

LORD DE VILLIERS AND HIS TIMES



Constable & Co.

London & York 27

*John Henry de Villiers.
First Baron de Villiers of Wynberg.
Chief Justice of the Union of South Africa.*

LORD DE VILLIERS AND HIS TIMES

SOUTH AFRICA 1842-1914

BY

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"Justitiæ cultor, rigidi servator honesti"

LUCAN, *Cato*, v. 389

CONSTABLE & COMPANY LTD.
LONDON · BOMBAY · SYDNEY

1925

OXFORD UNIVERSITY PRESS
Post Box 31, BOMBAY.

PRINTED IN GREAT BRITAIN BY ROBERT MACLEHOSE AND CO. LTD
THE UNIVERSITY PRESS, GLASGOW

PREFACE

LORD DE VILLIERS was born in the simple agricultural South Africa of 1842; he entered the Cape Parliament in 1867, the year in which the gold and diamond discoveries set in motion the economic revolution that has made the South Africa of to-day; he died in the first month of the Great War. His public life thus fell in the most complicated and controversial period of his country's history. It has been impossible to take the history for granted and concentrate on the man himself. That method presupposes a wide-spread knowledge of the last sixty years in South Africa, a knowledge which does not exist for the sufficient reason that the story has, in great part, still to be written. I have not attempted to write that history here; but Lord de Villiers' papers touch so intimately on events of political importance, there is so much in them that calls for explanation, that I have had to make his biography a running commentary, as far as possible from his point of view, on the South African history of his day.

Two interests dominated his life—the law and federation. His influence on the development of South African law was greater than that of any other man, for he presided over the senior court in South Africa for more than forty years. By 1875 he had made his name as a judge and had outlined the judicial reforms for which he fought throughout his life. I have, therefore, broken the chronological order at that point and given the legal side of the story as a connected whole in Chapters V. and VI. I have submitted those chapters to several members of the Supreme Court bench and I have to thank them all, especially Sir Malcolm Searle, Mr. Justice F. G. Gardiner and Mr. Justice E. F. Watermeyer, for helpful criticism.

Apart from his work as a judge, Lord de Villiers took a keen interest in politics. Most of his political work had to be done

sub rosa, much of it bore little immediate fruit, but all of it was directed towards the federation of the South African states and colonies under the British Crown. It is well to see this issue, on which so much of the history of South Africa turns, through the eyes of one who had a balanced affection for England and South Africa, who was in daily touch with politicians, and who yet, as Chief Justice, stood *au dessus du combat*.

It is this central and detached position which gives de Villiers' life its peculiar interest. He belonged to no political party and, with his judicial mind and training, he saw both sides of each question so clearly that, at times, his action was seriously impeded. "If I were to address an appeal to them," he ruefully confessed when asked to use his influence to check the spread of rebellion in Cape Colony in 1901, "I should have to admit that there have been faults on both sides." I would ask any reader, especially any South African reader, who may chance upon this book, to read that statement into every page of it.

Among the mass of documents at Wynberg House are notes on certain episodes in his life which he wrote about the year 1903. I have used these merely to supplement his letters and other papers. Those papers begin with a diary which he kept when he set out as a student to Utrecht in 1861; they end with a diary in which he recorded his experiences as acting-Governor-General during the fatal July and August of 1914. Between them lie letters from all the High Commissioners, all the Presidents, and most of the leading politicians and officials, Imperial, Colonial and Republican, of his time. There are also original letters of his own, besides many copies of letters sent (for he was a methodical man) and drafts of letters part only of which were sent (for he was also a cautious man) but which for that very reason tell the more clearly what he actually thought. It is on these documents that I have relied. For instance, the chapter on the retrocession of the Transvaal in 1881 is based on his draft of the Pretoria Convention with his corrections and marginal notes, and the chapters on the National Convention on his correspondence as President of that assembly.

Besides the papers at Wynberg House, I have been privileged to read part of the correspondence of the Rt. Hon. J. X. Merriman, the Hofmeyr papers in the S. A. Public Library in Cape Town, letters shown me by Lord Selborne which fill gaps in the National

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Convention period, and, owing to the kindness of Lord Loch and the Dowager Lady Loch, the two unpublished volumes of the late Lord Loch's South African correspondence. The extracts from Lord Loch's letters here published are, however, taken from those in the de Villiers collection.

