PART II

“MEMORIES OF OVER EIGHTY YEARS” – REMINISCENCES

OF MELIUS DE VILLIERS¹

Transcribed, arranged and annotated by WG Schulze²

Chapter 1

My early years²

I was born at the Paarl on the fifth day of September 1849 and baptised in the Dutch Reformed Church at that place on the thirtieth day of that month.³ I cannot, of course, assert these facts from my own knowledge but for their correctness have to depend upon a baptismal certificate. I had several godparents, only one of whom I ever knew; but as none of them thereafter ever apparently concerned themselves about me I need not further advert to them. My father was Carel Christiaan de Villiers and the maiden name of my mother was Dorothea Elisabeth Retief. As regards my remoter ancestry, on the 8th of

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¹ Initially, when he commenced writing his memoirs in September 1926, De Villiers, then aged seventy seven, called it “Memories of Nearly Eighty Years”. He later replaced the word “Nearly” with “Over”. More than 150 handwritten pages containing his memoirs were written over a period of at least five years (from 1926 to 1931), necessitating the change in the title. His “Memoirs” forms part of the Melius de Villiers Collection which is housed at the Free State Archival Depository in Bloemfontein. The “Memoirs” consists of a main manuscript of ninety eight handwritten pages, and nine smaller batches of handwritten notes. These smaller batches of notes (ranging from two to twenty four pages each) consist mostly of second drafts on topics which he had already discussed in the main manuscript. While some of these smaller batches are numbered and have headings, others do not. For purposes of future reference I need to explain the numbering and headings which I have used in identifying these smaller batches of notes. “Batch I” consists of three pages and starts with “page 1c” in which Fischer’s conversation on the looming War is explained. “Batch II” consists of twenty four pages and starts with the sentence: “To me it was the most miserable and melancholy of sights …”. “Batch III” consists of three pages. It is not numbered and there is no heading. It deals with President Steyn’s reluctance to enter the War. “Batch IV” consists of Melius de Villiers’ petition to Parliament regarding his pension under the heading “Union of South Africa”. “Batch V” consists of a single page with half a sentence written on it. “Batch VI” consists of five pages under the heading “Under three Presidents in South Africa”. “Batch VII” consists of five pages which contain a number of incoherent sentences. It does not contribute anything new to the main manuscript. “Batch VIII” consists of three pages under the heading: “Anglican Church”. “Batch IX is numbered “IV” (by De Villiers). It consists of eleven pages under the heading “Employment of voluntary troops in the War”.

² In the original manuscript De Villiers initially inserted the heading “Chapter I. Earlier Years” here, but later deleted it. I decided to retain his initial heading here, but changed his “Earlier Years” to “My Early Years”.

³ In October 1687 Commander Simon van der Stel allocated farms along the Berg River to twenty three white settlers. The white Dutch and French farmers, as well as their black slaves who came to live in the Paarl Valley, played a decisive role in elevating not only the status of Afrikaans, but also the everyday use of that language. The Afrikaans Language Monument is situated outside Paarl. Paarl is generally regarded as the cradle of Afrikaans: see Oberholster (in association with Van Breda) Paarl Valley 1687-1987 (1987) passim for a history of the development of the Paarl Valley.
May 1689 three brothers arrived at the Cape from La Rochelle in France, where apparently they had been vineyard owners, and one of them was Pierre de Villiers. He obtained and settled himself on the farm Bonvyogne or Burgundy at French Hoek and married Elisabeth Taillefer, daughter of Isaac Taillefer, whose farm was situated at the Southern entrance to the Paarl. Pierre begot a son also named Pierre, who married the widow of J.H. Melius (or, as he signed his name, Mylius). This Pierre begot a son to whom his own name, but rendered into Dutch as Pieter, was given, and this Pieter begot my grandfather, named Jacob Nicolaas, generally known in his time as Jacob Vrederechter (Justice of the Peace). A legend in our family was something to the effect that old J.H. Melius, having no son, had requested his daughter, if ever she had a son when married, to call him by the name of Melius. She had no son so that eventually this request was lost sight of till it was brought to my father’s notice, whereupon he declared that the next son was I. How far this legend is in accordance with actual fact I cannot tell.

The De Villiers family’s dwelling “Rozenfontein” in Main Street, Paarl. Melius de Villiers was born here in July 1849. (Source: Private Collection, WG Schulze)
Of my father I can remember absolutely nothing as I was a very small child when he died. I believe his death was occasioned by his getting drenched with rain when out surveying. His profession was that of a Land Surveyor. He was a highly religious man and much respected. The respect in which he was held by all was evidenced by the fact that at his funeral (so at least I have been told) the coloured people of the Paarl made the request that they too might be allowed to take part in the funeral procession, a quite unusual request.

Of my mother I can remember very little. One of the little incidents I remember with regard to her is this. I used to sit on a footstool at my mother’s feet in church, the clergymen, the Reverend W. van der Lingen, being notorious for his extremely long prayers and sermons. I used naturally to fidget very much when these were going on. On one occasion on arrival home I was reprimanded by her for my fidgetiness during the service, my mother remarking: “If you cannot endure a few hours in church how will you be able to endure being in heaven forever?” I shocked her very much by saying in reply: “Well mother, if heaven is like church I would rather not go there.”

On the death of my widowed mother she left behind her four sons and five daughters, of whom two sons (including myself) and two daughters were still alive in September 1926. The eldest brother and sister, although themselves quite young, took charge of and brought up the younger ones with as much care as parents could have done. My eldest brother Jacob in his lifetime occupied various positions in the Government Service, the last position which he occupied before his retirement having been that of Civil Commissioner and Resident Magistrate of Worcester, where he resided in the Drostdy. He afterwards lived and died at Kenilworth near Cape Town, his death having been occasioned by having been knocked over by a motor bicycle. My second brother Henry lived to become Chief Justice of the Union of South Africa; he died at Pretoria in the year 1914 whilst acting as Governor General of the Union. The third brother, Charles, until he retired, practised as an Attorney.

5 Gottlieb Wilhelm Antonij (“Antonie”) van der Lingen was born in Cape Town on 29 May 1804 and died in Paarl on 7 November 1869. He was a minister in the Dutch Reformed Church, a leader in church affairs and champion of the Dutch language in South Africa. He served for thirty eight years as minister of the Paarl Dutch Reformed congregation. He was of frail build and suffered from bad health. However, that did not prevent him and his wife Elisabeth Johanna Hendrika Vos from having sixteen children, only seven of whom survived their father: see Du Toit sv “Van der Lingen, Gottlieb Wilhelm Antonij” in Dictionary of South African Biography Vol I (hereafter DSAB) 812ff. The Dictionary of South African Biography consists of a set of five volumes. Volume I was published in 1968 under the editorship of WJ de Kock; Volume II was published in 1972 under the joint-editorship of WJ de Kock and DW Krüger; Volume III was published in 1977 under the joint-editorship of DW Krüger and CJ Beyers; Volume IV was published in 1981 under the editorship of CJ Beyers; and volume V was published in 1987 under the joint-editorship of CJ Beyers and JL Basson.
Notary and Conveyancer. My two surviving sisters are now (September 1926) living together at Alexandra Villa, Alexandra Road, Wynberg.

The property on which we lived for a good many years was called “Roosfontein” or “Rozenfontein”, a little distance off the main street of the Paarl. It had an orchard up in the Main Street and also had on the other side of the house a vineyard stretching right away to near the Berg River. We thus had abundance of fruit and also grapes for the making of wine. I recall one incident connected with wine making. There were a married coloured couple who had been slaves of my grandfather’s who were very much attached to us as we had been to them. On one occasion the husband, old Jephta, was overwhelmed by fumes when working in a large wine vat. When brought out of it we children wept bitterly believing him to be dead. However, his case being immediately attended to, he recovered. On another occasion we children were left to ourselves at dinner time in the wife’s charge our parents having gone on a visit elsewhere. As we were about to partake of our dinner without saying grace she rebutted us, whereupon she was requested to do it for us. She then began a little child’s prayer in Dutch a translation of the beginning of which would be:

I am a little child,
Oh make me clean of heart etc.

At an early age I went to an infant school in a road leading off from Zeederberg Square (I think it was so called, at all events a Dr. Zeederberg lived on the square). This school was kept by Miss Marion Barker, daughter of the Reverend W. Barker, then in charge of the old Zion Chapel, where he ministered to a coloured congregation, but we generally went to the service as it was a short one. The old gentleman was blind and I remember Miss Marion Barker tinkling a little bell when the hands of a clock pointed to a certain hour in order to let him know that it was time for him to put an end to his discourse, which he then generally did at once. He could not have very good at speaking Dutch, for I remember that a sister of mine when very young always believed that he commenced his final benediction by saying: “Sekenade

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6 Referred to by Schoeman as “the redoubtable GWA van der Lingen” in “Some correspondence of Lord de Villiers” 1999 Quart Bull NLSA at 66.
7 Marion Barker was the fourth daughter of Reverend Barker: see Hockly av “Barker, George” in DSAB Vol I 55.
8 George Barker was born in Wimbish, Essex, in England in 1789. He was a missionary of the London Missionary Society. He arrived in South Africa in May 1815. After working as missionary at Bethelsdorp and Theopolis until 1839, he was transferred to the Paarl where he married Hilletjie Smuts. Blindness caused him to relinquish his missionary work in 1856. He died on 9 May 1861 in Paarl and is buried in the Zion Church’s cemetery next to the church: idem 54-55.
sekenoisì", which really was actually to mean “De genade van onze” (“the grace of ours”).

From Miss Marion’s school I was later on promoted to one of somewhat more advanced character kept by her elder sister Miss Elisabeth Barker, Queen Elisabeth we sometimes called her. Boys and girls were here educated together. Among other incidents connected with my school days there I remember the following. Every Monday morning each pupil was expected to rise in turn and repeat a text from Scripture which he had to select himself and learn by heart the previous Sunday. Every Monday morning too, after repeating our texts we had to sit and write an English letter on our slates addressed to the schoolmistress. One Monday morning I repeated my text, which was: “If thy enemy be hungry give him bread to eat; if thy enemy be thirsty give him water to drink.” Sitting down to my letter I cudgeled my brains in vain for something to write, so at last in despair I write: “My dear Miss Barker if thy enemy be hungry give him bread to eat; if thy enemy be thirsty give him water to drink, your affectionate pupil”, to which I signed my name. This epistolary effort amused her highly and I was afterwards much chaffed about it. This reminds me of another incident, showing the good nature of our teacher, who however could be stern enough in cases of wrongdoing.

There was a Dutch Reformed Church not far from the schoolroom and in this Church weddings not infrequently took place, and we sometimes would ask for half an hour’s holiday in order to see the wedding proceedings. So on one Monday morning I remember writing: “My dear Miss Barker, may we please go to see the wedding today; no, I only play with you, your affectionate pupil.” I wanted the holiday but all the same I thought I had better put it as if I meant it for a joke. However, if I remember rightly we got the opportunity of going to see the wedding. Miss Elisabeth Barker died many years afterwards, something like eighty years old. Miss Marion Barker married Reverend Mr. Budler, a missionary. Two things we were well-grounded in at Miss Elisabeth Barker’s school and these were Lenny’s Grammar and English spelling. At one time there was hardly a word in the English language which I could not spell

Elizabeth Barker (1816-1904) was the second daughter of Reverend Barker. She never married: idem 55.

She was in fact seventy nine years old: ibid.

Johann Friedrich Budler was born on 16 January 1816 in Königsberg, East Prussia. He was an inspector of schools and a Rhenish missionary. He was sent to South Africa in 1839 with two special instructions: he was to re-organize the mission schools thoroughly and to establish a training school at which brown teachers could be trained. In 1864 he married Mary Ann Barker, the daughter of the missionary George Barker of Paarl. He died at Ceres on 29 November 1873: see Heese sv “Budler, Johann Friedrich” in DSAB Vol II 96-97.
correctly; nowadays I feel somewhat doubtful at times about the spelling of a
word.

Our education at Miss Barker’s was entirely in English, amongst other things
we learned the history of England in rhyme and came in due course to know,
amongst other valuable information, all about King Henry VIII and his six wives
and were taught to sing “God save the Queen” and other, from a British point of
view, patriotic songs and also about buttercups and daisies and other English
flowers and robins and other British birds. Here I may remark that an entirely
loyal sentiment prevailed amongst our people in those days. People were even
proud of their loyalty, as if loyalty of this kind is necessarily a virtue. Of this
loyalty Captain Fletcher-Vane testified at a later time (in an article in the
Contemporary Review of July 1903) as follows: “In 1899 the Dutch Colonists
were amongst the most loyal of the subjects of alien blood in the Empire. ...
They were in all essentials loyal, respecting our flag and holding in reverence
the late Queen to an extent which is almost inconceivable.”12 These were the
same peoples to whose loyalty Lord Milner13 sarcastically referred and the
lying, lip-loyal, “slim” scoundrels which Mr. Ivan Müller, Lord Milner’s chief
apologist, has tried to make out they had been. Later on in these memoirs I
may have the opportunity of referring to the change of sentiment which
eventually and naturally took place. After our training of this kind in our youth
how much disappointment and disillusionment we had to experience in later
years. And if in later years there is much talk of “racialism” on the part of the
Dutch community (most of it nonsense) the subsequent history of South Africa
fully accounts for any change of sentiment.14

12 See further Fletcher-Vane Pax Britannica in South Africa (1905) passim.
13 Alfred Milner was born in Giessen, Hesse-Darmstadt, Germany on 23 March 1854. Milner, a
British government official, later served as Governor and High Commissioner in South Africa.
He was appointed as High Commissioner to the Cape in 1897. Milner was an arch-imperialist
and instrumental in convincing the British government that war was the only solution to solve
the ‘outlander’ problem in the South African Republic: see Harrington sv “Milner, Sir Alfred” in
DSAB Vol III 613-617. Milner acted as the Governor of the Transvaal from 1901 to 1905. Milner
Park, a portion of Johannesburg on which the West Campus of the University of the
Witwatersrand is situated, was named after him. Also Milnerton, a town ten km north-east of
Cape Town, which was laid out on the farm Biesjeskraal in 1902 and attained municipal status
in 1955 was named after Milner: see Raper A Dictionary of South African Place Names (1987)
348.
14 In a separate set of notes under the heading “Under three Presidents in South Africa” (my
numbering: Batch VI at 3-4) De Villiers elaborates on these sentiments: “Incidentally I may
here remark that this is the same feeling which Ivan Müller, Lord Milner’s henchman, has
described as ‘lip-loyal’. Tactfully and tastefully also Lord Milner, not long after his arrival in
South Africa on a visit to a country town remarked, with reference to an expression of
loyalty in an address delivered to him, ‘Loyal, it would indeed be monstrous if you were not
loyal’; a remark which merely reflected on the quality of his brain. The special quality we
were made to believe that distinguished English people and English policy was fair play
[and] truthfulness. We had no idea that a sad disillusionment might follow.”
Incidentally it may be mentioned that when the Reverend Mr. Barker died his successor in Zion Chapel was the Reverend Mr. Kolbe.\textsuperscript{15} I believe he wrote a Zulu or other Kaffer Dictionary\textsuperscript{16} and believed he had discovered a connection between such language and the Indo-European tongues.\textsuperscript{17} He had two sons with whom my brother Charles and I sometimes went to play at their house. I have lost sight of the elder of the two; the younger is now Monsignor Kolbe, he having been converted to Roman Catholicism. I have read his book explaining the reasons for his conversion but found it singularly unconvincing. I presume that the aesthetic qualities of its services really attracted him.\textsuperscript{18} Besides which Roman Catholicism acts as a sort of opiate to reasoning minds.

As a small boy I must have been of a somewhat skeptical disposition with regard to some of the things I was taught or told. For instance I had grave doubts about the rotundity of the Earth, for I argued thus: If standing in the daytime we have our heads above and our feet below; then at nights standing we have our feet above and our heads below; well then in the latter case the blood would rush to our heads and thus cause death. This I had been told would happen if a person was hung up by his feet. The rotundity of the Earth and its rotation round its own axis was thus for me not an established fact.

From Miss Elisabeth Barker’s school my brother Charles (who was a couple of years my senior) and I were removed to an elementary school which was the lowest department of the Paarl Gymnasium (\textit{Gymnasium Margasinum} \textsuperscript{[?]}) it was called in Latin testimonials given to boys). This School was situated along the Main Street at the furthermost corner of Market Square and was really the basement of the dwelling house of the Dutch Master Mr. Theodorus Hofman.

\textsuperscript{15} Frederich Wilhelm Kolbe was born on 3 November 1821 in Gütersloh, Westphalia, Germany. He was a missionary of the Rhenish Missionary Society and a Herero scholar. In 1845 he was sent to what is today known as Namibia. There he learnt the Herero language. He became so proficient in it that within a year he was able to preach in it. He moved to Paarl in August 1865 where he was a missionary of the Zion Church until 1877 when he resigned on account of ill health. He died in Cape Town in 1899: see Mosselow \textit{sv "Kolbe, Frederich Wilhelm"} in DSAB Vol V 419-420.

\textsuperscript{16} What Melius de Villiers describes here as a “Kaffer Dictionary” in language common during the twentieth century, was in all probability an elementary dictionary in Herero, entitled \textit{An English-Herero Dictionary with an Introduction to the Study of Herero and Bantu in General} (1883). He arranged for the printing of 1 500 copies of this dictionary. He also arranged for the printing of 1 000 copies of a book with fifty one Bible stories and forty hymns. His interest in publishing eventually led him to buy a printing press: \textit{idem} 419. See further \url{http://oasis.unisa.ac.za/search?kolbefw/} (31 January 2008).

\textsuperscript{17} See Kolbe \textit{A Language Study Based on Bantu, or an Inquiry into the Law of Root-formation, the Original Plural, the Sexual Dual, and the Principles of Word-comparison: with Tables Illustrating the Primitive Pronominal System Restored in the African Bantu Family of Speech} (1888) passim.

\textsuperscript{18} De Villiers presumably refers here to Frederick Charles Kolbe (1854-1926). Kolbe was the author of a number of books, including the following: \textit{The Art of Life: An Essay} (1903); \textit{Up the Slopes of Mount Sion, or A Progress from Puritanism to Catholicism} (1924) and \textit{A Catholic View of Holism: A Criticism of the Theory put Forward by General Smuts in his Book 'Holism and Evolution'} (1928); see \url{http://oasis.unisa.ac.za/search?kolbefc/} (31 January 2008).
The Gymnasium was founded by the Reverend Mr. van der Lingen, already mentioned by me. He was a remarkably learned man, the most so of all the Clergy of the Dutch Reformed Church, a mystic, finding mysteries in numbers occurring in Scripture, much given to Egyptology and such like recondite matters and also to the interpretation of the prophetical books of scripture especially the Books of Daniel and of Revelation. The Day of Judgment he constantly declared was near at hand. Many a fright I had as a child when on Saturday or other nights I was startled out of my sleep by the music of a band of coloured faith passing along the street, which I at the moment of awakening, thought might be the trumpet of the Archangel giving forth its menacing sounds. It did not strike me that it could not possibly be the midnight hour when as believed, this was to happen at one time all over the earth, so that if the trumpet sounded at night at my place it would be daytime at the antipodes. The day of judgment much haunted me and when a couple of Mormon missionaries visited the Paarl and there held forth in the open air near our house my fears were incensed by being told that according to Scripture false prophets were to appear towards the end. At one time Mr. van der Lingen, who was fairly well off, spent a good lot of money trying to bore an artesian well a few hundred yards above the Gymnasium building. The spot was on a rise and hardly seemed suitable for the purpose, and if it were suitable there was no necessity for the Paarl had its municipal water supply. Anyway, the bore at a considerable depth from the surface was continually breaking and had to be extracted with great difficulty; eventually the attempt had to be given up. He always drove from the "Pastorie" to Church in a huge cart, which we boys dubbed the “Alabama”, after an American man-of-war of which much was heard at one time. He always came into Church in gown and bands and with a three-cornered hat in his hand, which hat was ceremoniously hung by him on a wooden peg up the steps of the pulpit. We boys were fearfully frightened of

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19 Van der Lingen's Gymnasium opened its doors for the first time in 1858. Initially it was intended to serve as a preparatory school for theology students, but it soon developed into a fully-fledged church school and a vehicle for Van der Lingen to ensure that its pupils received a proper classical education with Dutch (and not English) as the medium of instruction. Two of the teachers at the Gymnasium (which later became known as the Paarl Gymnasium) were Arnoldus Pannevis and the Reverend SJ du Toit. Both Pannevis and Du Toit later became instrumental in the so-called First Afrikaans Language Movement: Du Toit (n 5) 814. For a disappointingly skimpy history of the Paarl Gymnasium, visit the school's website at www.paarlgim.co.za/hskool/geskiedenis.php (25 January 2008).

20 Perhaps this was where the seed of Melius de Villiers' own fascination with numbers was sown. His *The Numerical Words: Their Origin, Meaning, History and Lesson* was published in 1923. See further the Addendum below.

21 On the "Alabama" see, in general, Du Plessis *Aantekeninge uit Tuynstraat* (1975) 82ff; and Van Niekerk "The story of the CSS ('Daar kom die …') Alabama: Some legal aspects of her visit to the Cape of Good Hope, and her influence on the historical development of the law of war and neutrality, international arbitration, salvage, and maritime prize" 2007 (13-2) *Fundamina* 175-250.
the piercing gaze of the old gentleman and would scuttle away if we saw him anywhere near approaching.22

Mr. Hofman, the head master of the Elementary School to which I have referred above, was we always understood, a retired Dutch military officer; he entertained us with accounts of his East Indian Experiences. One eccentricity of his I remember. On Sundays he had to walk a long way going to Church, but even on the hottest summer days (and the Paarl can get excessively hot) he never carried an umbrella and he walked in the middle of the road, away from the shade of the oaks which line the streets on both sides; the reason which he gave for this was that in the East Indies where he had been stationed, soldiers were not allowed to walk otherwise. As he went along he used to guess the distance away to some object ahead, estimate the number of paces to such object and then count his paces up to such object to ascertain whether he had been correct in his estimation of the distance. He was a man very well qualified for his work, only he would insist upon us, who had already acquired a sufficient knowledge of spelling, a new system of spelling which only served to amuse us and our acquaintances when we told them of it. So much so that we never paid any serious attention to it. Instead of spelling in the ordinary way by letters of the alphabet, we were taught to spell by sounds; for instance “cat” would not be spelled c-a-t but ce-at, cat and “moon” not m-o-o-n but me-oo-ne, moon. I must confess the old spelling is rather absurd when one comes to think of it, for c-a-t can never really spell anything but see-ay-tee and w-e anything but double-you-ee. However the ancient Greeks must also in some way have overcome this difficulty for how could kappa-alpha-tau ever have spelled cat? I always thought that he had acted unjustly towards me, which caused me to dislike him and neglect his lessons. Our English master for a considerable time and until he died was Mr. C.P. Henry. He was succeeded by Mr. Charles Corven, who tried to do an agency business at the same time in the Resident Magistrates Court; but this arrangement did not work very satisfactorily and I do not think we learned much from him.

We always had grand games as the seasons for them came round. Who fixed these seasons I never enquired, but as if instinctively we played at them at certain periods of the year. I never tried playing at cricket or football; cricket was very little known and football not at all – there occasionally existed a cricket club, but we younger boys did not belong to it. Swimming in the Berg

22 De Villiers’ reference to Van der Lingen’s “piercing eyes” was no exaggeration. Du Toit (n 5) describes Van der Lingen as “a man of medium height, with a serious, but friendly countenance and a penetrating gaze” (at 812).
River at all times of the day was our chief delight, especially in summer; the river afforded splendid opportunities for that pastime.

There were some quaint characters in the Paarl in those days. Old Hennie van Breda, the Resident Magistrate, known for the stinginess of himself and his wife, and who, when a law agent in his Court quoted Van der Linden, the Roman-Dutch law authority, rebuked the agent by telling him that he had every respect for Mr. van der Lingen in the pulpit but that in his Court Mr. van der Lingen had nothing to say. Then the law agent Van Reenen “met de lange beenen” who was supposed to wear ladies’ kid boots and to get tipsy on Eau de Cologne. The tall schoolmaster, whose short little wife was supposed to stand on a chair when she gave him a whipping. Mr. O’Keeffe, the gaoler, an unfrocked Roman Catholic priest, whose pleasure it was to catch us youngsters by the button hole whilst he recited passages from Virgil or Homer and at whose death a box full of silver three-halfpenny pieces (now no longer to be met with) was found which in his lifetime he had collected. An old Frenchman, named Clement, but who passed under the name of Napoleon, as he frequently got drunk and then shouted out his name as he passed along the street. Old Pontimans, the painter, who always had a drop of watery fluid pendent from the tip of his nose, and who painted allegorical pictures which it was difficult to understand and a series of frescoes in the wine cellar of “Abraham Royand”, a name-sake of ours noted for his generosity and owning a wine farm to which one went up Berg Street, now a Government viticulture station, where however the frescos have now been whitewashed or painted over. Little Perold who sold the blatjang which his mother made and who for a small consideration would compose impromptu rhymes on any name or any other subject. Mr. Harris, who lived the life of a misanthrope, in a room excavated in the bank of the Berg River. Old Herbert, a queer-looking old chap, whose occupation it was to sharp razors for people, and so on. But there was one character that I must particularly refer to, an elderly woman, named Mita Geldenhuys, who lived by herself next door to us in the Main Street and whose tragic fate made a deep impression upon me at the time and caused me several almost sleepless nights after the event to which I shall now refer, took place.

Lower down the street a relation of hers was living with whom she was at enmity. One night an attempt was made to burn down his house by firing the thatched roof of a shed adjoining it. The next night the relation posted two Hollanders armed with guns on the spot to act as guards. About midnight one of these two became unwell, leaving the other on guard alone. Hardly had he
left when a tall white ghost appeared upon the scene. The man on guard, greatly terrified, called out three times “stand or I fire”; the ghost took no notice but continued approaching, waving its arms in the air. In his terror he fired and the ghost immediately fell. Others then came to the spot, amongst them was my eldest brother, who was sent for as a Justice of the Peace. According to his account it was a gruesome spectacle that he had gone to view. There lay Mita Geldenhuys, shot in the breast, with a high superstructure placed on her head and over all a large white sheet, with a bleeding wound in her chest. She was at once conveyed to her mother’s house close by, and in a short time expired. The man who had shot her was tried for murder but was of course acquitted. I remember a trick we once played upon her. An uncle of ours was staying at the seaside with all his family except a son whom he left behind staying with us to attend school in the meantime. In their yard was a huge “Adam’s fig” tree. We used to watch the figs ripening within reach but before we had a chance of picking them they would be gone. So one day the son and my brother Charles and myself got some ipecacuanha powder\textsuperscript{23} and put it into several nice large low-hanging figs. The next day we were highly amused to hear that old Mita had been going round to neighbours for some French Brandy as she felt very unwell having, as she alleged, bought and eaten some figs which had disagreed with her.

There were hardly any Jews at that time at the Paarl, which now has a plentiful supply of them. There was an old Mr. Goldsmidt, who had two sons who studied at the South African College and he was a very respectable [man] and Mr. Rosenzweig, a converted Jew who had married a Christian lady and who used to preach on Sunday afternoons at the “Gesticht” a sort of chapel of the Dutch Reformed Church. Of him, it was said that each Sunday he used to repeat the latter half of his previous week’s discourse, adding another half, so that a person who attended his services every alternate Sunday would eventually have the full benefit of his addresses on Sundays. The house he lived in on one occasion caught on fire and a Miss Pepler who also lived in the house, returning to it after she had left it to rescue some article, was burned to death.

23 Ipecacuanha is a low-growing South American shrub, the dried roots of which are used to prepare a drug which is used as a purgative and emetic: see Sinclair (consultant) Collins English Dictionary and Thesaurus (1993) 608 sv “ipecac”.

When we [were] considered sufficiently advanced in learning my brother Charles and I were promoted to the “real-school”, the second department of the establishment already referred to; and from these eventually to the upper
department or Gymnasium proper. We had by this time made some progress in Greek and Latin, geometry, algebra and other subjects of education. Our classical master was a Hollander, a man noted for his stinginess and often being sadly in want of new clothes; those he had on were sometimes pinned or stitched together. There were some mischievous boys who treated him very badly indeed; by, for instance, causing a heap of sheet dust to fall upon his head when he opened the door by which he had to enter the class-room; this was done by putting the dust on a slate one end of which was made to rest upon a nail driven into the door and the other end of which was connected by a string with a nail fixed above the door, and of course when the door was opened the dust came down whilst the slate remained hanging. It was only long afterwards that it became known that he had been supporting his parents in Holland all the time; had it been known, he probably would have been treated with more consideration. The poor man was very near-sighted so that tricks were very easily played upon him. He died only somewhere about the year 1919 in Holland at the age of 91 years.

The Old Building at the South African College School (SACS). (Source: Walker The South African College and the University of Cape Town. 1829-1929 (1929))
In connection with the matter of schools and education there is one point I wish to dwell upon. It is not infrequently asserted by English-speaking people that Dutch-speaking school boys are untruthful and invidious [when] comparison is made with English school boys. Now I must state once for all, that I do not agree with this assertion. So far as my experience goes the matter stands thus: If at school an English boy tells a falsehood the remark that would be made would be: “What an untruthful boy this is.” If similarly a Dutch-speaking boy tells a falsehood the remark would be: “What liars these Africanders are.” In the former case the boys’ conduct is treated as exceptional [and] in the latter case it is treated as typical. In this way by treating the exceptional as typical one might assert that all Englishmen are thieves and murderers because there are thieves and murderers amongst them. In every school that I attended in my youth the moral tone was good. Such a person as the “bully” one reads of in English books was unknown. Such things as are described in “The Loom of Youth” by Alec Waugh descriptive of public school life in England, which

24 Alexander (Alec) Raban Waugh was born on 8 July 1898 in London and died on 3 September 1981. He was a British novelist and the elder brother of the better-known Evelyn Waugh. He was married to Virginia Sorenson, author of the Newbery Medal-winning Miracles on Maple Hill. Waugh was educated at Sherbourne School, a public school in Dorset. The result of his experiences was his first, semi-autobiographical novel, The Loom of Youth (1917), which harked back to his schooldays. This book was seen as so controversial at the time (it openly portrayed the homosexual passions between the boys: is it perhaps this aspect of Loom of Youth which De Villiers had in mind when he referred to the “sensation” created by the book when it was published?) that he remains the only former pupil to be expelled from “The Old Sharburnian Society”. When the book was published Waugh was serving with the British Forces in France, although he did not see action in the First World War until Passchendaele. He eventually became a successful author, although never as successful or innovative as his younger brother, Evelyn. Waugh is said to have invented the cocktail party when he was active in London social life in the 1920s, when he served rum swizzles to astonished friends who thought they had come for tea. Within eighteen months, early evening drinks had become a widespread social entertainment in that city. Waugh also has a footnote in the history of reggae music. The success of the film adaptation of Island in the Sun and the Harry Belafonte title track inspired the name for the highly successful Island Records record label. Waugh had an extensive publication list. Apart from The Loom of Youth (1917), he also wrote: Resentment Poems (1918); The Prisoners of Mainz (1919); Pleasure (1921); Public School Life: Boys, Parents, Masters (1922); The Lonely Unicorn (1922); Myself when Young: Confessions (1923); Card Castle (1924); Kept: A Story of Post-war London (1925); Love in these Days (1926); On Doing what One Likes (1926); Nor Many Waters (1928); The Last Chukka: Stories of East and West (1928); Three Score and Ten (1929); “Siri!” She Said (1930); The Coloured Countries (1930); Hot Countries (1930); Most Women (1931); So Lovers Dream (1931); Leap before you Look (1932); No Quarter (1932); Thirteen such Years (1932); Wheels within Wheels (1933); The Balliols (1934); Jill Somerset (1936); Eight Short Stories (1937); Going their Own Ways (1938); No Truce with Time (1941); His Second War (1944); The Sunlit Caribbean (1948); These Would I Choose (1948); Unclouded Summer (1948); The Sugar Islands: A Caribbean Travelogue (1949); The Lipton Story (1950); Where the Clocks Chime Twice (1951); Guy Renton (1952); Islands in the Sun (1955); Merchants of Wine: House of Gilbey (1957); The Sugar Islands: A Collection of Pieces Written about the West Indies between 1928 and 1953 (1958); In Praise of Wine (1950); Fuel for the Flame (1960); My Place in the Bazaar (1961); The Early Years of Alec Waugh (1962); A Family of Islands: A History of the West Indies 1492 to 1898 (1964); Mule on the Minaret (1965); My Brother Evelyn and other Portraits (1967); Foods of the World – Wines and Spirits (1968); A Spy in the Family (1970); Bangkok: The Story of a City (1970); A Fatal Gift (1973); A Year to Remember: A Reminiscence of 1931 (1975); Married to a Spy (1976); and The Best Wine Last: An Autobiography through the Years 1932–1969 (1978); see http://en.wikipedia.org/wiki/Alec_Waugh (15 February 2008).
created some sensation when published a few years ago would have been considered incredibly shocking in any South African school I ever had anything to do with. And I have met with considerable confirmation of what appears in the pages of the book here referred to.

From the Paarl Gymnasium my brother Charles25 and I proceeded to the South African College, which has later on been incorporated with the University of Cape Town.26 This was in 1864 and I attended classes there until 1868.27 The railway from Cape Town did not then yet run as far as the Paarl. The first sod of that railway was cut on 31 March 1859, when I was about ten years old, and it took several years before it was completed so far. Navvies,28 huge and heavy (so at least they appeared to us boys) were imported to do the work of construction, and being rather tough customers people were rather frightened of them. We used to travel from and to Cape Town when we came home for the holidays and returned to the College on the top of an omnibus, drawn, if I remember rightly, by six horses doing the distance from the Paarl to Cape Town (36 miles) in about five hours, having breakfast at a small hotel along the road where, I think, as well as at a place further on (“Kruispad”),29 a fresh relay of horses was put into harness. We used thoroughly to enjoy those trips, however sad we might feel at leaving home and returning to the scene of our scholastic labours again. When the railway got as far as the Paarl a big agitation was set on foot, at the instance, I think, of the Reverend Mr. van der Lingen, against Sunday trains and it was decided to boycott the trains and continue the omnibus service. Sunday's trains in consequence were put an end to till a good many years afterwards when through the extension of the railway northward they became a necessity. As our family belonged to the party who objected to Sunday trains we continued to use the omnibus. Having never been inside a railway carriage we used very much to envy the travellers by train, as we saw it sweeping by as we were seated in the omnibus on which we were travelling in the old style.

25 Charles Christiaan de Villiers was a pupil at SACS from 1864 until 1866: see Ritchie The History of the South African College School. 1829-1918 Vols I & II (1918) 860.
26 On SACS, see generally Walker The South African College School and the University of Cape Town. 1829-1929 (1929) passim; and Linnegar SACS – 150 Years (1979) passim.
27 See further Ritchie (n 25) 860 where Melius de Villiers is listed as an alumnus of SACS. During the nineteenth century there were no secondary schools let alone tertiary institutions in South Africa in which the medium of instruction was Dutch. The large number of Dutch surnames listed among the alumni of SACS during its first ninety years (1829-1918) bears testimony to this fact. No fewer than ninety six students with the surname of De Villiers completed their studies at SACS between 1829 and 1918.
28 A “navvy” refers to a labourer on a building site. It is a nineteenth-century British concept and derives its origin from “navigation builder” or a “navigation”: see Sinclair (n 23) 759 sv “navy”.
29 “Kruispad” is nowadays better known as “Crossroads”, a township in the Wynberg district, some 12 km east of Athlone. It was named “Kruispad” because roads cross there: see Raper (n 13) 107 sv “Crossroads”. In the more recent past “Crossroads” became well-known for the huge informal settlement which was established there.
Our teachers at the South African College were Professor Cameron,\(^{30}\) who taught the classical languages, Professor Childe,\(^{31}\) who taught mathematics, and Professor Noble,\(^{32}\) who taught English language and literature, History, Physics (Chemistry, Geology, Astronomy, Geology and some other things besides). The College building was the one now standing amidst a series of other buildings since erected in connection with the College and abutted on the Gardens Avenue. Massive pillars supporting the roof over two stoops are a prominent feature of the building. In the "History of the South African College" published a few years back information on the subject of the professorate and the added buildings is to be found.\(^{33}\) Dutch we hardly learned at all; about half an hour every Wednesday afternoon was devoted to it. When the quarterly class-lists were drawn up the task of compiling it was entrusted to a certain boy, who presumably was the best Dutch scholar; he of course put himself down first and obtained the prize for Dutch at the Annual Examination, and he arranged the names of the other boys at his discretion. With such teaching we of course made but little advance in our knowledge of Dutch beyond what we knew when we first went to the College.

We boarded at first with the Reverend Mr. Guy Gething, a clergyman of the Anglican Church in Wandel Street (if I remember the name rightly) in the Gardens; thereafter when he left with the Reverend Mr. A.P. Meiring, a clergyman of the Dutch Reformed Church, Minister of Stephen’s, Cape Town, in a house somewhere in Wale Street and afterwards at “Rheezicht”, high up in the Gardens, and close to “Rocklands” and to the road leading to Platteklip, and being the property of a Mr. van Breda, Mr. Meiring’s father-in-law. Mr. Meiring was extremely delicate and accepted a call to Edenburg in the Orange Free State where he much benefited by the change of climate. His first wife having pre-deceased him, he married a second, and on her death a third wife. We also boarded some time with Mr. Henry Nixon, who was connected with Anne Wesley, an educational institution and eventually with some relations.

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\(^{30}\) The Reverend James Cameron BA was born in Antananarivo in Madagascar, where his father was a missionary. He was an ex-student of SACS and later furthered his studies at the Lancashire Independent College and Owen’s College, Manchester, in England: Ritchie Vol I (n 25) 171.

\(^{31}\) The Reverend Professor George Frederick Childe MA was a student of Christ Church, Oxford, and took a first-class in Mathematics in 1837. From 1846, he was an assistant at the Royal Observatory at the Cape. He was appointed at SACS in April 1852: see Ritchie Vol I (n 25) 140.

\(^{32}\) Roderick Noble was appointed as lecturer in Chemistry at SACS in 1855: see Ritchie Vol I (n 25) 159.

\(^{33}\) Referring here to the work by Professor W Ritchie The History of the South African College (n 25).
Whilst staying with Mr. Meiring he at one time presented me with a huge-typed Dutch Bible and at another time with Trench’s “On the Study of Words”, the latter of which I read with great interest, as the matter treated of in it was new to me. The mention of the Bible reminds me that I must have been amongst the first of stamp collectors even before stamp collecting became such a universal hobby. When I was a boy the Cape postage stamps were triangular, red for one penny, blue for four pence and so on. These I used to collect and paste in patterns on tissue paper. When I grew up these were neglected but many years afterwards I found one of these sheets of tissue paper in this Bible, and I was able to give away these stamps to friends who collected.

At the time I was at the South African College there was a yearly (or half-yearly, I am not now sure) examination held by the then existing Board of Public Examiners (afterwards superseded by the University of the Cape of Good Hope, which again in course of time was supplanted by the University of Cape Town) and called the Competition of Schools. This competition was open to pupils of the Colleges and Schools in the Cape Colony, and the boy who passed first in both Classics and Mathematics received a gold medal and twenty pounds sterling; the boy who passed first in either only received a silver medal and ten pounds sterling. There was of course much rivalry between these institutions in respect of these awards and the keenest interest was taken in the results of these examinations by the teachers and students attending them respectively. So much so that it is somewhat surprising that in the “History of the South African College” no mention appears to be made of any examination of this kind. Yearly blue-books for submission to Parliament were published by the Board of Examiners, in which, amongst other matters, the results of these examinations were given, which makes it still more strange that these were overlooked.

At one of these examinations I was fortunate enough to obtain the gold medal and the sum of twenty pounds sterling, much to my own surprise as everyone, including myself, felt sure these would be awarded to Robert Lewis, of our College. By a curious coincidence, the examiner in English language must also have been reading French’s “On the Study of Words”, for one of the questions which was put was entirely founded upon the etymologies of words as given in

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that book, and I was thus able to give a very satisfactory answer which I suppose none of the competitors could. I attribute it to this fact that I passed as well as I did in English, which, of course, is not my native language. I acquired from this book a great liking for etymological research which eventually resulted in my publishing a booklet on the origin of the numeral-words as I shall hereinafter narrate.

Whilst at the South African College I passed first the Preliminary Examination of the Board of Public Examiners, in which three mistakes in dictation spelling was a reason for being plucked. I luckily made none. Then in 1867 I passed the Third Class Certificate in Literature and Science and afterwards in 1869 the Second Class Certificate, supposed to correspond with the degree of B.A. Before going in for this Examination I had been unwell for some time and spent a month at Somerset West Strand, without studying, so that I lost all chance of doing fairly well at this examination, to which there was attached for the candidate who passed first on the list of successful candidates the Porter Scholarship\(^{35}\) of £150 a year for three years with the obligation of studying at a European University for that period. A curious thing happened to me in this examination, as showing that an examination does not always serve as a perfect test of knowledge but that its result may largely depend upon the state of mind of the candidate at the time of his undergoing such examination. One of the subjects of examination was Spherical Trigonometry. Somehow or other I had felt assured that one of the questions which would be put would be to work out what is known as De Moivre's Theorem. Consequently, although I was fairly well acquainted with it I made a further study of it until I knew it by heart and just before going into the examination room I looked it over again. When after entering the room I received the examination paper on the subject I have mentioned I found to my delight that the question for De Moivre's Theorem had actually been set. But when I had sat down to write my answers my mind was an absolute blank as to this particular question. I then put off answering it until I had answered the other questions which had been put, as

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35 The Porter Scholarship was named in honour of William Porter who was born on 15 September 1805 and died on 13 July 1880. The Irish-born Porter was the Attorney-General of the Cape from 1839 until 1866. In Porter's time the Attorney-General at the Cape was not only legal advisor to the Crown, but he was also an *ex officio* member of the Executive Council and the Legislative Council. He was a popular man in Cape Town, notwithstanding his strong personality and the influential position he held. He never married. Besides many university scholarships and the Cape reformatory bearing his name, the Western Cape town of Porterville was named after him in 1877. Porter was without doubt one of the leading lights in Cape public life for the larger part of the nineteenth century; see McCracken in De Kock *sv* “Porter, William” in *DSAB* Vol I 623; and Schulze & Hall “Smith v Lindsay – A legal cause célèbre from the Eastern Cape in 1847” 1998 (4) *Fundamina* 69ff.
hoping that the solution would still recur to my mind. This however did not happen however hard I tried to get hold of it; the consequence was that this question remained unanswered, and, as it was an important one, I probably lost a good many marks. When afterwards I looked the theorem up it seemed to me astonishing that I should so utterly have lost all grasp of it.