Apart from letters, I have received information from many, both in South Africa and Great Britain, who knew Lord de Villiers well, notably the late Dowager Lady de Villiers, Mr. Justice Melius de Villiers, his brother, Lord and Lady de Villiers and Sir John Kotze. It is impossible for me to mention by name all who have thus helped me, but they must take it that my gratitude is none the less sincere. I have also to thank the many correspondents of the late Chief Justice who have readily given me leave to publish their letters, and, finally, Mr. A. C. G. Lloyd, the other members of the staff of the S. A. Public Library, and my wife for help at various stages of my work.

ERIC A. WALKER.

UNIVERSITY OF CAPE TOWN,
September 1924.

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CHRONOLOGICAL TABLE

- 1828-34. Judicial system of Cape Colony organised under Royal Charters. Sir John Wylde, Chief Justice.
- 1837-39. Winburg, Natal and Potchefstroom republics founded.
1842. May. British occupy Port Natal . . . June 15. *De Villiers born.*
1845. Roman-Dutch civil law of the Cape extended to Natal; Recorder's Court. Andries-Ohrigstad republic founded.
- 1847-48. Crown Colony of British Kaffraria and Orange River Sovereignty founded.
1849. Nominal union of Transvaalers.
1852. January. Sand River Convention (Transvaal independent).
1853. *De Villiers enters South African College, Cape Town* . . . Parliamentary institutions granted to the Colony.
1854. March. Bloemfontein Convention (Orange Free State independent) . . . Utrecht republic organised . . . May. *Death of de Villiers' father* . . . December. Sir George Grey as Governor.
- 1856-7. Natal separated from the Cape as a Crown Colony; Supreme Court on the Cape model.
1858. January. Union of Zoutpansberg and S. A. Republic . . . Rustenburg Grondwet . . . Sir John Hodges, C. J.
1859. Failure of Grey's federation scheme . . . (Italian war of liberation).
1860. Lydenburg-Utrecht joins the S. A. Republic.
1861. February. *De Villiers sails for Holland* . . . (American War of Secession).
1862. Cape Statute Law published . . . Dutch Reformed Synod leads to acute ecclesiastical controversies . . . (September. Bismarck in power in Prussia) . . . October. *De Villiers goes to Berlin.*
1863. June 5. *De Villiers enters at the Inner Temple.*
1864. Eastern Districts Court established . . . (Danish war . . . Quebec Federation Convention).
1865. June. Basuto war . . . November 17. *De Villiers called to the English Bar.*

1866. January 18. *De Villiers called to the Cape Bar* . . . April. Treaty of Thaba Bosigo . . . British Kaffraria incorporated in the Colony . . . (Jamaica reduced to status of Crown Colony).
1867. April. First diamond found at Hopetown . . . June 15. *De Villiers elected M.L.A. for Worcester* . . . July. Basuto war . . . December. Gold at Tati . . . (Dominion of Canada and North German Confederation formed . . . British Reform Act).
1868. Sir Sidney Smith Bell, C.J. . . . March. Annexation of Basutoland . . . April. Annexations by Pretorius.
1869. February. Treaty of Aliwal North . . . June. *Brand offers de Villiers post as judge in O.F.S.* . . . July. Transvaal-Portuguese treaty . . . Diamonds on Vaal and Harts . . . (Suez Canal opened).
1870. First Synod of Anglican Church of the Province of S. Africa . . . August. Waterboer asks to be taken over as a British subject . . . Diamonds found at Dutoitspan . . . (H.M. garrisons withdrawn from Australia and New Zealand).
1871. March. *De Villiers' marriage* . . . *serves on Cape Federation Commission and discusses South African Confederation with Brand* . . . August. Cape takes over Basutoland . . . October. Keate Award . . . British annex Griqualand West. Recorder's Court at Kimberley . . . (January. German Empire proclaimed).
1872. July. Burgers President of the S. A. Republic . . . November. Responsible Government act passed . . . December 2. *De Villiers Attorney-General in Molleno ministry.*
1873. *De Villiers introduces University and Seven Circles bills* . . . Rev. S. J. du Toit starts the "Eerste Taal Beweging" (Afrikaans) . . . Langalibalele rising in Natal . . . December 9. *De Villiers Chief Justice.* (English Supreme Court of Judicature act).
1874. (February. Carnarvon Colonial Secretary.) . . . July. *De Villiers chairman of Judicial Reform Commission* . . . *Judgments in Alexander v. Perry and Hough v. van der Merwe* . . . O.F.S. High Court founded on Cape model . . . (New federal constitution in Switzerland).
1875. May. Carnarvon's Confederation despatch . . . June. *Judgment in de Villiers v. Cape Divisional Council* . . . July. MacMahon's Delagoa Bay Award . . . Du Toit founds "Di Patriot" . . . (British Merchant Shipping act).
1876. May. *De Villiers' address on the language question* . . . (Brussels conference on Africa) . . . July. Failure of Transvaal attack on Secocoeni . . . August. Carnarvon's conference in London . . . (English Appellate Jurisdiction act).
1877. *De Villiers arranges scheme of Confederation with Brand and criticizes Carnarvon's Permissive Bill* . . . High Court in S. A. Republic on the Cape model . . . March 31. Sir Bartle Frere