After a year’s time, in 1870, I went up for the First Class Certificate in Literature and Science, supposed to correspond to the degree of M.A. I had a somewhat similar experience in this examination. One of the papers in that examination, in fact the one I thought I might perhaps do best in, was that of which the subject was the Dutch language. When I received the paper I found that it was so inordinately lengthy that I saw no chance of answering it in the time allowed for the purpose. This upset me so that I could hardly answer anything at all properly and the paper remained very badly answered. However, having passed, I received the bursary attached to it, of £100 a year for three years which enabled me to visit Europe later on.

In 1870, just after the outbreak of the Franco-German war, I travelled to the nearby discovered diamond fields at Pniel on the Vaal River, going by wagon. Being constantly unwell there from drinking the water from the river, I left proceeding to Jacobsdal and then to Fauresmith and thence to Bloemfontein. All the time I was at these places I was unwell. Just at that time my eldest brother and Mr John Noble, then Clerk of the House of Assembly, paid a visit to the fields and to Bloemfontein, and I returned with them to the Paarl.

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36 John Noble was born in Inverness, Scotland, on 18 June 1836 and died in Wanstead, near London, on 21 June 1898. He was a Cape Parliamentary official and an author. After he came to South Africa in 1857 he joined the staff of The Cape Argus as a reporter and journalist. In May 1865 Noble became Clerk of the House of Assembly and held that post for more than thirty years until he resigned for health reasons in June 1897. His contribution to Parliament was immense. He served under three speakers, Sir Christoffel Brand, Sir David Tennant and Sir Henry Juta and all three relied heavily on his knowledge of Parliamentary rules and procedures. He helped to formulate the parliamentary rules and procedures during his term of office. His many other publications include, as joint compiler with Charles Aken Fairbridge, the Catalogue of Books Relating to South Africa, Compiled for the Colonial and Indian Exhibition (1886), this being the first general catalogue of Africana to be published: see Immelman sv "Noble, John" DSAB Vol II 517-518.

37 After visiting the diamond-fields Noble published a concise and interesting paper on the discovery of diamonds and the early days of diamond mining at Jagersfontein, Dutoitspan and Bultfontein. This paper was published in the Cape Monthly Magazine (January-June 1871). From 1857 to 1861 Noble's brother, Professor Roderick Noble and Alfred Whaley Cole, later advocate and Judge at the Cape (from 1888 until his "forced retirement" on account of his deafness), edited The Cape Monthly Magazine. After Roderick's death in 1875 John became editor of The Cape Monthly Magazine. Apart from the numerous newspaper articles that appeared from his pen, John Noble became well-known for a spate of high-quality scholarly writings, the majority of which are today much sought-after Africana: see Immelman (n 36) 517-519; and Roberts A South African Legal Bibliography (1942) at 353-354.
Travelling this way was by no means a source of delight, as there was much trouble about horses getting sick along the road, necessitating much delay and exchanges or fresh purchases of horses, in which [more] often than not the traveller came off second best.
Chapter 2

The young advocate

In 1872 I passed the First Class Certificate in Law and Jurisprudence, corresponding to the degree of LL.B. which entitled me to admission to the bar as an Advocate of the Supreme Court. Accordingly, on the 12th of May 1872 I was so admitted. When the University of the Cape of Good Hope was established persons who had obtained the First Class Certificate in Literature and Science and the Second Class Certificate in Law and Jurisprudence were entitled to become members of that University with the degrees of M.A. and LL.B. respectively, of which fact I later on took advantage.

With the bursary I obtained in connection with the First Class Certificate in Literature I was enabled to pay Europe a visit. The steamer in which I went to England was the “Briton” of some 900 tons. This was her last voyage whither, as she had been sold to the British Government; she was re-named “Dromedary” a very appropriate name on account of her slowness. The voyage to England took some thirty six days. I remember us remaining in sight of Tenerife [for] seventy two hours, being detained by head-wind. The dining room of the ship was simply a sort of long passage down the middle of which a table with benches on either side, whilst the cabins opened on the saloon on both sides. This was rather unpleasant with many of the passengers suffering from sea-sickness. In those days steamers plied between England and the Cape only once a month, generally taking thirty or thirty one days for the voyage. A person who had visited Europe from the Cape in those days was almost regarded as one of distinction. As there was no cable in existence yet at that time, the excitement was always great when the mail steamer arrived, bringing the latest European news, especially when there was a war going on, for instance that between Prussia and Austria.

I stayed in England some time and visited the continent, including Holland, Belgium, France, Italy as far as Naples and Rome, the Rhine and Switzerland. My visit to Europe was not long after the Franco-Prussian War. In Paris the savages committed by the communists were still perceptible in the ruins of the Tuilleries and their buildings. From the Continent, I returned to England,
visited Scotland and came back to the Cape.

At that time Capetown was a very different place from what it is now. The main thoroughfare then was, as it is now, Adderley Street, formerly called Heerengracht until the local vandals of that day re-named it after a nonentity Sir Charles Adderley.41 The left side of the street looking towards the sea was mostly occupied by the stores of firms of wholesale merchants, men who would have scorned to do any retail business. These stores generally speaking were two-storied unpretentious buildings; some with shops in front and some even with a chain across the street and attached to pillars. One building that belonged to the Dutch Reformed Church stood right across part of the roadway and so did part of the Old Supreme Court buildings. These obstructions have now been removed. Hezchen and Cartwright’s was then a plain grocery shop in a two-storied building and opposite it on the Parade stood a kiosk, constituting the terminus of the telegraphic system of the Cape. From Cartwright’s corner, there started twice daily an omnibus and a van to convey passengers to the southern suburbs. The railway station at the opposite bottom corner of the Parade consisted of a galvanised iron shanty, with two platforms inside, one for passengers and one for goods traffic. The sea extended at the time to guide close to the railway station.

After my return from Europe I commenced practice at the bar. I do not think that nature ever intended me to adopt the profession of an advocate. I was much too diffident and too acutely aware of my own limitations and deficiencies. However I did not do badly at the bar and was saving up money, though not upon a big scale. The first case I was engaged in was as junior to Mr. Advocate (afterwards for a short time judge) Cole.42 It related to a dispute

41 Sir Charles Bowyer Adderley was born in Knighton, Leicestershire, England on 2 August 1814. He was a British politician and philanthropist and showed early concern for colonial problems. He strongly opposed a proposal put to the House of Commons that the Cape became a penal colony. As a gesture of thanks the Cape Town municipality honoured him in 1859 by giving the city’s main thoroughfare, the name Adderley Street. Melius de Villiers was perhaps a trifle unfair in his assessment that Adderley was a “non-entity”. Adderley died on 28 March 1905 in Coleshill, Buckinghamshire, England: see Boucher sv “Adderley, Sir Charles Bowyer” in DSAB Vol V 5-6.

42 Judge Alfred Whaley Cole was born in London in January 1823. He was called by the Middle Temple on 25 January 1850 and came to the Cape in July 1865. He took silk in 1880. He was appointed a puisne judge at the Cape in March 1888. He retired on 14 September 1891 on account of his deafness. He died in Wynberg on 26 November 1896: see Roberts (n 37) 353-354.
between two sects of the Mohammedans, the Shafees and the Hanafees as to
the right to a certain mosque in Cape Town. The difference between the two
sects appeared to me to be much like that between Tweedledum and
Tweedledee. In the case of one sect the belal handed to the imaum his
pastoral staff (or something of the kind) before he ascended the pulpit; in the
case of the other sect after he had done so; in one case the priest alone said
“Ameen” at the end of prayer; in the other case the whole congregation said
“Ameen”. How the case ended I do not remember. The first case I was
engaged in on my own was an appeal from a Court of Resident Magistrate and
related to some sheep which had been worried by a dog. I was told afterwards I
had conducted the case quite well, but the Court decided against me, wrongly
as I thought and as I still venture to think. The main point on which the
occasion went was the doctrine of Scienter of English law at a former time,
that is to say the principle that the owner of a dog worrying sheep was not
liable for the damage done unless he was aware of the propensity of the dog to
worry sheep; as an English judge sarcastically remarked, “every dog is entitled
to at least one worry”. I urged that this doctrine was not known to our law, as is
really the case. The absurdity of the matter however was this that an Act of
Parliament had already previously been passed in England doing away with
this doctrine, so that the Court depended upon an out-of-date publication for its
information. Such is the uncertainty of the law.

I was rather put out in this case by a witticism of Judge Fitzpatrick at my
expense. I was citing an authority in Latin about dogs worrying geese
(auseres). Being in a somewhat nervous condition in the first case I had of my

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43 The phrase “Tweedledum and Tweedledee” dates from the nineteenth century and refers to
the proverbial names of Händel and the rival musician Buonocini. The names were popularised
by Lewis Carroll’s use of them in Through the Looking Glass (1872); see Sinclair (n 23) 1251
sv “Tweedledum and Tweedledee”.

44 The Belal or Bilal is the person who calls people up for prayers to the mosque. The Belal or
Bilal is also referred to as the Muathin or Muazin: see Maqsood A Basic Dictionary of Islam
(2000) sv “Bilal”.

45 The Imam, Imaum, or Imaam is the leader of the congregational prayer in a mosque: see
Sinclair (n 23) 564 sv “Imaum”; and Maqsood (n 44) sv “Imam”.

46 “Scienter” literally means “to have the requisite knowledge of the wrongfulness or illegality of an
act or conduct”. For example, a person who keeps an animal which injures some person or his
or her property is liable for damages towards the injured party. In some cases the owner of the
animal may be indicted if he or she had prior knowledge of such animal’s propensity to cause
harm or injury to others: see Halsbury The Laws of England 3rd ed edited by Lord Simonds Vol I
(1952) par 1267ff. “Scienter” is the common law equivalent of the actio de pauperie of the civil
law.

47 James Coleman Fitzpatrick was born in Tipperary, Ireland, on 6 January 1816. He took his BA
and LLB degrees at Trinity College and was called to the Irish Bar in 1842. In 1861 he was
appointed as a judge of British Kaffraria in King William’s Town and when this Colony was
incorporated into the Cape Colony in 1865, he was transferred to the Eastern Districts Court. In
1869 he was transferred to the Cape Bench. He died in harness on 6 February 1880. He was
the father of Sir Percy Fitzpatrick, the author of Jock of the Bushveld. He was known for his wit
and according to Judge Cole he (Fitzpatrick) “was one of the most genial and witty men …”: see Roberts (n 37) 360.
own, I inadvertently translated *auseres* as “swans”. “Well Mr. de Villiers”, the judge remarked, “I trust you are not one of those people whose geese are always swans.”

The first criminal case I was engaged in was a Circuit at Worcester, where Judge Fitzpatrick was the Circuit Judge and it had rather an amusing result, showing the [oddities] of which a jury is capable. Three Hottentots were prosecuted for theft of a sheep which they had caught, killed and eaten. I defended them. There was really no direct evidence against them except the confession of one of them, implicating all three. When the Public Prosecutor proposed to read this confession I objected to its being read on the ground that it could not be admitted as evidence against the two who had not admitted their guilt. “Well Mr. de Villiers”, the Judge said, “I shall allow it to be read but at the same time I shall warn the jury that it is no evidence whatever against the two who did not admit their guilt.” This was done, but to the surprise of everyone in Court the Jury acquitted all three. I am afraid that I gained a feather in my cap quite undeservedly. I was afterwards told that the reason for the verdict was that in as much all three were equally guilty they considered it unfair that the one should be punished whilst the two others got off. The judge seemed rather aggrieved at the verdict at the time but in the evening when I met him at the hotel where he was staying he chaffed me about it.

After the appointment of my second eldest brother Henry as Chief Justice, I felt some scruples about practicing before him. A remark made by an attorney of standing that now lots of work would fall into my hands to some extent decided me in adopting the course I then took of accepting the position of Registrar to the Chief Justice. As such I more than once accompanied him on Circuit where I had to act as Registrar to the Court. Previously I had gone on Circuit a few times as advocate. In those days the sitting of the Circuit Court twice a year was the occasion of gay doings in the respective circuit towns. The judge always entered the Circuit town in grand style, in his special wagon, drawn by eight horses followed by a conveyance carrying his butler and impedimenta and by a riding horse. A big dinner to which all the local notabilities were invited was given at each town by the Judge, of course at the expense of the public; and the townspeople as a rule got up dances, concerts, etc. The judge always went about in a frock coat and with a high hat; all this I believe is no longer the case.
Once at Swellendam a performance was to take place under the patronage of the Chief Justice. The Circuit dinner took place on the same night. At half past ten a message was conveyed to the Chief Justice that the audience was getting very impatient as they had been in attendance since eight o’clock and the entertainer would not begin before the Chief Judge arrived on the scene.

The Deodars seen from the south-west corner of President Brand Street and Charles Street. The photo was taken from the terrain where the Fourth Raadzaal was later built. (Source: Free State Archive Repository: Ref no VA 6217)
Chapter 3

The Orange Free State Bench

Whilst acting in the capacity which I have mentioned [that is, as Registrar to the Chief Justice, Lord Henry de Villiers], I received the offer of a seat on the bench of the High Court of Justice of the Orange Free State, which, after some hesitation and some misgiving, I accepted. This was in the year 1875. The hesitation, to a great extent, was due to a measure of doubt as to my capacity to occupy so important a position. I had been in practice as an Advocate of the Supreme Court of the Cape of Good Hope for only three years previously.

President Brand, his wife and their eldest daughter shortly afterwards came down from Bloemfontein in a wagon drawn by eight mules and I was enabled to avail myself of the opportunity of its returning to travel to my destination, Bloemfontein, the Capital of the State. I had a very unprosperous journey, as several times a mule after being outspanned, swelled up to an extraordinary extent and died, thus causing much delay through the difficulty to replace those that had died. After arrival at Bloemfontein I took the oath of allegiance and fidelity to the State containing the clause that “I would maintain the independence of the State” in the presence of the Triumvirate who were at the head of the Government during the President’s absence. The High Court came now to consist of F.W. Reitz as Chief Justice, J. Buchanan as first puisne judge.
judge and I as second puisne judge. If I had no other qualifications for the judicial office I at all events had these: an ardent desire to do my duty to the best of my ability, without fear, favour or prejudice, and a detestation of wrongdoing, injustice, unfair dealing and oppression, whether at the hands of individuals or governments.

The reason for President Brand’s visit to England was the action of Great Britain with regard to the newly discovered diamond fields within the territory of the Orange Free State, culminating in their annexation. This action was one of the discreditable proceedings of England in South Africa, an illustration of the Punic faith with which it has always observed its treaty engagements in South Africa. Some master of irony has called Great Britain the protector of small nations; but the attitude that country has always assumed towards weak countries and which it would not have adopted towards the strong justifies one in saying: “Small nations experience this fully: The conduct of John Bull is always John Bully.”

One can only refer to this matter of the diamond fields with that disgust which any honest and honourable man must feel at the low blackguardism which was practised in obtaining the desired result of acquiring the diamond fields by annexation. England had guaranteed the independence of the Orange Free State; that did not prevent it from seizing part of its territory and bringing it under its own domination. The wrong done would probably have been felt less keenly had the fields been seized boldly, as a robber might, on the principle that “might is right”, but it was taken possession of on miserable, lying pretends. As the irony of fate would have it, the English Privy Council, when subsequently certain land cases came before it in appeal, recognised the existing titles to land granted by the Orange Free State and admitted its original right to the territory about which there never had been any honest, genuine dispute. “The fiction of Waterboer’s claim may now be abandoned”, remarked a Governor. (Vide Van der Merwe’s *Life of President Steyn*.) When a person

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53 Andries Waterboer was born north of the Orange River in 1789 and died in Griquatown on 13 December 1852. He was a Griqua chief and often acted as interpreter between missionaries and the Griquas. In 1814 he became one of six lay readers in Griquatown and gave a sermon which was claimed to be the first ever made by a Griqua in South Africa. Following the departure of Adam Kok II and Barend Barends from Griquatown, Waterboer was elected Chief on 20 December 1820. He benefited immensely from the public image which he put over of generally acting with the best interest of the Cape Colony at heart and of being a true Christian: see Ross *sv* “Waterboer, Andries” in *DSAB* Vol IV 763-764.

54 My searches for a biography under the title “Life of President Steyn” were unsuccessful. The only biographies on Steyn which I could trace and which pre-dates 1938 (ie, the year of De Villiers’ death and therefore still published in time for De Villiers to have consulted it) were:
records these things and puts them down in their correct light he is generally denounced as a liar and as being anti-British; but if facts can historically and truthfully be stated in one way only it must needs be stated, by anyone who loves honest and honourable dealing, in that way and in no other. One may be anti-wrongdoing without being anti-British. One may hate and denounce sin yet love the sinner.

When I arrived in the Orange Free State there accordingly prevailed a very bitter feeling of resentment at this nefarious seizure of its territory; one of the several wrongs inflicted by the stronger upon the weaker power, as will hereinafter be pointed out.

In vain President Brand appealed to the British Government to submit the matter in dispute to impartial arbitration. Having no case and having a weaker power to deal with England refused this reasonable request. President Brand was then commissioned by the Volksraad to proceed to England himself to seek to obtain redress. As a matter of history he was eventually obliged to accept £90,000 as satisfaction for the wrong done and to be deeply grateful for what he had got. It was a relief to him that his little State was not forced to take up arms as a stronger power would have done and for a certainty loses its independence. There would have perhaps been a better alternative and that was to refuse the offer and for the State to protest and remain quiescent without waiving its claim. The absurd sum of £90,000 as satisfaction had been suggested by a newspaper at Bloemfontein that had always been bitterly hostile to the Orange Free State as an independent country and the suggestion was adopted by the British Government as if it were in accordance with the expressed wishes of the people of the country. The British Government did not admit its wrongdoing but professed to make this grant to the Free State only to put an end to the dispute. But this act and others of which the Free State had to complain and which were flagrant violations of treaty engagements never ceased to rankle in the minds of the people of the country, who henceforth looked upon Great Britain as a wrongdoer and oppressor of small nations.

Rompel Marthinus Theunis Steijn (1902); Anon President MT Steyn: ’n Gedenkalbum (1916); President MT Steyn: Lewe en Sterwe van die Groot Afrikaner Staatsman which was published by the Volksblad in 1917; Van der Merwe Marthinus Theunis Steyn Vols I & II (1921): see Anon sv “Steyn, Mathinus Theunis” in DSAB Vol II 715-716; and http://oasis.unisa.ac.za/search/president+and+steyn (14 February 2008).
President Steyn addressing the audience at the laying of the foundation stone of “New” Grey College, Bloemfontein, in May 1894. On the far left of the picture is Chief Justice Melius de Villiers, enjoying what appears to be a warm winter’s sun on a Free State winter’s morning. To the right of De Villiers is his colleague, Judge FW Reitz. (Source: Van der Merwe Marthinus Theunis Steyn Vols I & II (1921))

The fact that President Brand had to proceed to England to seek to obtain redress was felt to be a deep humiliation. The Orange Free State was as much a sovereign power, although a small one, as England itself. However, the best face had to be put upon it and the President’s safe return home was made a matter of official rejoicing. The State afterwards lost several thousand pounds of the money thus obtained, for the firm Bauman Brothers and others instituted actions against the Government for farms lost by them (in a manner that need not here be detailed) through the action of the Government in surrendering its territory. The Government pleaded that it had been compelled to adopt the course it did by superior force, but the Courts held that it could not

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55 Isaac Baumann was born in Hesse-Cassell, Germany on 26 July 1813 and died of a heart attack in Bloemfontein on 19 July 1881. He was a merchant and Bloemfontein pioneer. In 1837 he established himself in Graaff-Reinet as the first Jewish settler there. In 1849 he became the first Jewish settler in Bloemfontein where he opened a shop and worked as a jeweller. He was one of the signatories to a petition against the British abandonment of the Orange River Sovereignty. On the establishment of the Orange Free State Republic in February 1854 he became a burgher of the young Republic. However, he was the only merchant in Bloemfontein who refused to accept the compensation of £300 offered by the British when they withdrew: see Hotz sv “Baumann, Isaac” in DSAB Vol II 40.
now avail itself of this plea considering the terms of the agreement under which the money offered by the British Government had been accepted.56

Before the circumstances above narrated there had been the following trouble. War, provoked by constant inroads into the Orange Free State, broke out between the Free State and the Basutos. The Cape Government thought it fit to interfere, threatening to cut off the Free State’s supply of ammunition. Such action would have been a breach of the Convention in which the independence of the State had been established. Even such interference was a breach of England’s engagement in the Convention not to interfere with natives north of [the] Orange River. But with that Punic faith which has characterised all England’s treaty obligations in respect of the South African Republics, the Convention was habitually treated as “a scrap of paper” merely.

After the annexation of the Diamond Fields, Sir Henry Barkly,57 who was the main instrument in bringing about this iniquity, was determined upon further trouble. In the year 1872 three wagons laden with contraband had been captured at Magersfontein and taken to Jacobsdal, whereupon that Governor sent an intimation to the Free State Government that according to a sketch made by [a] land surveyor, Orpen,58 (who by the way, was one of the Governor’s accomplices) Magersfontein lay within the annexed territory. Although, even if it did so lie, the Free State acted in the innocent belief that Magersfontein remained within its boundaries, he demanded from the

56 De Villiers also refers to this incident in his “Random reminiscences of the Orange Free State Bench” 1920 SALJ 399.
57 Sir Henry Barkly, who was born in London on 24 February 1815 and died in Kensington, London on 20 October 1898, was the Governor of the Cape from 1870 to 1877. Several places in South Africa were named after him: Barkly East (116 km south-east of Aliwal North), Barkly West (36 km north-west of Kimberley), a settlement – Barkly Bridge (37 km north-east of Port Elizabeth) and a mountain pass (Barkly Pass – a ten km long pass over the southern Drakensberg, between Barkly East and Elliot); see Hattersley sv “Barkly, Sir Henry" in DSAB Vol II 27-30; and Raper (n 13) 43.
58 Although there were two Orpen brothers (Francis Henry Samuel and Joseph Millerd) who worked as land surveyors in the Northern Cape and Free State during Sir Henry Barkly’s term as Governor of the Cape, one may assume that De Villiers referred here to the elder of the two, Francis Henry Samuel Orpen. FHS Orpen was born in Dungourney, Coke, Ireland on 22 October 1824 and died in Barkly West on 22 February 1893. It is known that FHS Orpen had a close relationship with David Arnot, agent of the Griquas and that he assisted Arnot in the latter’s desire to annex Griqualand-West and the diamond fields for Great Britain and in the process feathered his own nest. After the annexation of Griqualand-West by the Cape, a dispute arose as to the exact points indicating the eastern border of Griqualand-West. To the dismay of Barkly most of the important diamond fields in that region still fell within the borders of the Orange Free State after the annexation. Sir Henry Barkly appointed FHS Orpen to establish the exact borders of the territory. After hearing the evidence of Arnot and making an inspection in loco, FHS Orpen found that the eastern border of Griqualand-West was indeed further east and included most of the important diamond fields. In 1876, when Great Britain and the Orange Free State had reached a settlement over this dispute, the borders as established by Orpen were accepted as correct: see Leverton sv “Orpen, Francis Henry Samuel” in DSAB Vol III 666. FHS Orpen’s younger brother, Joseph Millard, was the father of Hope Roland Orpen, an attorney in Johannesburg at the start of the twentieth century. During the middle 1890s he (Roland Hope Orpen) was an articled clerk to William Somerset Bell. For an account of Hope Roland Orpen’s role in the Jameson Raid in 1895, see Somerset Bell Bygone Days (1933) 206–207 and 245; and Schulze South Africa’s Cricketing Lawyers (1999) 40-41.
Government the return of the wagons within 100 hours together with £600 as damages and an apology. The Government (then in the hands of an appointed Triumvirate, President Brand being seriously ill) could not do otherwise than comply with this insulting request, one which such a bully would not have dared to make of a stronger power. According to a statement by Sir Arthur Cunningham,\(^59\) some 400,000 guns were thus introduced into Basutoland.

A natural feeling of distrust of England thereafter ever prevailed. The feeling – one might almost say of certainty – always was there that some day still, and now that the “howling wilderness” of the time of the abandonment of the “Sovereignty” by the British Government had become Naboth’s flourishing vineyard, the attempt would be made to deprive the State of its independence; that independence that was so dear to the hearts of its people. For years there was strong opposition in the Volksraad to the building of railways to Bloemfontein from the seaports on the sole ground that through railways they would lose their independence. Those of us who considered ourselves better informed scoffed at the idea, yet those who opposed the introduction of railways were right in this respect; for if there was one thing that in after years facilitated the British operations in the war of annexation it was the existence of railways in the republics. And that railways may be really considered a change for a country is evidenced by the fact (according to a statement in the Cape Times, which may be regarded as being well informed on this point) that the Cape Colonial Government more than once declined to accede to a proposal emanating from the German government that the Cape railway system should be connected with that of German South-West Africa, on the very ground of the fear (in this case a very absurd one) of German oppression in the future.

After my appointment I was for at least eighteen months very hard worked, for appeals from the lower Courts had heaped up to a very great extent, in anticipation of the establishment of a full bench of three judges through my appointment.

One class of appeals which frequently came before the Courts were those arising from land disputes. In olden days when the country was first being settled, land commissions were appointed to proceed to allot farms toburghers

\(^59\) De Villiers refers here to Sir Arthur Augustus Thurlow Cunynghame who was born in Line Craig, Argyllshire, Scotland, on 2 August 1812 and died in Aden on 10 March 1884. From November 1873 until 1 March 1878 he served as Commander-in-Chief of the British Army in South Africa. Fort Cunynghame in King William’s Town was named after him: see Langham-Carter sv “Cunynghame, Sir Arthur Augustus Thurlow” in \textit{DSAB} Vol III 190.
in the various districts and to fix the “beacons”, which were as a rule not less than four in number. They would in their inspection reports describe one beacon as an anthill with a bees nest in it or as an anthill with the head of a wildebeest upon it, another as a karree-bush, and so on. As in most cases the owners neglected to put up proper landmarks and as in course of time the objects described as beacons had a tendency to disappear, disputes as to boundaries of farms constantly arose. However, by hearing the evidence of parties and inspection on the spot the truth could generally be arrived at with some degree of certainty and accuracy.\textsuperscript{60}

By taking up my residence in the Orange Free State and occupying a seat on its judicial bench and taking an oath of allegiance I had become a burger of the State. There is an ancient Greek saying to the effect that a change of residence does not necessarily bring about a change of temperament. With me the effect of the change to the Free State was very different. Perhaps unconsciously the fact that a person is the subject of another person, especially, when that other is of an alien race, affects one; when he ceases to be such and becomes a citizen of a free and independent State, in subjection to no one else, one comes to enjoy a moral and spiritual – one might almost say a physical – uplift to which one had previously been a stranger. Perhaps the same effect was produced upon other Dutch-speaking colonists who took up their abode in either of the two republics, for such men and women alike have become the most ardent supporters of the independence of their adopted countries. How glorious it was to see the Free State flag – perhaps the most beautiful flag that man has ever devised – floating in the breeze; how one’s heart beat as the Free State artillery passed along with their band accompanying them! I got sincerely to love the independence the State enjoyed; that independence of which it was destined thereafter to be deprived by low and dastardly craft and force.\textsuperscript{61}

\textsuperscript{60} See De Villiers (n 56) 399-400.

\textsuperscript{61} The separate set of notes that deal with the topic of De Villiers’ oath of allegiance to the Orange Free State contains one or two additional thoughts. In this regard De Villiers remarks: “The oath I took was to the effect that I would be faithful to the State and would maintain its independence. I could not then know how materially the taking of this oath would affect my afterlife. By taking this oath and accepting the position offered to me I became a citizen of the Orange Free State. This change in my position had a very great influence upon me. I felt a different human being from what I had been before. From being the “subject” of another person who might be no better in any respect, I was now a free man; one who might even at some time attain the highest position in the State, a primus inter pares. When our Artillery band was playing the strains of our national anthem, my heart rejoiced as it had never rejoiced before. And I found that colonists from the Cape who had settled in the State had become the staunchest of republicans and devoted lovers of the state and its institutions”: see Batch VI 4–5.
The liberality of the Constitution of the Orange Free State was extreme. After six months’ residence and taking the oath of allegiance to the State any white man could become a burger. Nothing could be more tolerant than its attitude towards foreign elements. That toleration perhaps sometimes verged upon want of fixed principle and was sometimes abused. That toleration existed from the start. When the country was abandoned by Great Britain it was against the indignant remonstrance of notably the English section of the community. The portion of the Dutch speaking community who were willing to acquiesce in the withdrawal of Great Britain [was] publicly reviled by the former as a “rebel crew”. But when the withdrawal had actually taken place the foundations of the State were laid in such a liberal spirit that no distinction was made between English and Dutch. In pursuance of this broad and liberal spirit Englishmen were taken into the confidence of the new government. Seats in the government and other positions of trust were confided to them. And during my stay in the Orange Free State when different examining bodies were merged into a Board of Examiners, although English residents were in a small minority, many of the examinations could be taken in either Dutch or English. How different all this from the usage extended to Dutch in the Colonies of South Africa. In total no account was taken of Dutch at all, and in the Cape Colony even when the Dutch element enormously preponderated, Dutch was almost completely suppressed. Shortly after the date that the Cape came under British domination addresses and petitions to government was allowed only in English; English became the official language, so that even in Courts of law where judges, counsel, parties to action and witnesses all knew Dutch and the last two Dutch only, yet all the proceedings were in English. And when the annexation of the Orange Free State took place one of the first measures of Lord Milner, though the bulk of the population was Dutch, was to make English the medium of education, whilst only a few hours a week were allowed for Dutch; the very man who had made an outcry about the insufficient recognition of the English language in the Transvaal. In the Cape Province the Dutch had for sixty years or so to carry on the struggle for their own language; no other language than English was allowed in Parliament and they were thus forced to vote for English-speaking members. Even lately (in 1926) Dutch-speaking men were submitted to abuse and in one case to personal assault for accosting a railway conductor in Dutch on a train; such accosting was described by a member who has much to say on “racialism” as “bullying” the conductor and seemed rather surprised that such assaults were not more frequent – what a different spirit the people of the Orange Free State displayed, and so did the Transvaal so long as Englishmen conducted themselves with ordinary decency.
I noticed the same toleration in the matter of the different Protestant churches. Whilst the State supported such churches, it paid out to the Dutch Reformed Church something like sixpence per head and to the Anglican Church (if I remember correctly) something like half-a-crown per head. And yet in their church services prayers were offered for “Our Sovereign Lady the Queen” and if the President of the State was mentioned in them (which sometimes happened and sometimes not) it was as if he were a mere subordinate of the Queen and in such prayers were expected to join young Freestaters who belonged to that Church. In the Church of England, schools for both boys and girls, mostly born in the State, on festive occasions were taught to sing “God save the Queen”, though sometimes the “Volkslied” was added afterwards. No wonder that when the British advanced to Bloemfontein their guide was a young man of English parentage born in the Free State and belonging to the Anglican Church. Anthony Trollope,62 who visited the Orange Free State and thereafter described his travels in a book and who at Bloemfontein came in contact chiefly with elements of the population very truly wrote: “We abandoned them, and now that they are altogether out of our hands we are hankering after them.” That was the attitude of the English clergy, with however at least one notable exception. And when Bishop Webb63 had retired he (if I remember rightly, this was during the War of Annexation in 1899) according to his own statement wrote to a native priest of his community (“Father Gabriel” I think it was) asking what the natives thought of an annexation of the country, the answer (he stated) was: “It would be to them like the coming of the Kingdom of Heaven.” I might write more on this subject but it is not necessary. I refer to this matter because racialism is so much written about in the English press of South Africa; if there has been racialism in the past it has not been on the side of the Dutch element when it found itself in a majority.

When I first went to the Orange Free State many of the facilities which we now enjoy had not yet been introduced there. A letter to anywhere in the Cape

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62 Anthony Trollope was born in London on 24 April 1815 and died there on 6 December 1882. He was the author of various works (sixty altogether, while his mother Fanny Milton wrote 114 books), of which South Africa (1877) in two volumes became the best known. South Africa went into a fourth edition in 1876. The research for South Africa was done during his travels in South Africa from July 1877 until December that year. In his Autobiography, he mentions that he only earned £850 from South Africa, barely enough to cover his travel expenses. A reprint of the 1878 edition of South Africa was published in 1973 in Cape Town. It is alleged that Trollope had a role in inspiring Olive Schreiner to write The Story of an African Farm (1883), although this is unconfirmed: see Gray sv “Trollope, Anthony” in DSAB Vol III 787.

63 Bishop Allen Becher Webb was born in Calcutta, India, on 6 October 1839 and died in Salisbury, England, on 12 June 1907. In 1870, while he was the Bishop at Avon Dasset, he was invited by Robert Gray to become the Bishop of the Orange Free State. From 1870 until 1883 Webb was the Bishop of Bloemfontein. During this time he founded numerous missionary stations, churches, educational institutions and hospitals in the Free State: see Nuttall sv “Webb, Allen Becher” in DSAB Vol III 834.
Memories of over eighty years

Colony required a stamp of four pence\textsuperscript{64} and if to Europe, (if I rightly remember) an additional six pence in Colonial stamps. The parcel post was unknown, so were postal and money orders, letter cards and post cards. The telegraph did not reach Bloemfontein till a good many years afterwards. Transport from the coast was very expensive, as everything had to be conveyed by bullock-wagon; hence many houses at Bloemfontein had no better ceiling than one of canvas, and in many cases the roof consisted simply of “brak” earth spread on wooden boards.

After my arrival at Bloemfontein I for a short time lived at the Free State Hotel and afterwards went into occupation of a small house belonging to a Mr. van der Hast and subsequently into one in Maitland Street close to the Wesleyan Church. In the last mentioned place of residence a rather funny incident recurred. My Kaffir boy one day in a state of great excitement came to tell me that a large snake had entered into the house by the front door. We made a search throughout the house but could not find the snake. A few weeks afterwards I went on circuit and allowed a cousin of mine to occupy the house during my absence. One day, going into the kitchen, he found a large cobra coiled up on a table and with the assistance of a native boy he at once killed it. So I had been living in the house all the time with a live cobra. This reminds me of another somewhat similar incident. Returning from the seaside to Bloemfontein by myself, as I stepped out of the train at my destination a snake crept out of the carriage on to the platform, so that he had been my travelling companion.

I later bought a small furnished house opposite the South-East corner of the grounds appertaining to the Government buildings. It belonged to a Mr. Schermbrücker\textsuperscript{65} who at that time was the Editor of the local newspaper “The Express”, and who was about to leave Bloemfontein for elsewhere. He stayed with me in the house for a few weeks before leaving. He was at that time an ardent republican or professed to be such.

\textsuperscript{64} Under the decimal system: four cents.
\textsuperscript{65} Frederich Xavier Schermbrücker was born in Aschaffenburg am Main, Bavaria, Germany, in 1826 and died in Wynberg on 27 April 1904. He was a soldier, journalist and politician. In 1856 he joined the German Legion for service in the Cape and contributed enormously to the various communities where he resided. In 1873 he moved to Bloemfontein and in 1875 he started the Orange Free State Newspaper Company (“Oranje Vrijstaatsche Nieuwsblad Maatskappij”). He became the editor of the company’s newspaper, De Express. At the end of April 1877 Schermbrücker left Bloemfontein, probably because of financial problems, although other reasons were also mooted at the time: see Anon sv “Schermbrücker, Frederich Xavier” in DSAB Vol I 688.
When the incident of the first annexation of the Transvaal (to which reference will again be made) took place and was announced at Bloemfontein, Schermbrücker at once wrote a very strong article in “The Express” denouncing the annexation. At that time there were a number of young Englishmen resident at Bloemfontein who had formed a band called “The Mohawks” under a young fellow of the name of Hubbard, who, like others, was there for the sake of his health. Resenting this attack they made an effigy of Schermbrücker, put a quantity of gunpowder into its head, carried it in procession to the top of Monument Hill and there set it on fire. When the flames nearly reached the head of the figure they ran away in fear of an explosion. Schermbrücker wrote a rather amusing article on the subject, telling his readers that when Mr Schermbrücker’s brains began working his enemies were at once scattered. The night after this incident very late some gentlemen turned up with the purpose of taking him to a place of safety as they had been credibly informed that the Mohawks were going to drag him out of my house and there was no knowing what might not be done to him. However both he and I laughed at the idea, dismissed them and went to bed and enjoyed an undisturbed night’s rest.

During my occupancy of a seat on the judicial bench the first annexation of the South African Republic, then already generally known as the Transvaal, took place. On this point I refrain from making more than a few remarks. It will be rendered plain to any reader of Mr. Leyds’s book on the subject and the autobiography of Sir John Gilbert Kotzé that it took place on as flimsy pretends as the annexation of the Free State diamond fields. It is now

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66 Schermbrücker had a sharp brain and an even sharper pen. One of the reasons advanced for his leaving Bloemfontein in a hurry in April 1877 was the article that he wrote in De Express in which he attacked the honesty of President JH Brand of the Orange Free State, and which caused the indignation of the citizens of Bloemfontein: idem 668-669.
67 Willem Johannes Leyds was born on 1 May 1859 in Mageleng, Java. Originally he was a teacher in Java, but in 1880 he enrolled at the University of Amsterdam to study law. Shortly after he had obtained his doctor’s degree in 1884, he was approached by President Kruger to become State Attorney for the South African Republic. He soon became the confidante of President Kruger and rapidly climbed the ladder of success in Kruger’s state administration. In 1888 he became Secretary of State and ten years later he was appointed as envoy extraordinary and minister plenipotentiary of the South African Republic in Europe. His contribution as historian of the South African Republic was enormous and a number of books and other documents in which he had chronicled the history of the young republic appeared from his pen. He died on 14 May 1940 in The Hague in the Netherlands: see Van Niekerk (n 51) passim.
68 See WJ Leyds De Eerste Annexatie van Transvaal (1906) passim.
69 See Sir John Kotzé Biographical Memoirs and Reminiscences (c 1933) passim.
70 Johannes Gysbert (John Gilbert) Kotzé was born on 5 November 1849 in Cape Town. Kotzé, who was two months younger than Melius de Villiers, was a contemporary of De Villiers at SACS (1864-1868). He later went to London University and was called to the Inner Temple in 1874. Two years later he commenced practising law in Grahamstown. He was appointed as Judge of the High Court of the Transvaal in 1877 and on 8 August 1881 he became Chief Justice. In February 1898, Kotzé was “dismissed” by President Kruger. He thereupon held a number of positions in various South African courts. He was appointed to the Appellate Division in 1922 and retired in 1927. He died in Cape Town on 1 April 1940: see Hiemstra sv “Kotzé, Sir John Gilbert” in DSAB Vol I 438.
pretended that the Transvaal was in danger from the native Chief Sekoekoeni.71 As a matter of fact Sekoekoeni had sent in his submission. President Burgers72 had persisted in leading the Transvaal burger forces, but as he knew nothing of Kaffir warfare the burgers were discontented with his leadership and returned home. Sekoekoeni however knew very well that under their own experienced leaders he had no chance against them; hence his submission. When however two delegates from Sir Theophilus Shepstone73 had interviewed him he at once changed his tune. The low, slinking method by which with Punic faith a solemn treaty was violated, here prevailed as in the case of the diamond fields.

In July 1879 I had an offer of a judgeship in the Transvaal from Sir Owen Lanyon,74 then Administrator there under the British Government. I declined this offer without assigning any reasons, but of course with my views on the subject of the annexation I could not accept. In February of the next year the position of Chief Justice [of the Transvaal] was offered me on a salary of £1700 a year; but this offer also I declined.

I may as well mention here that in July 1882 the Cape government offered me a seat on the judicial bench in Kimberley at a salary of £1500 with an extra allowance of £500. This offer also I did not accept for one reason among others, that I had become deeply attached to the Free State and its republican institutions. In the following month, after the retrocession of the Transvaal, the offer of the position of Chief Justice there was made to me on the resignation of Chief Justice Kotzé, who had meanwhile accepted a seat on the bench at Kimberley. Kotzé however soon regretted the exchange which he had made,

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71 Chief Sekhukhune I was born on the Steelpoort River (in the province which is now known as Mpumalanga) in 1810 and was assassinated by his arch-enemy, Mampuru, at Manoge (in the Lulu Mountains) on 13 August 1882. He was the Paramount Chief of the Pedi Empire in the North-Eastern Transvaal (now: Limpopo Province): see De Vaal “Sekhukhune I” in DSAB Vol II 646-647.

72 President Thomas Francois Burgers was born on the farm Langfontein in the Kamdebo, district of Graaff-Reinet on 15 April 1834 and died in Richmond in the Cape on 9 December 1881. He was President of the ZAR from July 1872 until April 1877: see Van Jaarsveld “Burgers, Thomas Francois” in DSAB Vol I 133.

73 Sir Theophilus Shepstone was a government official and an administrator in the Department of Native Affairs. Born in Westbury-on-Trym, near Bristol, on 8 January 1817, he came with his parents to South Africa in 1820 with the British Settlers. He soon acquired a fluency in both the Xhosa and Zulu languages and his first governmental post was that of interpreter to Sir Benjamin D’Urban. He ended his public career as Administrator of the Transvaal when he retired in 1880. His father was John William Shepstone, a Wesleyan missionary. Theophilus Shepstone died on 23 June 1893 in Pietermaritzburg. The town of Port Shepstone in KwaZulu-Natal was named after him: see Gordon & Kotzé “Shepstone, Sir Theophilus” in DSAB Vol I 746-753.

74 Sir William Owen Lanyon was born in Belfast, Ireland, on 21 July 1842 and died in New York, USA, on 6 April 1887. He was a soldier and Colonial Administrator, and in March 1879 he was appointed as Acting Administrator of the Transvaal. In March the next year he was permanently appointed in this position. After the Anglo-Transvaal War he was given the opportunity to resign as administrator, and this he did on 9 April 1881: see Davey “Lanyon, Sir William Owen” in DSAB Vol I 465.
and in deference to his desire, intimated to me by him, by letter to resume office in the Transvaal. I declined the offer; though in any case I probably would not have accepted the same.

After having been in the Free State about three years and within a few weeks of my thirtieth year, the most important event in my life took place. At a bazaar at Winburg I first met my future wife, Adelaide Holmes-Orr, daughter of the Reverend William Holmes-Orr – then Rector of West Lydford, Somersetshire, England. In August 1879 I was married to her in the house of a Mrs. Cleaver, at Senekal, by the Anglican Bishop of Bloemfontein, assisted by the Rev. Mr. Gune, afterwards Bishop of Mashonaland or Bechuanaland. (I do not remember which.) She has been the best and most devoted of wives; in later times when after the occupation of Bloemfontein the future seemed so dark it was her courage and sanguine temperament that buoyed me up and inspired new hopes for the future. For our honeymoon trip we travelled to the Cape and visited relations there. Our journey was mostly by cart and on our return [we] took the opportunity of going by a wagon which was going that way. How very different travelling in those days was from what it is now and how much more expensive. Our travelling expenses amounted to about £200.

I several times took my wife on Circuit in the Free State. Some of our adventures on Circuit I have described in the “South African Law Journal” (vol. 27 p. 398). On one occasion when I took her we were informed that there was great excitement at Ladybrand in connection with a criminal case that was to be tried there; all sorts of things were going to be done and even the judge’s life might be in danger. Of course I scoffed at the idea. On our way to Ladybrand, about half-an-hour’s drive from that place we noticed a large gathering of people in carts and on horseback awaiting us. My wife felt rather nervous about what was going to happen but I reassured her by ridiculing the idea of anything untoward happening. When we drove up to the spot where the people were gathered the Sheriff came up to me and informed me that a deputation of townspeople were desirous of presenting me with an address. I got down; someone read the address, which was one of welcome and of thanks for my having declined the offer which had recently been made to me of a seat on the bench at Kimberley. We heard nothing further of the expected disturbance. Every morning we were rather amused at something that happened when we were taking a stroll after breakfast and before the opening of the Court. Walking across the veld a farmer came up to us and shook me by

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75 See De Villiers (n 56) 403-405. See further Part I above, where these “adventures” are described in detail.
the hand saying in Dutch: “Good morning, my lord!” Then turning to my wife he shook her hand and said: “Good morning, Mrs lord”. He had been resident in the Cape Colony where judges are addressed by the title of “lordship”.

After our marriage I sold my house that I had been occupying and bought a better one in Elisabeth Street, which house we named “Virginia Cottage”; on account of the Virginian creeper planted against its walls at the back. Later on again I bought eight erven adjoining President Brand Street and there I built a house which we named “The Deodars”. This ground was then quite out of the town, but soon after erven were taken up all round it and its position is now, so to speak, in the heart of the town. Eventually some years after the iniquitous annexation of the Free State I sold it with a good profit which proved very advantageous, as I had been left without other resources, as I may hereinafter mention.

Later on the house together with some other property was acquired by the municipality as a site for a new Town Hall. It was accordingly demolished. An incident that was the cause of some curiosity among the good citizens of the town was the following. In demolishing the building the workmen engaged in that operation found a judge’s black cap and a bundle of newspapers in various colours between the ceiling of the drawing-room and the floor of the room above it. The explanation was that after Lord Robert’s arrival at Bloemfontein my family and I left for the Cape and my house was occupied by the military. During the occupation electric lights were installed in the building. In the loft above the upper story (to which loft there was access by a trapdoor) I had stowed away articles that I valued and also this cap and newspapers. The

76 Melius and Adelaide de Villiers were married in 1879. One can therefore accept that they stayed at Virginia Cottage for the larger part of the 1880s, before moving to The Deodars. The Deodars was built sometime during the early 1890s: see Schoeman Bloemfontein in Beeld/Portrait of Bloemfontein 1860-1910 (c 1987) 85 (caption to picture 188).

77 The Deodars was situated on the north-west corner of President Brand and Charles Street. It had impressive neighbours. On 5 June 1893 the Fourth Free State Raadzaal (Council Chamber) was officially opened. The Fourth Raadsaal is in President Brand Street, between Elizabeth and Charles Street and was the south-east neighbour of The Deodars: see Oosthuizen Die Vierde Vrystaatse Raadsaal. Gedenkboek 1893-1993 (1993) at 24-25. The Appeal Court was completed in 1929: see Schoeman Bloemfontein. Die Ontstaan van ‘n Stad 1846-1946 (1980) 254b. The Appeal Court is situated on the south-west corner of President Brand and Charles Street and flanked The Deodars on its right: see Nienaber, Smit & Botes Vrystaatse Argitektuur (1987) 59; and Oosthuizen 56-62. During the Anglo-Boer War The Deodars was rented by British officers, and later on it served as the Defence Head Quarters in Bloemfontein. At the end of 1902 The Deodars (as well as the adjacent property, Welgelegen, of Arthur Fichardt) was demolished to make way for the new Town Hall. The laying of the foundation stone of the Town Hall took place on 27 February 1934 by Prince George. During the Anglo-Boer War The Deodars was also for a short time a place of incarceration for Mrs Tibbie Steyn, wife of the President of the Orange Free State, MT Steyn. She was taken into custody at Fouriesburg in July 1900. After she had spent a short time under guard at The Deodars, she was taken to another double-storied house at 193 Zastron Street, Bloemfontein, where she was also guarded by British soldiers: see Schoeman (n 77) 172b.

78 The Town Hall – built in the “New Tradition style” – was officially inaugurated on 5 December 1936: see Nienaber et al (n 77) 61.
workmen engaged in this work had to gain access to this loft. Everything I had left there was taken away and apparently when electricity appliances were introduced into the drawing-room the ceiling had to be opened for that purpose. It was not worth while stealing the cap and newspapers. So they were concealed between the floor and ceiling and the ceiling closed up again. At the time the newspapers were published during the war; while paper for printing had become scarce.  

President Brand remained President of the Orange Free State for many years. He was a man universally esteemed and beloved by his people and deservedly so by reason of his admirable qualities and noble virtues. Personally my relations with him were always of the friendliest and pleasantest – his kindness and considerateness were things one could never forget. Yet such a man as he was during his struggles for the recognition of the rights of the republic at the head of which he was, he became the subject of the cancerous and malignant abuse on the part of the British press in South Africa and the epithet of anti-British was one of the minor titles by which he was constantly and persistently assailed. That press has been the cause of every political mischief and trouble in South Africa; a press which now has the impudence to descend upon racialism as if the Dutch-speaking people were the [activists]. After the occupation of Bloemfontein by Lord Roberts one of his favourite generals pointing to President Brand’s statue exclaimed in my hearing: “This man was always a friend of England.” One might enquire: “Who was right, the English press in South Africa in former days or this general?”

President Brand had his faults, but who has not. Having been elected several times successively to his office [he] became somewhat self-opinionated and apt to consider any opposition to [him] as being inspired by personal motives. Notwithstanding the firm position he took up in respect of the Basutos under the most desperate conditions he was perhaps too yielding in respect of England’s aggressive policy. He made a great mistake, one which considerably impaired his popularity in accepting a British knighthood; on his own part he did not desire it but in such matters a man is often not his own master. In connection with certain domestic matters he was estranged from President Kruger, in a matter in which the latter was not entirely to blame. But, taken all in all, Present Brand was a man of fine and lovable character.

79 It appears that there is something missing from this sentence in the original manuscript.
The system of government in the Orange Free State was an excellent one. No parties formally existed, yet there were always two classes of members constituting the Volksraad; those who were more progressive and those who were more conservative. The latter served as a useful check on the former. Each member was elected to serve as such for four years (except in the case of the first election, when half of the members were elected for only two years), so that every two years half of the members (having served four years) fell out. In this way the Volksraad always remained in touch with the people; for if a member did not satisfy his public he would naturally not be re-elected. The common sense of the Volksraad was, as a rule, quite remarkable; often they have proved to be in the right when people supposed to be more enlightened thought them in the wrong. I have heard an Englishman declare: “The Orange Free State was the best governed country in the world.”

During my tenure of office however I at one time had a rather serious controversy with the Volksraad. Certain defamatory and insulting remarks on that body published in a local newspaper by a Hollander, the Volksraad had passed an Ordinance according to which they would have been entitled to punish with fine and even with terms of imprisonment any person guilty of breach of its privileges as defined in that Ordinance. As the Constitution of the Orange Free State provided “judicial power shall be exercised by the Courts of Law exclusively”, I felt that this Ordinance constituted a breach of the Constitution and of the rights of the Courts and of the public. By their oaths the Judges were bound to maintain the Constitution. (A question as to the right of the Courts to “test” a law by the Constitution, such as had arisen in the Transvaal, it may here be mentioned, could not arise in the Free State, the Volksraad having itself at one time passed a Resolution, having the force of law, that the Courts should not be bound by any law that was in conflict with higher law – and such the Constitution was). At a Circuit Court held at Boshof, in thanking the jury for their services, I alluded to the subject in a somewhat lengthy speech which was fully reported in the Bloemfontein newspapers. A great deal of excitement and a strong feeling against the Ordinance was to an unexpected degree created throughout the country after the attention of the public had thus been drawn to the provisions of the Ordinance. The Volksraad eventually withdrew this obnoxious regulative measure.80

At this town of Boshof (I am not sure whether it was on the occasion just referred to) I once had a case in appeal brought before me of a somewhat curious nature. A black hen belonging to Mr. A, who was in the service of a
local storekeeper, laid some eggs in the yard of Mr. B next door, who was in
the service of another storekeeper, who was on bad terms with the other
storekeeper. Mr. B's white hen hatched those eggs, whereupon Mr. A claimed
the chickens. Mr. A and Mr. B, each having the support of the storekeeper in
whose service he was, went to law on the subject of the ownership of the
chickens before the Court of the Landdrost, who decided that Mr. B, whose hen
had hatched the chickens was entitled to them but that Mr. A was entitled to
claim the value of the eggs. The case was brought into appeal before me, the
Court being crowded with people anxious to know the result of this cause
célèbre, it being generally known that hostile feelings between the two
storekeepers were at the bottom of the affair. After hearing counsel I decided
that the decision of the lower court was quite correct. I held this view on the
analogy of what the Roman law lays down as to a piece of marble belonging to
one person which has been sculptured into a statue by another. The eggs
might as well have been brought out by an incubator, in which case it would be
the labour of the owner of the incubator which produced the chickens. It is true
that A's hen laid the eggs; but the matter here was one of law and not of
physiology; from the point of view of physiology the male bird might rather be
considered the parent of the chickens. (It may be remembered that a question
discussed in an ancient Greek tragedy was: who is the parent of a child, the
father or the mother?) Anyway, it cannot be questioned that this case was
properly decided, for so it has been laid down in a note to Van Leeuwen's
Roomscho Hollandsch Rechtsgeeleerdheid,81 which is regarded as an important
authority in our law.

During President Brand's term of office I was on two separate occasions
requested to arbitrate between the British Government and the Transvaal in
respect of certain matters in dispute between them. The first question related to
the boundary between Bechuanaland, of which it had taken possession, and
Transvaal territory. This was in the year 1885. I travelled along the disputed
boundary from the South Northwards, the British and Transvaal
Commissioners travelling the same way. The boundary was mainly connected
with a certain road. The road claimed by both parties was well watered, whilst

80 See De Villiers (n 56) 405-406 for a more detailed account of this incident.
81 See Van Leeuwen Het Roomscho Hollandsch Recht (1664). The Orange Free State
Constitution of 1854 provided that "Het Romeinsch-Hollandsch recht zal de hoofwet van dezen
staat zijn alwaar geen andere wet door den Volksraad gemaakt is". The value of Het Roomscho
Hollandsch Recht for modern South African law lies in the fact that it deals at great length with
the historical development of the law and with the various decisions that have contributed to
establish the customary law of the Netherlands: see Wessels History of the Roman-Dutch Law
(1908) 311-313; Roberts (n 37) 184; De Wet Die Ou Skrywers in Perspektief (1988) 139-140.
the alternative road was nearly waterless. I very soon focused and pointed out that there really could be no dispute on this point, as the line had been definitely agreed to run at a certain distance from a certain spot and that the well-watered road was within the territory of the Transvaal. As soon as the British Commissioner (Captain Conder) heard from me at our first meeting that I had found this out from the documents handed in he confessed that he had been well aware of the fact, but had hoped to get the road within British territory! It was then agreed between the Commissioners that the only point to be reserved for arbitration was what was meant by the term “the garden grounds of Kunana”. On this point any decision must have been somewhat disappointing to the Transvaal Commissioner, as my decision was entirely against his contention on the subject. Captain Conder, by the way, one day told me in the course of conversation that they were determined some day again to fight the Transvaal to show that “man for man, the British soldier was a better fighting man than the Boer”. The fight eventually came to pass, but hardly the demonstration.

At Kunana I first met the Chief Moshette. His first greeting was the word: "shelling". I gave him a shilling accordingly. To show the unreliability of these people, I may mention that in conversation with the Chief in the presence of the Transvaal Commissioner, the Chief expressed his great desire to remain under the Transvaal Government (which had always supported his cause against a rival Chief), whilst at another time, speaking to the British Commissioner (if what the latter subsequently stated in his official report to his government was correct) he expressed as great a desire to come under the British Government. I afterwards received the thanks of both the governments concerned for my services, but refused to accept any remuneration for the same. My actual travelling expenses were defrayed by these governments.

The other arbitration case in which I was concerned was some years afterwards. It had reference to the position of Indians in the Transvaal. I arrived at the conclusion that the matters submitted to me could not properly be and should not have been submitted to arbitration, but I did the best I could under the circumstances. Whatever may be said of my award, I again received the thanks of both governments concerned in the matter. For my services, Sir

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82 This should be “Khunwana”, where Chief Moshwete ruled the 2000 to 3000 members of the senior Rolong tribe: see Breutz sv “Moshwete” in DSAB Vol II 494-495.
83 This should read “Chief Moshwete”.
Hercules Robinson, on behalf of the British Government saying that my award had materially aided in the settlement of a long-standing dispute. An attorney who acted on behalf of the Transvaal Government many years afterwards informed me that this was the only case in which he had ever been concerned where both parties were entirely satisfied with the result arrived at. So that after all my way of getting out of the difficulty had been successful. How at a later date I was treated by the British I may relate later on.

It was during my occupancy of a seat on the judicial bench of the Orange Free State that there occurred the incident which led to the annexation to that State of the Barolong Territory of which the Capitol (or at least, where the Chief Sepinane Marokko had his residence) was Thaba Nchu and which, so to speak, formed an island, surrounded as it was by Free State territory. The people there would never have been interfered with, but for this incident, which was as follows: There had been two rival claimants for the chieftainship after the death of the chief Marokko, viz. a certain Samuel and Sepinane Marokko. The latter had been recognised as the successor during the old Chief’s lifetime. Their respective claims were submitted to the arbitration of President Brand, who, after careful investigation into the matter, decided in favour of Sepinane. Some years later, whilst Sepinane was ruling the Barolong, an inroad was made by Samuel from Basutoland and over Free State territory with an armed force of Basutos and others in the course of which Sepinane was shot and Samuel seized upon the government. Under the circumstances a commando of burgers was called up by the President, which proceeded to Thaba Nchu and put an end to the disturbance. It was felt that the chief having been killed, a continuation of a dangerous state of affairs could not be tolerated and the President accordingly issued a proclamation by which the Thaba Nchu territory was incorporated with the Orange Free State. Samuel was arrested and brought to trial at Bloemfontein for murder, but upon an objection raised to the jurisdiction of the court there on the ground that the crime had been committed on foreign territory by an alien, he was discharged.

84 Sir Hercules George Robert Robinson was born in Rosmead, Westmeath, Ireland, on 19 December 1824 and died in London on 28 October 1897. In August 1880 he was appointed as Governor and High Commissioner in the Cape. He took up office in January the following year. Robinson arrived in the Cape at a time when the political situation in South Africa was extremely explosive. Robinson, a tactful and conciliatory Governor, left the Cape in May 1889 with a good record. Peace had been maintained in South Africa, but not for long: see Van Rensburg sv “Robinson, Sir Hercules George Robert” in DSAB Vol IV 509-512.

85 The attorney in question was Ewald Esselen. On Esselen, see Part I above.
Chapter 4

Chief Justice

On the death of President Brand he was succeeded by the till then Chief Justice, Reitz. The succession to the office had previously been privately offered to Sir George Grey, who many years before had been Governor of the Cape Colony and who, as such, had been beloved by all. After him was named Grey College at Bloemfontein, the foundation of which institution was due to him; so is the Grey Collection in the Cape Town Library. His statue in marble has been placed at the bottom of the Municipal Gardens in Cape Town. Some distance away and facing him stands the brazen statue of another man who was in every respect an anti-thesis of Sir George Grey; a statue of a man without principle, scruple, conscience or honour, Cecil Rhodes.

On Chief Justice Reitz becoming President I succeeded him on the bench as Chief Justice (Mr. Justice Buchanan having accepted a judgeship at Kimberley) and remained such till the time of the annexation, one of those flagitious acts of

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86 De Villiers initially inserted a heading here called “Chapter III. Under President Reitz”. He later replaced the words “Under President Reitz” with “Chief Justice”, obviously referring to his taking over the position of Chief Justice from Reitz. Following his original numbering, De Villiers’ numbering of this Chapter is clearly wrong. It should have been “Chapter II”, and not “Chapter III”.

87 Sir George Grey was born in Lisbon, Portugal, on 14 April 1812 and died in London on 19 September 1898. He was Governor of the Cape Colony from December 1854 to 1859 and 1860 to 1861. The towns of Greyton (near Caledon) and Greytown (in KwaZulu-Natal) as well as a mountain pass (Grey Pass, in the Fynbos region near Citrusdal) and a Durban suburb (Greyville: well known for its race-course where the Durban July is held) were named after him. Lady Grey in the Cape Province was named after his wife. During his time as Governor, Grey supported immigration to and education in South Africa. Two of the educational institutions that carry his name are Grey High School in Port Elizabeth and Grey College in Bloemfontein: see Du Toit “Grey, Sir George” in DSAB Vol I 326ff; and Raper (n 13) 190 and 287.

88 Cecil John Rhodes was born in Bishop’s Stortford, Hertfordshire, England, on 5 July 1853 and died in Muizenberg in the Cape on 26 March 1902. He was a British imperialist, financier and mine magnate, and one of the most influential forces during nineteenth-century South Africa. Not only did he become Prime Minister of the Cape in 1890 but his personal wealth was matched by few during and after his lifetime. He formed the De Beers Mining Company in 1880, launched Goldfields of South Africa in 1887 and founded the British South African Company in 1889; see Garson “Rhodes, Cecil John” in DSAB Vol III 704ff; and Wheatcroft The Randlords (1987) passim. De Villiers’ unflattering views of Rhodes’ character are shared by many other commentators. In passing, a short explanatory note on the name “Rhodesia”: The territory north of the Zambezi, now Zambia, was administered separately by Rhodes’ “British South African Company” as “North-Western Rhodesia” and “North-Eastern Rhodesia” from 1890 and 1897, respectively. It was later known as “Northern Rhodesia” until 24 October 1964, when it was granted independence by Great Britain and renamed “Zambia”. The territory which is today known as “Zimbabwe” was originally referred to as “South Zambezia”. The name “Rhodesia” came into use in 1895. The designation “Southern” was adopted in 1901 and dropped from normal usage in 1964. “Rhodesia” became the name of the country until the creation of Zimbabwe Rhodesia in 1979. On 18 April 1980 the name “Republic of Zimbabwe” was formally proclaimed: see Palley The Constitutional History and Law of Southern Rhodesia (1966) 742-743. Rhodesia was named after Rhodes and he was buried in the Matopo Hills.
which there have been only too many, which have been perpetrated by Great Britain in South Africa. Reitz was a man of upright and honorable character though perhaps somewhat indiscreet in some of his actions. At one time he had a severe attack of nervous [depression] but from it he eventually recovered. 89 His enemies attributed his illness at the time to a very incorrect cause; he was a strictly abstemious man. Such enemies as he had were resident in the Northern part of the [Free] State, and then being such was due to the following case. Some years previously a case had come before him as Circuit Judge at Harrismith in which the purchasers of certain farms in the district had in good faith paid the purchase price (amounting to some thousands of pounds) to the auctioneer, without any authorisation from the sellers (executors in a certain estate), and the money thus paid had been appropriated by the auctioneer; whereupon they had been sold by the sellers for payment of the money to themselves. Judgment was quite rightly given against the purchasers, and on appeal this judgment was confirmed. It was a very great blow to the purchasers who never forgave Reitz his decision against them and their animosity took the form of spreading evil reports affecting his character, which unfortunately were very generally believed. When once travelling on Circuit in conversation I found this out and that he was unpopular in those regions and was able to contradict the reports spread about him. On a subsequent visit to those parts I found he was quite popular and I enquired the reason for the popularity he had acquired since my previous visit. One answer I got was that they had always been told that he was a very proud and a very irreligious man, but they had found that he was the very opposite, for on a visit to that part of the State he had shaken hands with everyone and he had appointed a day of prayer for rain on account of a severe prevailing drought.

When, later on, President Reitz for reasons of health resigned, he was succeeded by M.T. Steyn, up to that time senior puisne judge. My name was also mentioned as a candidate but I at once intimated that under no circumstances would I allow myself to be nominated. My brother, Sir Henry de Villiers, then Chief Justice of the Cape Colony, was also approached on the subject, but he felt some difficulty about accepting a nomination. The Free State has been fortunate in respect of its Presidents. Steyn was a man of upright and honorable character, high-principled, steadfast in his principles and devoted to the cause of his country and to the maintenance of its much

89 In a parenthesis that he later deleted, De Villiers states that at the time of writing — by then 1927 — Reitz was “suffering from something similar”.


cherished independence. Against him stood Mr. John George Fraser,\textsuperscript{90} as a candidate for the presidency, but he really never had a chance. He never was really trusted by the people of the country by reason of his having at one time signed a petition to the British Government detrimental to its independence. Mr. Fraser has done me a very good turn once, so I am sorry to remark it, but no doubt as an opponent of Steyn and even of Reitz, he became a vindictive enemy, which led him afterwards in a published autobiography\textsuperscript{91} to attack these men and make statements which were far removed from the truth.\textsuperscript{92} For instance, one would deduce from his remarks that President Steyn sought for war whilst he himself shows how Steyn detested war. In fact, when the last session of the Volksraad [met], Steyn, with tears in his eyes, made the pathetic observation that possibly that might be the last time that the Volksraad would ever meet. As to Steyn’s attitude with regard to the War I may have some further remarks to make later on. Of Fraser it may be remarked that later he received a knighthood from the British Government.\textsuperscript{93}

During President Steyn’s term of office as President the spectre of war became more and more threatening under the evil influence of Lord Milner. When he (then Sir Alfred Milner) visited Bloemfontein for the first time, probably merely to spy the land, Mr. W.H. Poultney,\textsuperscript{94} then interpreter to our Court, told me that Milner had made a very favorable impression upon President Steyn and on Mr.

\begin{footnotes}
\item[90] Sir John George Fraser was born in Beaufort West on 17 December 1840 and died in Bloemfontein on 22 June 1927. He was a medical doctor, farmer and attorney. In 1871 he became the private secretary of President JH Brand. In 1880 he was selected as member of the Free State “Volksraad”, first as member for Knapzakrivier, Philippolis, and from 1881 to 1899, as member for Bloemfontein. From 1884 to 1896 he was the Chairman of the Orange Free State “Volksraad”. He was knighted in 1905. From 1910 to 1920 he served as senator for the Free State in the Senate of the Union of South Africa. In 1910 an honorary doctorate was awarded to him by the University of Aberdeen: see Van Rensburg sv “Fraser, Sir John” in \textit{DSAB Vol I} 301-302.

\item[91] Published under the title \textit{Episodes in my Life} (1922).

\item[92] De Villiers probably refers here to Fraser’s adverse comments on the presidencies of Reitz and Steyn when he remarked that “[w]e [the Orange Free State] were blessed with the guidance of our Great President, Sir John Brand, for a period of twenty-five years, in which our State was brought out of chaos to peace and prosperity, and became a model State in South Africa. But under the regimes [of Reitz and Steyn] which followed his death, the spurious patriotism which was so assiduously and disastrously fostered in the minds of our simple people, the chief motive was personal aggrandizement which betrayed our State to the anti-British schemes of President Kruger …”: \textit{idem} 273-274.

\item[93] In July 1871, Fraser was appointed private secretary to President Brand. He subsequently held the positions of Secretary of the Volksraad, Master of the Orphan and Insolvent Chambers and, at the time when Melius de Villiers arrived in Bloemfontein in May 1876, Fraser was the Registrar of the High Court. However, finding his emoluments insufficient for the adequate support of his growing family, Fraser, during his service as Registrar, took up the study of the law. After he had passed the necessary exams, he resigned his official position and commenced legal practice in Bloemfontein on 1 July 1877. He was one of the few Members of the “Volksraad” who later successfully made a “seamless transition” between the old and new order, and also served after the War as member of the Legislative Council of the Orange River Colony: \textit{idem} 62-64.

\item[94] There can be little doubt that “WH Poultney” was William Henry Poultney, Justice of the Peace and later Secretary to the Witwatersrand Agricultural Society and Chairman of the Johannesburg College and Cleveland High School. He was born on 28 July 1860 in Aliwal North: see Donaldson (ed) \textit{South African Who’s Who} (1910) 379. Poultney and his wife
\end{footnotes}
Abraham Fischer, one of the members of the Executive Council and he asked me what I thought of Milner. I replied: “Well, if he had stood before me as a prisoner in the dock I would have said to myself: This is as crafty a scoundrel as ever I had to do with.” Some years afterwards Mr. Poultney informed me that after this conversation he told his wife of it and remarked that they would see who was right. When at a later time a deputation approached Lord Milner with a memorial (probably inspired by himself) in favour of a suspension of the Constitution of the Cape Colony he reproached them for not having exercised “craft” enough. Such was the man. Why I believe that he inspired the memorial is not only his remark but also that even before the outbreak of the War the possible suspension of the Constitution was referred to in the Star, a newspaper published at Johannesburg, and there was demonstrably a close contact between Milner and the propagandist newspapers. In the Cape Times I remember the appearance of anonymous letters demanding the suspension of the Constitution about the same time as the memorial, and it was curious that the writer’s name did not appear as a guarantee of the genuineness of such letters.

were close friends of President Steyn and his wife. The Poultneys stayed in Monument Way, below the Fort; see Schoeman (n 77) 143a.

95 Abraham Fischer was born on 9 April 1850 in Cape Town. He was a lawyer and political leader in the Orange Free State. After the formation of the Union of South Africa in 1910, he served as cabinet minister in a number of portfolios including that of Lands in the Cabinet of General Louis Botha; see Jacobs sv “Fischer Abraham” in DSAB Vol I 302-304.
President MT Steyn (Source: Van der Merwe Marthinus Theunis Steyn Vol I & II (1921))
Chapter 5

Transvaal affairs

I must revert to Transvaal affairs. During the Presidency of President Brand there occurred the rising of the burghers of that country and the affair at Majuba. I may here remark that during the later anti-Transvaal propaganda for the purpose of stirring up a war of annexation it was constantly repeated in English papers and periodicals that the burghers of that country were in the habit of boasting of the occurrence at Majuba. On the contrary I always found them, when speaking of it at all, doing so in a reverent spirit, as if what was there accomplished was not an act of man but one of divine providence. Another legend, I may here mention, started by the propagandists was that the Ministers of the Dutch Reformed Church were in the habit of thumping their pulpit desks and denouncing Rhodes. Mr. Brebner, Superintendent General, wrote a letter stating that during the long period he had attended the services of that church he had never experienced any such denunciation or knew of any one who had; and judging by my own experience I can confirm this and I do not believe any such incident ever occurred in any single instance. Through the intervention of President Brand and my brother (then) Sir Henry de Villiers peace was established – very unfortunately so, I now think. The matter should have been fought out to the end. If the Transvaal was vanquished it would not have been in a worse position than it actually is at present. But its chances of success were greater then than they were later on when war actually broke out. Railways, for one thing, had not yet been built within the republic to any extent and after all railways were what was most helpful to the British in the later war. But more important still was the fact that so intense was the indignation throughout South Africa and the sympathy with the Transvaal that the British could not so easily have made the colonies the basis of operations as they afterwards did; in fact it is not certain that a great section of the Colonists would not also have taken up arms, as the Burghers of the Free State were certainly prepared to do. At all events, Lord Randolph Churchill who was opposed to the peace terms before he came to South Africa, returned, convinced, as he said,
that, but for them South Africa would have been lost to England. What evil consequences sometimes follow from deeds which those who take part in them fancy will lead only to good. But these two men did not understand the English character sufficiently.

A chivalrous people would have admired the pluck of a small band of sixty men at Majuba attacking and defeating so greatly a superior force of trained soldiers, but there only lurked the spirit of revenge; not revenge in a spirit of chivalry but by means of overwhelming force. I am reminded of the speech of the old Herennius Pontus after the defeat of the Romans by the Samnites at the Caudine Forts: "The Romans are not a race who know how to sit quiet under defeat; whatever that is which the present necessity shall brand will rankle in their breasts forever and will not suffer them to rest until they have wreaked manifold vengeance on your head."

The Convention which so fortunately for England amicably restored the country to its lawful people stirred up the indignation of the English jingo crowd at Pretoria. The name of Gladstone, who was then Premier in England, was thereafter held in utter detestation, although he, on the evidence of Lord Randolph Churchill, had saved South Africa for England. They buried the English flag and erected a tombstone bearing the legend Resurgam: "I will arise." Thenceforth there prevailed the Resurgam spirit and that too in the case of a people upon whom it was afterwards demanded that an utmost unlimited franchise should be bestowed.

Subsequent to the Convention entered into between England and the Transvaal the Chief Montsioa\(^{98}\) who was hard pressed by the adherents of his rival, Moshette,\(^{99}\) conveyed to the Transvaal Government his desire to be taken under its protection. In this emergency the President issued a proclamation giving effect to this desire, subject however to the approval of Great Britain.

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\(^{98}\) There can be little doubt that De Villiers refers here to Chief Montshiwa, Chief of the boo-Ratshadi branch of the Rolong Tribe. Chief Montshiwa, who was born in 1814 and died in Mafikeng on 10 October 1896, had long and acrimonious correspondence with the Transvaal and British Governments over territorial claims. When President Burgers became President of the ZAR in 1872 he made Chief Moshwete the Principal Chief of the Rolong boo-Ratlou. But Chief Montshiwa rejected Burgers' overtures. With the outbreak of the First Anglo-Boer War in December 1880, Chief Montshiwa declared his support for the British, but he was opposed by his rival Chief Moshwete and the latter's supporters who favoured the Transvaal: see Anon sv "Montshiwa" in DSAB Vol II 485-487.

\(^{99}\) Chief Moshwete, who was born at Motelewaphwane in 1821 and died at Khunwane in 1904, was a chief of the baRolong boo Ratlou boo Seitsiro, the senior Rolong tribe.
The Transvaal Secretary of State, Dr WJ Leyds (left), with Chief Justice Melius de Villers (c 1895). (Source: Schoeman Bloemfontein in Beeld. Portrait of Bloemfontein 1860-1910 (1987) 69)
Memories of over eighty years

(I have not the proclamation at hand and have thus to rely upon my memory as to the exact wording of the proclamation.) It will be seen thus that instead of there being a contravention of the Convention which delimited the boundaries of the Transvaal (to its detriment), there was a distinct recognition of its obligations. What is here said is confirmed by Mr. Justice Kotzé by writing as follows in the “Cape Argus” of 26 May 1927: – “Kruger said he must act at once, and if the High Commissioner objects I can but withdraw my proclamation no one can blame me for seeking to avoid bloodshed.” It was however too good an opportunity to be lost to open the road to an acquisition of territory to the North. Crowded meetings were held in Cape Town and elsewhere to protest against the alleged breach of the Convention by the perfidious Kruger.

The Warren expedition100 followed. My information, when engaged on the arbitration question as to the boundaries between the territories of the two Governments, was to the effect that President Kruger went from point to point urging the so called “filibusters” not to fight and that it was due to him that no conflict ensued. Of course, according to the usual lying account of what took place, it was said that President Kruger was at the bottom of the so-called filibustering raid. I found that, instead of having been overawed by Warren’s force the “filibusters” entertained a profound contempt for the army of “jameaters” (as they called them) and felt much aggrieved that they could not try conclusions with them.

By the new Convention the former status of the South African Republic (or Transvaal, as it was more generally called) was not entirely restored, as it ought to have been in faithfulness to the earlier convention, but the suzerainty of England was imposed upon the country. Great dissatisfaction arose there in consequence. A commission went to England in order to try to get the Convention modified in that respect. In this the commission succeeded and a new Convention was signed by which the suzerainty was withdrawn. With the restoration of its old status within the territory which remained unannexed to

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100 De Villiers refers here to the expedition led by Major (later Sir) Charles Warren in 1884/1885 to enforce British authority in the Boer Republics of Stellaland and Gosen. Warren was born in Bangor, Wales, on 7 February 1840 and died at Weston-super-Mare, England, on 21 January 1927. In 1876 he came to South Africa for the first time to assist in the demarcation of the border between the Orange Free State and Griqualand West. He stayed there until 1879. With the outbreak of the Anglo-Boer War he was appointed as Deputy Supreme Commander of the British forces in South Africa with the rank of Lieutenant-General. The defeat that he suffered at the Battle of Spioenkop was a serious blow to his reputation as a soldier. After the relief of Ladysmith, Warren was appointed as military governor of Griqualand West and his task was to keep the Cape Rebels, who operated in that area, in check. In July 1900 he returned to England; see Celliers sv “Warren, Sir Charles” in DSAB Vol I 864-866. On Warren’s role in the Anglo-Boer War, see Pakenham The Boer War (1997) 282ff.
England the name of South African Republic was restored instead of Transvaal State to which the people had previously to assent.

In the year 1886 the discovery of gold in large quantities in the South African Republic was announced. The fact of gold existing in the country had been known long before but was always kept secret, both by private individuals on whose properties it was found and by members of the government, but the fact was always concealed, for, they knew that, Convention or no Convention, if the fact became generally known, a pretext would be found, as in the case of the Diamond Fields, for the acquisition of the territory by Great Britain. That pretext was, of course, actually found after the gold fields had attracted large numbers of men, mostly English, from different parts of the world.101

Whilst with my family enjoying a sea-side holiday at Onrust River in the Cape Colony the notorious Jameson raid occurred.102 It is alleged that this occurred without the knowledge of Rhodes; but strange to say the intention to invade the South African Republic appears to have been known in London about a week before.

In connection with this matter I wish to make the following remarks. In his book Commando Mr. Deneys Reitz asserts that after the raid it became a common saying in the Free State: “We must drive the English into the Sea.”103 Now at that time Reitz was a youngster and he may have been relying on an inaccurate memory when he wrote this.104 However, I am in a position

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101 The original manuscript here contains a sentence that De Villiers later deleted. It reads as follows: “There was a remarkable conjunction of scoundrels arranged against the Transvaal.”

102 On 29 December 1895.

103 Deneys Reitz was the third eldest son of President FW Reitz’s five surviving sons from his first marriage. FW Reitz’s surviving sons were: Hjalmar (born in 1877), Joubert (born in 1880), Deneyes (born in 1882), Arent (born in 1883) and Johannes Henricus Brand (Jack) (born in 1887). Altogether there were seven boys and one girl born from the marriage between Reitz and Blanca Thesen: see Reitz (n 51) 28 nn 1-3. Deneyes Reitz was a soldier, writer and cabinet minister. At the time of his death in London on 19 October 1944 he was the South African High Commissioner in Great Britain: see Lennox-Short sv “Reitz, Deneys” in DSAB Vol I 670. The well-known attorneys firm “Deneys Reitz” today still carries his name and has offices in Sandton, Durban and Cape Town.

104 Commando is Reitz’s journal of the Anglo-Boer War (1899-1902). Reitz was seventeen years old at the outbreak of the South African War in October 1899. He served throughout the War in a Boer Commando. He wrote the original draft of Commando in Afrikaans (actually in a Dutch dialect) while working as a transport driver in exile in Madagascar in 1903. The original title of Commando was Of Horses and Men. The Afrikaans version was later edited and translated into English by Reitz. It was first published in October 1929. General JC Smuts was the driving force behind its publication and wrote the foreword. The original English manuscript of Commando, in Reitz’s handwriting, is housed in the Oppenheimer family’s Brenthurst Library, Johannesburg. The original draft manuscript of what eventually became Commando, consisted of a number of small note-books. These note-books were later preserved in the Cape Town library of Reitz’s son, Jan Deneys Reitz. Commando has been translated into French, Dutch and German, and its more than a dozen impressions have overtaken in sales almost all other Anglo-Boer War books combined; see the introduction by Thomas Pakenham in the 1998 edition of Commando at 4-8 and n 1 at 253. Reitz also wrote two further works of an autobiographical nature: Trekking On (1933) and No Outspan (c 1943). The trilogy has subsequently been republished in a single volume entitled Adrift on the Open Veld: The Anglo-Boer War and Its Aftermath, 1899-1943 / Deneys Reitz (edited by Emslie).
absolutely to contradict this statement.\textsuperscript{105} The expression referred came into vogue when British troops were being massed on the Transvaal border and approaching towards the Orange Free State from the South, “for the case of emergencies” (as Lord Milner, expressed it) and exclusively referred to the British troops. During the war when a British force was seen advancing the expression used was always “Daar kom die Engelse aan” (“there the British soldiers are coming on”). Never at any time was the expression used with regard to any others. In fact during the war Englishmen could daily be seen at the Bloemfontein Club chatting with Free Staters and undisturbed. The toleration on the part of the latter went extremely far. When several hundred British troops were prisoners of war at Bloemfontein English residents went to the place of confinement, sang loyal British songs and showed their sympathies with the enemies of the country and they remained unmolested. How different was the case in England where men who stood up for right and justice, the so-called Pro-Boers, went in danger of their lives. Take the cases of Merriman\textsuperscript{106} and Montagu White.\textsuperscript{107}

After the great gold discovery in the Transvaal it was a sure thing that (as happened in the case of the discovery of the Diamond Fields in the Orange Free State) on some pretext or other Great Britain would attempt to get possession of the country. There was a remarkable conjunction of scoundrels arranged against the Transvaal: Chamberlain, Milner, Rhodes and Jameson, men without principle, conscience, scruple or honour. There was Chamberlain, who, evidently at the suggestion of certain newspapers, dishonorably resuscitated the claim of suzerainty and began speaking in Parliament of “Conventions” in the plural instead of the “Convention” (in the singular) which

\textsuperscript{105} In Deneys Reitz’s defence, one must add that he himself makes this statement very clear in \textit{Commando} (3\textsuperscript{rd} ed, repr March 1939) at 19 where he declares that “I myself had no hatred of the British people; from my father’s side I come of Dutch and French Huguenot blood, whilst my mother … was a pure-bred Norwegian … so one race was much like another to me”.

\textsuperscript{106} John Xavier Merriman was born in Street, Somerset, England, on 15 March 1841 and died at Schoongezicht, Stellenbosch on 2 August 1926. He was a Cape parliamentarian and the last Premier of the Cape Colony. Merriman attended school at the Diocesan College in Cape Town from 1851 to 1856 before he proceeded to Radley College in England. In 1862 he returned to the Cape and worked as a surveyor in the Northern Cape. He later tried his hand at wine-making and a pioneer crayfish canning factory before entering politics as a member of JC Molteno’s ministry in 1875. He blossomed in his new career as parliamentarian. His political career spanned fifty-four years and culminated in the premiership of the Cape Colony. It is said that Merriman’s contribution in bringing about the Union of South Africa was second only to that of Smuts: see Lewsen sv “Merriman, John Xavier” in \textit{DSAB} Vol II 463ff.

\textsuperscript{107} Montagu White was born in Surbiton, Surrey, England, on 28 August 1857, and died in Blanco in the Cape on 13 April 1916. Educated in the Cape at the Diocesan College, he joined the gold rush in the Transvaal in 1886, but soon thereafter opted for the safe haven of a government post in the Department of Mining with the Transvaal Government. He soon acquired a working knowledge of the Dutch language and, notwithstanding his English background, was a loyal supporter of the Boer Republic. In 1892 he was appointed by Dr WJ Leyds to act as consul general of the South African Republic in London. By the end of December 1899, he departed from England to the USA where he did much to promote the cause of the South African Republic with prominent Americans such as President McKinley, John Hay and Theodore Roosevelt: see Davey sv “White, Montagu” in \textit{DSAB} Vol I 876ff.
had replaced the earlier one and cast overboard every principle which at an earlier time he had entertained. There was Milner, who from the start was evidently determined to suppress the republic, in spite of his protestations to the contrary in his conversations with private individuals. Rhodes: there was the author of all the political and social calamities that have since befallen this country. Of Jameson’s foolish enterprise in the spirit of Resurgam it is not necessary further here to refer.

Personally, I have been the subject of much misrepresentation and misunderstanding in connection with occurrences in the Transvaal.

While the dastardly anti-Transvaal propaganda was going on I thought it my duty in conformity with the oath I had taken to maintain the independence of the State to try to appeal to the English spirit of fair play, of which so much has been heard, emanating at least from English speakers and writers. Accordingly, I wrote an article for the *Nineteenth Century*, setting forth forcibly and truthfully and without reticence much of what had occurred in South Africa at the hands of Great Britain, feeling sure that the facts which I set forth must have been unknown to the British public. The article appeared in due course. The following month there appeared in the same periodical an article purporting to be a reply to mine, by H. Stanley. Its chief characteristic was interpretation of so low a character that I was surprised that a respectable journal could admit it and that I could only fancy the writer was intoxicated when he wrote it. However I wrote a very moderate reply, entirely refuting his misleading statements. This reply was not accepted. One can only guess why the first article was inserted at all. This was my experience of the [much] vaunted British spirit of fair play. The dastardly propaganda should not be checked. My first article obtained for me the reputation of being a “virulent Anglophobe” in the estimation of Lord Milner; a curious illustration of British mentality; an incapacity of seeing matters at any but one’s own point of view.

Another incident seems worth mentioning as showing the sort of spirit that animated the enemies of the republics. On one occasion I returned from a visit...
to Pretoria by rail and had two travelling companions in the same train, a Mr. Stiglingh and a man from Natal. The chances of war were discussed and Mr. Stiglingh expressed the opinion that in case of war the republics could hold their own. Utter pessimist as I was as to the probability or possibility of our success, I deservedly refrained from expressing any opinions. Yet some time afterwards there appeared a letter in a Natal newspaper to the effect that on the occasion here referred to I had extravagantly boasted as to what the republics would and could do in case of war. I did not wish friends of mine at Harrismith (who were closely connected with Natal) to believe this, so [I] wrote a letter to the newspaper in question denying the statements made. The Editor of the newspaper published a note in it to the effect that the statements made were absolutely true and that the reason I denied this was that I knew that the British would be at Bloemfontein in a few weeks’ time and would know what to do with me. This incident is worth mentioning only as showing the knowledge that England was bent upon war (which had not then yet started) and the general expectation in pro-British circles that the conquest of the republics would be a very easy matter, in fact a mere “picnic” undertaking. Incidentally it was also a mark of the violent animosity which at all times prevailed in Natal against the Dutch republics and in fact everything Dutch.

In a book recently published (Lord Milner’s Letters)\textsuperscript{110} it is tried to be made out that I was an agitator in favour of war. Such is the irony of fate. No one dreaded the war more than I did; [I] worked for peace as far as possible and knew better how small was our chance of success. What really happened was this.

In their anxiety for a peaceful settlement of the alleged grievances and the prediction of war Mr. Abraham Fischer was several times sent to Cape Town to consult with Lord Milner and to try to achieve their object. Every time he came back he reported his want of success as Lord Milner would not listen to reason and was evidently determined that [forceful] measures should be adopted. On one occasion (the last as far as I remember) on his return from Cape Town I went to see him. He was utterly dispirited and disheartened. There was no longer any doubt he said that Milner was determined upon war. Milner thought very lightly of the subject telling him that Great Britain had now sufficient forces in South Africa to smash up the two republics. (At this time the Cape Times put the number of available troops down as 25,000.) Fischer said as war was now certain it was necessary to draw up some sort of manifest to be issued as soon as the war was started by the invasion of the Transvaal or possibly of both

republics. At that time or about that time England certainly was preparing for war. Illustrated English papers, such as the Illustrated London News, every week had pictures of the armaments in combatant "for the impending war with the Transvaal". They did not conceal the fact that war was intended. Fischer asked me to draw up some document of this kind for the case of the eventuality we were in fear of. This I did, stating the case from our point of view and truthfully. This document afterwards fell into the hands of the British and, with the usual perversion of facts such as might be expected, it was tried to make me guilty of instigating to war. The document published seems to be that which I drafted though I fancy there is some interpolation by another hand. Of course every attempt has always been made to throw blame upon others than those who deserve it. The Transvaal had constantly been blamed for its declaration, transmitted to the British Government, that a continuance of the massing of troops on its borders would be considered to be a declaration of war by Great Britain but the persons who ever have imputed this blame have never stated what other alternative was open to the Transvaal. The disgrace of the war is that of Great Britain and Great Britain alone. And a cowardly, dastardly, blackguardly war on the part of Great Britain it was.
Chapter 6

The Anglo-Boer War\textsuperscript{111}

Of the war waged by England against the two republics I do not like to say much. In the first place I hope that some day the truth regarding that war will be faithfully and truly published to the world, and in the second place, I never kept a diary and relying upon my memory only I may easily fall into error, which is the last thing I should wish to do.

There are a few points however to which I desire to refer in the absence of a reference to it by others. In this connection I may remark that it is a great pity that Mr. Abraham Fischer never left a record of his experiences and that President Steyn died without giving a full narrative of the occurrences in which he took part.

Agitators of war\textsuperscript{112}

Fischer came up to me one day quite excited and said: “Well Chief, even Fraser in the Volksraad has just been saying ‘the Transvaal has now given everything it could be expected to do, and even I am not too old to take up my rifle again’.” Fraser had behaved very bravely in the Basuto War.\textsuperscript{113} In his book “Episodes in my Life”\textsuperscript{114} he tries to make out that Steyn was anxious to have war. This he virtually himself contradicts in his book by mentioning Steyn’s unhappy foredooming expressed in the Volksraad should war break out. As a matter of fact Steyn lived in terror of the possibility of war and time after time Fischer at his instance ran down by railway to see Milner to try to arrive at a pacific arrangement. Each time Fischer returned to Bloemfontein he told me the result of his interviews with Milner and each time he reported that Milner was simply determined upon war.

Milner told him that they had sufficient forces to crush the two republics. The Cape Times at the time stated that they had 25 000 men available. Some time

\textsuperscript{111} This heading does not appear in the original manuscript and is my own.

\textsuperscript{112} This heading does not appear in the original manuscript and is my own.

\textsuperscript{113} De Villiers refers here to Fraser’s conduct during the Second Basuto War in 1865 when he joined the Philippolis Commando as a Field Cornet. He was one of the few brave men who stormed Thaba Bosigo with Louw Wepener in an attempt to defeat Chief Mosjesjwe’s troops. FW Reitz later wrote a poem “Ter nagedachtenis van kommandant Louw Wippenaar” to commemorate Wepener’s bravery; see Grobbelaar av “Wepener, Lourens Jacobus (Louw)” in DSAB Vol I 872-873.

\textsuperscript{114} Fraser’s somewhat self-glorifying autobiography was published in 1922.
before, Colonel Brabant\textsuperscript{115} in Parliament had said that he could sweep through
the Transvaal with 6000 men.

It has been held out as a proof that Milner did not want war, that the forces
available proved so inadequate. But it must be remembered that it was
generally thought that the war was going to be a sort of picnic affair; English
officers openly boasted that they were going to eat their Christmas dinner in
Pretoria. (Some of them did, as prisoners of war!)

Reference may be made to the following fact. Every \textit{Illustrated London News}
for a considerable time before the Transvaal sent its ultimatum had pictures of
the armaments being prepared for “the impending war with the Transvaal”, as it
was expressed.\textsuperscript{116}

The position that I took up before the War was as follows. Several times I went
out purposely to see President Steyn and Mr. Fischer at Loncer [?] Temple
where they both then were, and urged upon them that war should at all costs
be avoided. My idea was that if war arose it should come from the British side.
If the Transvaal was invaded and possibly also the Free State, we should
simply quietly submit under a strong protest. The time would come some day, I
assured them, that Britain would get into difficulties with some foreign power
and then we could reassert our independence with every prospect of success.
They seemed inclined to take that view, but there were serious objections. In
the first place it might be difficult to get the Transvaal to take that view after all
the bullying its people had undergone. Smuts, I fancy, would have been against
it and also some who believed that if war ensued an Almighty Power would be
on the side of right and justice. Then again, President Steyn said, he had lately
travelled through parts of the Free State and feeling was most intensely
embittered at the tactics/action of the British Government. [T]he women were
everywhere baking biscuits and making preparations for the campaign which
they foresaw and that it would soon be quite impossible to restrain the
Burghers from attacking the forces which were now threatening the Transvaal. I
remained very pessimistic. I foresaw that huge forces could be brought to fight

\textsuperscript{115} There can be little doubt that De Villiers refers here to Sir Edward Yewd Brabant. Sir Edward
was the only member of the Cape Parliament from 1854 to 1910 with the surname of Brabant.
He served three terms as MP for East London: 1873 to 1878, 1884 to 1902 and 1905 to 1907.
In total, he served in Parliament for twenty eight years: see Kilpen \textit{The Parliament of the Cape}
(1929) 140.

\textsuperscript{116} The first four paragraphs under the heading “Agitators of War” did not form part of the original
numbered manuscript. They were included in two separate pages that are numbered 1c and
2c, respectively. Since they logically belong with the rest of the material contained under this
heading, I have included them here.
against us. (I was unduly pessimistic in fact; for later I saw that if instead of appointing as Commanding Officers such utter fools as Joubert, Cronjé and at Kimberley old Vetkop Wessels, men like De Wet, Botha, Smuts, De la Rey and Hertzog had been appointed, the result would have been very different.)

I had a conversation at the Presidency one day. I said: “President, if war should come the British will come into the Country. They will burn down every farm homestead they come across.” “Oh no”, he remarked, “for if war unfortunately should come we shall fight against a civilised foe.” (“Ons sal mos met ‘n beskaafde nasie veg.”)

He also remarked that if it should happen that our forces were utterly repulsed the intention was to start a guerilla warfare. My own idea, which I expressed, was that in case of war it should be a guerilla warfare from the start; and that the British troops should always be attacked from the rear.

There was a scheme that at the outbreak of war Hertzog should at once with a strong force go boldly into the [Cape] Colony, seize a prominent position and stop the British forces at that point. Why this scheme was not carried out I do not remember. I believe religious feelings had something to do with it; it was not right to invade foreign territory, our duty was simply to defend our own. This idea had however afterwards to be given up. [Farms in] parts of the Cape Colony were even declared to be annexed; this was to give Colonists who sided with us the position that they were now fighting as burghers of the Free State and not as rebels.

Although I had been strongly opposed to war-like proceedings on our part, yet when war had actually ensued I was instructed by President Steyn to draw up a proclamation to our burghers calling them up to arms. This I did to the best of my ability but very shortly. I dwell chiefly (as far as I remember) upon the obligations of behaviour that would not put our people to shame in the eyes of the world. I suppose that the British got hold of it ultimately so that perhaps was the cause of the shameful treatment I [received] as a prisoner of war.\footnote{The last five paragraphs under the heading “Agitators of war” do not form part of the original numbered manuscript. They are contained in four separate pages that are numbered 1a, 2a, 3a and 4a, respectively. As they logically belong with the rest of the material contained under this heading, I have included them here.}
Employment of voluntary troops in the War

On one occasion preceding the War, Mr. Abraham Fischer came up to me and gave me the information that at a meeting of the President [Steyn] and members of the Executive certain native [Basuto] Chiefs had appeared, having come expressly for that purpose, to offer that if war ensued they would stand on the side of the Free State. President Steyn however, declined their offer, saying that if unfortunately the British Government were to force the country into war it would be a war between white people only and natives had to keep out of it.

Certainly President [Steyn] laboured under this conviction. What assurance he had upon this point I cannot remember. He certainly acted as if he had received this assurance and in accordance therewith gave instructions during the war that all natives actually found fighting against the republican forces should be shot. Captain Fletcher Vane in an article in the Contemporary Review distinctly states that there was an agreement of this nature and held that accordingly it would have been quite justifiable if any native found in arms were shot.

How earnest President Steyn was on the subject is shown by the fact that after the war had started he instructed me to draw up a proclamation to the effect that this being a war between white men natives were required to remain neutral. This I did, and it was translated into Sesuto.

The blackguard jingo press in one instance perverted this into a call upon the natives to take a part in the war against the British.

As to the employment of natives [I can] record the following. After the war when I had adjoined the Bar I prosecuted a white man for (it was alleged) shooting and hitting a man called Charles Williams. When Williams was called as a
witness it was not an Englishman but a burly black native who handed in his discharge from the “Bushveld Rangers” and who boasted of the many “Boers” he had shot. The name of the corps evidently intended to camouflage the fact that bodies of natives were employed by the British for fighting.

In conformity with the understanding that no natives were to be allowed to take part in the war President Steyn issued formal instructions that any natives captured taking part in the fighting on the side of the British should be shot. This was actually done by Scheepers, who after being captured was tried by martial law by the British and (in the condition of sickness as he was) executed (one might rather say murdered); one of the charges being that he had thus acted against the rules of war. Another breach of the rules of war committed by him was (if I remember rightly) that he had burned down a Magistrates’ Office in some village, in retaliation apparently for the burning down of farms by the British in the Orange Free State. If so, the British did not act contrary to the rules of war, but he did. If ever the history of the war is written by an impartial writer more still will be revealed as to the employment of natives in the war by the British.

It is rather amusing to read in that notable work of fiction The Official History of the Anglo-Boer War119 that England could have set the native tribes to overrun the Transvaal. In other words they would have exterminated the outlander population on whose behalf Great Britain was supposed to be fighting and the British would have had thereafter to dispossess these tribes.120

It may seem strange at first sight that Basutos should have desired to take part with the republic, with which they at one time had been in conflict.121 In short the history thereafter was that whilst these people were under the control of the Cape Colony the Parliament of that country passed a disarmament Act applicable to Basutoland in consequence of which war ensued. Although the burgers of the State had resented the policy of a Cape Governor of supplying these natives with firearms they as much disapproved of this Cape action.


120 The remainder of this paragraph (“The Role of Black South Africans in the War”) does not form part of the original manuscript but was taken from De Villiers’ separate and additional notes to the main manuscript. These additional nine paragraphs of text are contained in the set of notes with the heading “IV – Employment of Native Troops in the War” (see my “Batch IX” (own numbering) in my copy of the De Villiers’ “Memoirs”). While the bulk of De Villiers’ “Memoirs” was written between September 1926 and October 1927, these separate notes on the “Employment of Native Troops in the War” were written at least two years afterwards. Since De Villiers, in the separate notes, refers to an article that appeared in the Cape Argus of 19 March 1931, one may assume that he wrote the separate notes not earlier than March 1931.

121 The first three and a half pages of Batch IX contain no new material and merely repeat what De Villiers describes in the main part of the “Memoirs”. These pages have been omitted here.
These people should never have been allowed to acquire such arms, but now these having been acquired it was a most unjust act to dispossess them. The Free State government could hardly refuse free passage to troops going to Basutoland but that was all it did. Besides, from previous warfare the Basutos had a high respect for the Free State burger as a fighting man; they lacked that respect for other troops.

At the disturbance later at […] one of their Chief-men remarked: “It is a pity Presidents Kruger and Steyn are now dead; they at least understood us natives.”

It has been written in mitigation of Great Britain’s action in employing natives to fight in this struggle that it was only an insignificant number of them that were employed. That is somewhat like what happened in the case of the unmarried girl who had a baby and pleaded in mitigation of her indecent conduct that it was such a very small one.

The question arises then: were very many employed? It is absolutely certain that a very large number were employed. It is difficult to say how many. To illustrate this I may refer to a personal experience.\footnote{De Villiers refers here (again) to the case of Charles Williams of the “Bushveld Rangers”, the details of which appear earlier on in this paragraph.}

That they were employed in very large numbers is proved by indisputable evidence. One need only read the report in the \textit{Cape Argus} of 19 March 1931.\footnote{See also the letter by JH Brand Wessels in \textit{The Cape Times} of 30 March 1917 in which the writer provides ample proof (from personal experience in the War as well as by citing published sources) that the British Army indeed employed black South African troops on a large scale during the Anglo-Boer War.} General Hertzog remarked: “I saw whole columns of them, columns of which only the officers were white – I myself was under fire from these people not once but many times, there were thousands and thousands and we continually had to fight against them.” These natives were used not only in actual fighting but to escort women (sometimes pregnant women) and children from their burned homes to concentration camps; these women having to submit to the indignity of preparing their meals along the road for these blacks.\footnote{De Villiers inserted the following in brackets after these statements: “State the authority for this. Also for the allegation of the murder of seventy burgers in Northern Transvaal by natives who were commanded by British officers. Look it up.” It is obvious that De Villiers intended to cite certain (unknown) sources to substantiate the averments he had made in this paragraph.}
These seem to have been natives from outside the republics. Whatever may have been the case in the Transvaal in the Free State the natives were devoted to their masters and mistresses. Pathetic tales have been told of natives armed with nothing better than knobkieries being found with their masters on the battleground in spite of their having been ordered to stay at home. Tales too of native women supplying food to women and children who were living under native willow trees along the rivers in order to escape the dreadful and dreaded concentration camps where, as Lord Milner expressed it, the death-rate was “appalling”. And yet the ordinary Englishman is made to believe that the Dutch-speaking farmer of the Orange Free State controls the native with a sjambok.

If the Free State Government accepted the offer of the Basuto chiefs and employed their well-armed forces, what an outcry there would have been. These natives ride well and shoot well. How thankful the British ought to be that the republican leaders displayed a nobility of character which was wanting on their own side.

On the British side there has been much boasting that they did not go further and hurl the neighbouring native hordes upon the Transvaal. As if they could afford to make these hordes ravage the property and risk the lives of the Uitlanders. And as if the republics could not also have availed themselves of the well-armed Basutos and Barolong.

The use of natives against the republics appears to me to have always been in contemplation. The following remembrance of mine requires corroboration in order to be stated as a fact. If the Free State records have not been destroyed so far as they bear upon this matter there may be proof or disproof of the matter as I remember it, which is as follows:

After the iniquitous annexation of parts of the Free State upon which diamonds had been discovered in the year 1872 three wagons were captured laden with contraband fire-arms and the like at Magersfontein and removed to Jacobsdal by the Free State authorities. President Brand at the time was seriously ill and the government was meanwhile being conducted by a triumvirate: Messrs. W.W. Collins, Schnehage and Du Toit. Land-Surveyor Orpen who with

125 William Whiskin Collins was born in Cape Town on 10 October 1832 and died in Bloemfontein on 30 May 1917. He was a writer and politician and lived in Bloemfontein from 1851 to 1917. On 15 August 1862 he was elected as member of the Free State “Volksraad” and served in that capacity for eighteen years. By the end of 1872 he was elected as chairman of a triumvirate of special commissioners to govern with all the powers and privileges of the State President during President Brand’s illness. He was also one of the leading attorneys in the Orange Free State and in August 1862 he was appointed as a member of the Board of
a man called Arnot\(^{128}\) (a “shifty” according to Professor Eric Walker\(^{129}\)) had been at the bottom of the whole iniquitous annexation business, now conveniently discovered that Magersfontein just fell within the annexed British territory. Britain’s cup of iniquity was not yet full. The delight of bullying a small country by “the Protector of small nations” (as some Master of Irony had phrased it) could again be enjoyed. A demand was made upon the Free State Government that the wagons should at once be restored, an apology made and £600 paid as damages. Messrs. Collins, Schnehage and Du Toit could but succumb. They remonstrated that these guns were on the way to Basutoland to arm the Basutos. The Cape Governor courteously replied, if my memory serves
me aright, that that was the very reason why they should be allowed to go.\textsuperscript{130} The virulent hatred and spite displayed by the Governor towards the people whom and the country which he bullied is illustrated by an incident for the truth of which I can personally vouch. A relation of mine of the name of Blignaut,\textsuperscript{131} who was Landdrost of Kroonstad but was desirous of returning to the Cape where he had been born, wrote to the Governor applying for a certain appointment and as some recommendation remarked that he had been in the civil service of the Free State so and so many years. Whether the Governor at that time was the proper person to apply to I do not know, but at any rate the Governor condescended to reply. And he was mean enough to write that the fact of Blignaut’s having been in the civil service of the Orange Free State for so many years was a sufficient reason for not giving him any appointment that was in his power to give.

\textbf{The fall of Bloemfontein}\textsuperscript{132}

To me it was the most miserable and melancholy of sights to see the British troops entering Bloemfontein;\textsuperscript{133} their triumph of unrighteousness and afterwards to hear of the proclamation of annexation being read on the market square.\textsuperscript{134} At the time the Free State Government was located at Winburg and naturally President Steyn was there. I considered it my duty to rejoin Steyn if I possibly could manage to do so, and resolved, if I could not manage that to go to the Cape with my family provided I could let my house at Bloemfontein. As it was impossible to get out of Bloemfontein without the sanction of the military I requested an audience with Lord Roberts, which was granted. I went to see him at the Residency to make my request. He refused to allow me to go to Winburg but had no objection to my going to the Cape. It seems curious that he knew about my article in the "\textit{Nineteenth Century}" and I told him that there was not a word of it that I could withdraw. It was arranged that I might leave the next Saturday.

\textsuperscript{130} De Villiers here inserted the word “Investigate”, clearly indicating that he intended to consult (and refer to) sources to substantiate his statement.

\textsuperscript{131} PJ Blignaut originally hailed from the Boland region in the Western Cape. He was appointed as magistrate in Kroonstad and in 1879 he was appointed as State Secretary in Bloemfontein. He held this position until 1900 when Bloemfontein fell to the British. On occasion in 1896 he also acted as State President: Schoeman (n 77) 61 and 132.

\textsuperscript{132} This heading does not appear in the original manuscript and is my own.

\textsuperscript{133} On Tuesday 13 March 1900. See Schoeman (n 77) 156-160 for a vivid description of the taking of Bloemfontein by Lord Roberts.

I had given instructions to Mr. J.G. Fraser (afterwards Sir John Fraser) to try to let my house if I went. Almost immediately after my seeing Lord Roberts he informed me of an offer of £50 per month. (In view of what happened afterwards I may mention that this was a very moderate rent if one considers the high prices asked and given for much inferior places.) Mine was a large double-storied and extremely well-furnished house.

On the Friday I received a message from General Pretyman asking me to go to see him. I did so. General Pretyman said: “You are going to the Cape tomorrow.” I answered that I was. He remarked: “You understand that you are going as a prisoner of war?” I replied that I had an unconditional permission from Lord Roberts to go to the Cape with my family. He immediately became rude and offensive and added: “When you arrive in Cape Town you go at once to the Castle and report yourself.” I had next to go to the Provost Marshal to obtain a written permit to travel for myself and family. In his office there were beside himself a man who had been convicted of a foul murder but who was released from prison by Lord Roberts and a young Free Stater. The provost Marshal asked me how many were going. I began: “Myself, my wife ....” “How many wives?” said he. At this brilliant sally the two other gentlemen roared with laughter. Curiously enough both the Provost Marshal and the ex-murderer got into grievous trouble thereafter. Later when I was in England I happened to be at the Great Western Railway Station at Southampton and there saw the Provost Marshal, looking a mere wreck of a man after (I think) typhus fever, so

The Orange Free State was officially annexed on 24 May 1900 and renamed the Orange River Colony: idem 169.
one could not but feel sorry for him. The ex-murderer after leaving Bloemfontein in disgrace proceeded to Natal where he got an appointment in a scholastic institution. He gave lectures on some subject (history I think) but it was found that he was simply repeating like a parrot what appeared in a book on his subject. After his dismissal from this office he resorted to embezzlement. Of this crime he was convicted, and after his being found guilty the previous convictions against him were proved, including the one for murder. Such was the man released from prison by Lord Roberts at the instance of the British residents of Bloemfontein who resented an Englishman being found guilty and hanged by the republican government. The same spirit it was as had long before shown in the notorious case of Cox.

**Back in the Cape**

At the Cape my family and I lived in the house on the farm Rust-en-Vrede at Simondium in the Paarl district, which house had been kindly offered to me for occupation by my brother Henry, to whom it belonged. I was in receipt of no income except £30 a month rent of my house at Bloemfontein, which did little more than cover premiums payable on my policies of assurance of £8 000. The arrangement made with regard to my house had been that General Pretyman should have it for three months with an option to have it for a certain further length of time. When now the three months had nearly lapsed I wrote to enquire from General Pretyman whether he wished to exercise his option. I received from him a very offensive reply but its main point was that as I was a prisoner of war he need not pay me a penny of rent and he could retain the house as long as he might choose, but as a matter of grace he would in future pay me twenty pounds a month!

With respect to this house I may as well refer to an event which happened between thirty and forty years afterwards. During the occupancy of the house by the military they installed electric light throughout it. Access to the loft was by a trapdoor. By this means before leaving Bloemfontein I had stored away a good lot of things, such as my shot gun, camera, also a judge’s cap and a bundle of newspapers containing special news about the progress of the war in which the Free State was engaged and a number of other things. After the war I sold the premises after finding that all these things had disappeared.

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135 This heading does not appear in the original manuscript and is my own.
136 De Villiers had either made a mistake with the amount of the rent (earlier in his “Memoirs” he stated that the rent was £50 per month) or the rent was later reduced to £30 per month.
137 Major-General Pretyman served as military-governor of Bloemfontein: Pakenham (n 100) 506.
138 Thirty two years later to be exact. Bloemfontein was taken by the British in March 1900 and The Deodars was demolished at the end of 1932.
The purchaser subsequently sold the house for a very big price to the municipal corporation of Bloemfontein for the purpose of the building of a new Town Hall on it together with some adjacent ground. On the demolition of my house being carried out a judge’s cap and a bundle of newspapers was discovered between the ceiling of the drawing room and the floor above it. There was much curiosity at Bloemfontein as to how and why these articles came there. Eventually the editor of *The Friend* newspaper wrote to me asking whether I could and would explain the matter, which I did. The articles left on the loft had been stolen by persons engaged on the work of electrification and hidden by them in the place where the two articles were found when engaged in their work in the drawing room till they found a favourable opportunity of removing them, but the two articles abovementioned were not considered worth removing and were therefore left behind and the ceiling which had been opened for the purpose of electrification was again restored.\(^{139}\) These articles were, I believed, preserved in the Museum at Bloemfontein so that all this explanation may perhaps be deemed to have been not altogether unnecessary.

At Rust-en-Vrede my stay was not made very pleasant by the military and besides I had other troubles. I had to borrow money without being able to give security for loans, but fortunately my brother Henry (the Chief Justice of the Cape) was able and willing to lend me what I wanted. I daily took a walk with my wife along the main road toward French Hoek; this must have been reported to the Commandant at the Paarl, for I one day received a peremptory order from him not to set my foot beyond the limits of the farm. However at the request of my dear wife, who said it was necessary for me for the sake of my health to take such walks the order was rescinded. On another occasion I got a permit to go to see my brother Henry at Wynberg. During my absence, as my wife and another lady were taking a walk along the road a Field Cornet rode up and announced that all prisoners of war were required to present themselves at the office of the Commandant at the Paarl on the next Monday morning “with bag and baggage”. My wife obtained a cart and horses and drove to the Paarl where she saw the Commandant. After some discussion she was permitted to telegraph to me that I should come to the Paarl on the Monday. This I did, only to find on my arrival on Monday that all the prisoners of war there had turned up, had been ordered to go home again, which they did with pleasure. The wives of some of these men had been busy the whole preceding night baking...

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\(^{139}\) See n 78 above where De Villiers first refers to this incident.
biscuits for the men to take with them to Ceylon; for that was expected by these wives, as had been by my own, that they would be sent thither. Amongst other nuisances all our lights had to be put out pretty early at night.

The reason why I went to see my brother Henry was this: Lord Milner made me the offer of the Chief Justiceship of the Orange Free State. I was very anxious to retain this position but felt precluded from accepting it for the reason that the Free State Burghers were still in the field fighting for the independence of their country and that on my appointment to the Bench of the Orange Free State I had taken the official oath that I would be faithful to the State and would maintain its independence. Thinking I might be wrong in this matter I had gone to consult my brother and learned from him what he thought about it. His opinion was that I could not accept the offer, and this determined me to refuse it. Shortly afterwards Milner offered me the position of legal adviser to the Governor he had appointed in the Free State, but this also I refused for the same reason as that for which I had refused the position of Chief Justice.140

140 During his later life De Villiers tried unsuccessfully to convince the Union Parliament to grant him a state pension. In this regard he corresponded with various members of Parliament, including Colonel Deneyes Reitz, Jan H Hofmeyer, CR Swart and General JC Smuts. Among the De Villiers papers there is a petition he wrote to Parliament setting out the grounds for his requests. This unfortunate saga in his life is discussed in more detail in Part I above.
Chapter 7

To England and the Netherlands

My wife had been terrified by the idea of my perhaps being sent to Ceylon whilst a considerable number of prisoners of war had been sent, and it was determined for that reason and also for the reason that our children were receiving no education that we should, if possible, go to Bedford in England, where they could have their schooling. We obtained permission to go to England by transport ship free of charge. We lived in England for about three years, and there we were in no way disturbed. Our son went to the local Grammar School and the girls to the Girl's High School. I at first returned alone to the Cape. After my arrival there I proceeded to Bloemfontein, where I sold my house and other property for a good price, which saved me from bankruptcy, for by that time I was very heavily in debt.

My wife and children were now enabled to return. I resumed practice at the Bar, but did not do very much; in fact my nerves were in too shaken a state to do that. We lived in a house called Langheme at Wynberg. Whilst there I got an offer from the University of Leiden of a professorship in Roman-Dutch law, which I accepted. The salary was ... gulden yearly, equivalent to ... pound in English money. My travelling expenses to the amount of £200 were to be refunded to me in Holland. Nothing was intimated to me of my having to contribute to a Pension Fund and stupidly enough I took it for granted that, as in the Orange Free State, the pension would be really an additional salary and no contribution would be required. The whole affair proved to have been conducted on the other side in a most unbusinesslike manner. After my arrival in Holland I applied at once for the refunds of my travelling expenses. To my surprise I was told that I would receive it at the end of the year if the funds were available. Having relied upon receiving this money I found myself in a rather

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141 This heading does not appear in the original manuscript and is my own.

142 Who could blame Adelaide de Villiers for fearing that her husband might be sent to Ceylon (Sri Lanka)? The Boer prisoners-of-war were transported by sea to remote islands such as St Helena and Ceylon in the most atrocious of circumstances imaginable. Of the slightly more than 6 000 Boer soldiers who perished during the Anglo-Boer War, 1 118 died as prisoners-of-war. This number of 6 000 Boer deceased does not include the nearly 28 000 mostly Boer women and children who died, some say were murdered by neglect, in the concentration camps. For these and other statistics on Boer casualties during the Anglo-Boer War, see Brink Oorlog en Ballingskap (1940) Annexure, and for a riveting description of the hardships which the Boer prisoners-of-war had to endure on the ships while being transported to their places of incarceration, see Brink 127ff and Groenewald Banneling oor die Oseaan. Boerekrygsgevangenes 1899-1902 (1992) 32ff.

143 In the original manuscript De Villiers left a blank space as to the amount of guilders he received as salary from Leyden University. Among his personal papers which were donated to the Free State Archives, I found his letter of appointment at Leyden in which it is stated that his salary for the first year was 4 000 guilders. In his second year his salary was increased to 6 000 guilders.
difficult position. However, I happened to mention this to a local banker, who however was good enough to tell me not to trouble about it as his bank would be quite willing to give me credit to the extent of two thousand gulden for which my professorship was sufficient security. At the end of the year I was informed that the funds were available to repay my travelling expenses. The banker told me I need not expect to receive it for the next few months. As a matter of fact I received the money in the month of July, just about twelve months after my arrival.

In Holland salaries are paid quarterly. When at the end of the first quarter I went to receive my pay, not knowing that the practice there was for a menial official of the Treasury going to the professors and paying the money, getting as a matter of course, a good tip for doing this, I was informed that the full salary of … gulden was only to begin on the first day of the next year and that I would now receive only the salary given to newly appointed professors. (The offer made to me of … was a special one.\textsuperscript{144}) To my annoyance and disgust I was now also informed that for the time of four years there would be a considerable deduction as contribution to a widow’s pension and an orphan’s pension fund; so that in all I received a small sum only instead of what I had expected.

\textbf{The \textit{Leidse Fees} (Masquerade) in 1905. (Source: Private Collection, WG Schulze)}

\textsuperscript{144} De Villiers probably refers here to the salary of 4 000 guilders which he received during his first year in Leyden.
The front door of 70 Witte Singel with its stilted arch. (Source: Private Collection, WG Schulze)
Dinner menu at the celebration of the University of Leyden's 331st anniversary on 8 February 1906. The University was founded in 1575. The function was held at the Hotel Levedag. One can but hope that the spread on the Levedag's menu was more to Melius de Villiers' liking than the meals which he and his family were served when they stayed at the Hotel Lion d’Or in Bree Street, Leyden. (Source: Melius de Villiers Collection, Free State Archive Repository)
The *Grote Zaal* of the old *Academiegebouw* on the Rapenburg in Leyden where Melius de Villiers delivered his inaugural lecture on 5 July 1905. (Source: Private Collection, WG Schulze)

The view of the Witte Singel embankment which greeted the De Villiers family when they exited their front door at 70 Witte Singel. (Source: Private Collection, WG Schulze)
I found I would be liable to a state, a provincial and a municipal income tax. In the case of the two former, if the receiving official (his name and title I do not remember) thought your income tax return was less than it should be he fixed his own estimate. I found I had the reputation of being a wealthy man, because in Holland only wealthy men and firms pay by cheque. The first time I paid income tax by cheque I received a reply that the cheque would be accepted this time but this must [not] occur again. All this is mentioned as it seems to show a certain want of business methods in Holland. On leaving Holland I optioned to continue paying into the Widows and orphan’s pension fund, but, though I pay my 120 gulden in yearly I seldom succeed in getting a receipt.

I arrived in Holland with my family in the first week of June 1905. I was under the impression that I would at once be able to commence my duties. I discovered, however, that though I had been requested to be there at that time it was only that I might be able to view the lustrum festival (quinquennial) of that year and I was told it would not be possible for me to deliver my inaugural dissertation and to commence before some time in September. As I would have to remain at Leiden some three months without any income I felt very annoyed, besides which I felt no interest in the lustrum festival, so I insisted that I should be allowed to begin my duties early the next month. This would be against all precedent and with some difficulty I got it arranged that I should deliver my inaugural dissertation on 6 July 1905. My dissertation was not a long one; I afterwards discovered that a long one is better appreciated than a short one and is considered more dignified. As it was now vacation time we went over to England the same month and after a short stay in London went to stay at Pangbourne on the Thames and afterwards stayed a week at Oxford. On our return to Leiden we stayed at the Hotel Lion d’ Orr in Bree Straat. The proprietor had built a new bathroom. We engaged use of the bathroom without extra payment. When the month’s bill was first presented we found the bathroom (hot water furnished by a gas geyser) was charged for. I represented this to the proprietor who remarked that he thought we would require and have an occasional bath but that we had baths every day. Thereafter I was content to pay for the bathroom. We did not relish Dutch hotel food it was rather different from what we were accustomed to. From there we went into a home we had lived [in] on the Witte Singel.

We bought our furniture and the drawing room furniture was specially made for us; the purchase was on easy terms; in fact we were told we could pay from time to time within the next ten years.
The Hotel Lion d’Or in Bree Street, Leyden, where Melius de Villiers and his family stayed in June 1905 is long gone now. Although the Leyden Stadsbank is now conducting business from that premises, the building’s façade is still the same, including the basket-handle arches above the windows and the unmistakable tympanum above the impressive front door with flag pole. (Source: Private Collection, WG Schulze)
We had fairly good servants. The girls used to sing lustily constantly when at work. My wife stopped this by offering each of the two a gulden extra every month if only they would not sing. Dutch housewives do not seem to mind this sort of thing as it shows that the girls are happy in their service. A curious custom I found was this: all accounts are settled through the servants, who of course get a commission from the payee. The first account I paid was to a dentist by cheque through the post. To my surprise I received a receipt by post in an envelope together with a certain number of gulden “for the servants”.

**Back to South Africa: The final years**

We lived in Holland till 1912 when we returned to the Cape. Several times my son at the Cape had written suggesting we should return by reason of the war which he considered to be impending. There certainly was a very strong anti-German feeling in England and much was made of a German invasion in theatres and otherwise. A Jingo spirit was not wanting. The *National Review* before the war wrote: “The Germans are depriving England of its trade. A war with Germany is absolutely necessary, and the first thing to do will be to annex German South-West Africa.” (I quote from memory). However, members of my family were eager to return to their native country. At that time General Hertzog, as Minister of Justice, had been to consult my brother Henry as to the appointment of a commission to codify certain laws, more particularly those related to judicial procedure. My brother informed him that I was prepared to return to the Cape if I could get paid work to do and suggested that I should be approached on the subject. After my return I began by tackling the subject of the inferior courts but General Hertzog was excluded from the Ministry which had been formed after the resignation and resumption of office by General [Louis] Botha. Mr. Sauer succeeded Hertzog and I came to an agreement with him with regard to my work and recompense and on arrival home at once put into writing an agreement, which Sauer confirmed. Unfortunately almost immediately afterwards Sauer died. He was succeeded by De Wet who however repudiated an agreement on the ground that there

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145 This heading does not appear in the original manuscript and is my own.

146 De Villiers refers here to the political crises in 1912 when JBM Hertzog, the then Minister of Justice, made a number of controversial public statements regarding the furtherance of an ideology of South African Nationalism at the expense of the British Empire. The Prime Minister, Louis Botha, came under huge pressure from his own party to get rid of Hertzog. Botha put Hertzog before the choice to either repudiate his comments or to resign as cabinet minister. Hertzog refused whereupon Botha tendered his own resignation to the Governor-General. The Governor-General then requested Botha to appoint a new cabinet from which Hertzog was omitted: see Krüger sv “Hertzog, James Barry Munnik” in *DSAB* Vol I 366ff; and [http://rulers.org/safrgov.html](http://rulers.org/safrgov.html), (5 May 2008).
was no record in his office of any agreement on the subject and that he intended to have the work done departmentally. My brother Henry wished me to take legal proceedings against the Government when I exhibited to him the documentary evidence which I had to support my claim for compensation as I had given up my position in Holland on the strength of my undertaking [to do] this work on my return; but on one thing I was determined never to become a party to an action at law if I could help it. However, I got the compensation which I had claimed for the work I had done.

Some time afterwards I was appointed chairman of a commission to report upon the “Black Peril”.\textsuperscript{147} Attacks on white women by natives were very rife and caused great indignation and uneasiness especially at the Rand.\textsuperscript{148} This commission was appointed to satisfy public feelings. I expected (as actually happened) that a carefully drawn report would eventually be pigeon-holed and the matter sink into obscurity but had no objection to undertake such a well-paid duty. We visited various places of importance in the several provinces of the Union to take evidence on the subject with which we had to deal. At Durban a rather amusing incident occurred. Our Commission was gathered in a room in the local Town Hall. A gentleman was admitted and we cordially greeted each other. As chairman I asked him to take a seat, explained to him our functions and then began examining him, as our first witness, on the matter on which we had to report. After being examined by other members of the Commission I thanked him for the valuable information he had given and he retired from the room. I shortly afterwards discovered that he had not come there as a witness at all but was the Mayor of Durban and had come to welcome the Commission to Durban. He was, if I remember rightly a Mr Hollander.\textsuperscript{149}

\begin{footnotesize}
\begin{enumerate}
\item De Villiers refers here to the Commission Report entitled \textit{Report of the Commission Appointed to Enquire into Assaults on Women} (1913) which was published in 1913.
\item The Commission’s mandate stretched much wider than an investigation of the so-called “Black Peril”, or – put in the parlance of the Commission’s Report – “Sexual assaults by coloured men on white females”. The Commission was tasked to investigate attacks on women of all races and committed by men of all races: see the Report iii.
\item De Villiers’ memory indeed served him correctly. Witness no 80 listed in the list of witnesses who had testified before the Commission was “FC Hollander, Mayor of Durban”: \textit{Report} (n 147) vi.
\end{enumerate}
\end{footnotesize}
Melius de Villiers, aged fifty two (c 1901). This beautiful studio photo was taken by J Thomson of Bedford and one may therefore assume that it was taken during the two-year period between 1900 and 1902 when De Villiers and his family were in Bedford. (Source: 1910 SALJ)
Subsequently I was appointed Chairman of the University Commission.\textsuperscript{150} An Act was passed by Parliament establishing the existing universities except the one at the Witwatersrand.\textsuperscript{151} Personally I did not approve of so many universities being established as well as university colleges, – the latter evidently aspiring to be universities themselves. At Maritzburg I actually found the local university college being called “the university”.

I contributed articles on legal subjects pretty frequently to the \textit{South African Law Journal}. One subject (on which I also wrote a pamphlet in reply to one by Sir J.G. Kotzé,\textsuperscript{152} former Chief Justice of the Transvaal) viz the requirement of consideration in contract in Roman and Roman-Dutch law. My brother, then Chief Justice of the Union, had held in a considered judgment that consideration, or at all events a \textit{quid pro quo}, is necessary for a valid contract, and Kotzé tried to prove that he was miserably wrong. An actual consideration was in the law (Roman and Roman-Dutch) known as \textit{causa}; an actual element in the constitution of a contract. But \textit{causa} was also often used shortly for \textit{causa obligandi}; that is to say the contract itself. (There can be a \textit{causa obligandi} in the form of a delict; but with this we have nothing to do here.) By muddling up the \textit{causa} in the one case with the \textit{causa} in the other case the Supreme Court after Lord de Villiers’ time came to the conclusion that a \textit{quid pro quo} was not essential to the constitution of a contract.\textsuperscript{153} Judge Kotzé’s booklet contained a mixture of exceedingly bad law, incoherent and self-contradictory argument and bad taste. He had no love for the Chief Justice of

\textsuperscript{150} This Commission was established in 1917 under the chairmanship of De Villiers. He was assisted by Professors (later Sir) William Thomson, John Carruthers Beattie, GG Cillé, WJ Viljoen and Wilfred JR Murray: see Boucher, Maurice \textit{Spes in Arduis. A History of the University of South Africa} (1973) 140.

\textsuperscript{151} The \textit{Universities Acts Amendment Act} 9 of 1918: \textit{ibid}.

\textsuperscript{152} On Kotzé, see again n 69 above.

\textsuperscript{153} Here De Villiers refers, of course, to one of the most famous debates in South African law. At stake was the question what constitutes a valid and enforceable contract under South African law. This debate turned on the question whether cause or consideration was the test of seriousness to distinguish between promissory transactions that are binding and those that are not. In the course of the nineteenth century the term “\textit{iusta causa}” came to be translated as “consideration”. The term “consideration” was soon equated with the English doctrine of valuable consideration. In the first two decades of the previous century the question whether “\textit{iusta causa}”, as understood by the Roman-Dutch lawyers, was or was not distinguishable from the concept of “consideration” in English law, became the hottest debatable question in the South African law of contract. JG Kotzé, Chief Justice of the Transvaal Supreme Court, advocated that these two concepts were indeed distinguishable. Opposing Kotzé was Lord Henry de Villiers, Chief Justice for forty one years: first of the Cape, and since its inception in 1910, of the Union of South Africa. Kotzé represented the purist view and De Villiers that of “besoedelaar” or “pollutionist”. Kotzé advocated his viewpoint in \textit{Rood v Wallach} 1904 TS 187, while De Villiers expressed his view on this matter in \textit{Mtembu v Webster} (1904) 21 SC 323. Lord Henry de Villiers died in harness on 1 September 1914. Five years later, in 1919, the Supreme Court of Appeal brought the matter to a head. It decided in favour of Kotzé’s viewpoint and against that of De Villiers: see \textit{Conradie v Rossouw} 1919 AD 279. For a summary of this great \textit{cause célèbre} of contractual theory, see Reinhard Zimmermann \textit{The Law of Obligations – Roman Foundations of the Civilian Tradition} (1996) at 556-557. See Part I above for a more detailed discussion of this debate.
the Supreme Court, Lord De Villiers, and years before had attacked him in the public press in a matter in which the writer made him no admirable figure. Apart from his public actions in other matters in regard to which I entertained a very decided disapproval I personally liked him for his very genial disposition.