- arrives . . . April 12. Shepstone unexpectedly annexes the Transvaal . . . *De Villiers knighted* . . . September. Kaffir war.
1878. Carnarvon resigns . . . February. Sprigg's ministry . . . August. Hofmeyr founds the "Boeren Beschermings Vereeniging" . . . November. *De Villiers chairman of Law Amendment Commission.*
1879. January. Isandhlwana . . . April. British cabinet censures Frere . . . July. Afrikander Bond founded . . . Cape Court of Appeal founded . . . November. *Judgments in Kok v. the Queen and Upton v. Solomon and Dormer* . . . Secocoeni submits . . . (Gladstone in Midlothian).
1880. February-March. Crown Colony institutions in Transvaal . . . (April. Gladstone takes office) . . . June. *De Villiers' Education Commission reports* . . . August. *Judgment in Merriman v. Williams* . . . September. Exit Frere. Basuto War of Disarmament . . . October. Griqualand West incorporated with the Colony . . . December. Transvaal War of Independence.
1881. April 29. Sir Hercules Robinson's Basuto Award. *Wood and de Villiers open sittings of Transvaal Royal Commission at Newcastle* . . . August 3. Pretoria Convention signed.
1882. (Tel-el-Kebir . . . German Colonial Society founded) . . . *Brand and de Villiers awarded the K.C.M.G.* . . . High Court of Griqualand West on Cape model . . . Transvaal raises qualifications for franchise to five years' residence . . . December. Republic of Goshen proclaimed.
1883. May. Lüderitz at Angra Pequena . . . August. Republic of Stellaland proclaimed.
1884. February. Convention of London . . . April. New Republic in Zululand. Mackenzie in Bechuanaland . . . August. Germany annexes Namaqua-Damaraland . . . September. Kruger's "annexation" of Goshen . . . Monopoly to Netherlands Railway Company . . . November. M'Corkindale case . . . December. British annex St. Lucia Bay.
1885. Warren's expedition . . . September. British Bechuanaland and (November) Protectorate proclaimed . . . (Attempt to form Australian Federal Council).
1886. January. Brand suggests Customs Union. Kruger asks for Customs agreement and extension of Cape railways. Cape refuses . . . *De Villiers proposes formation of S. A. Appeal Court and admission of colonial judges to the Privy Council* . . . Cape Court of Appeal abolished . . . July. Transvaal refuses Cape request for Customs Union . . . September. Witwatersrand goldfields proclaimed.
1887. First Colonial Conference . . . July. Grobler-Lobengula treaty. . . September. New Republic joins the S.A.R. *De Villiers chairman of Diamond Laws Commission* . . . December. Doms case.

1888. February. Moffat-Lobengula treaty . . . March. De Beers Consolidated formed . . . May. *De Villiers defends Robinsou's policy in London and (June) declines to stand for Free State presidency on death of Brand* . . . July. Grobler-Khama controversy . . . August. *Judgment on De Beers amalgamation* . . . October. Rudd concession.
1889. March. Transvaal-Free State defensive alliance . . . May. Exit Robinson . . . July. Cape-Free State Customs Union . . . October. Charter to B.S.A. Company. Rhodes joins hands with Hofmeyr. Delagoa Bay railway reaches Transvaal soil . . . December. Railway beyond Kimberley begun. Sir Henry Loch arrives . . . (Washington Panamerican Congress).
1890. January. British ultimatum to Portugal . . . March. Conference at Blignaut's Pont . . . *De Villiers declines to sit on local B.S.A. Board* . . . Collapse of Bowler Trek. Transvaal raises qualifications for franchise to fourteen years' residence . . . June. Bechuanaland Order-in-Council . . . July. Anglo-German treaty. Rhodes Prime Minister . . . August. Anglo-Portuguese and First Swaziland Conventions . . . September. Salisbury founded.
1891. *De Villiers presses his judicial reforms* . . . June. Order-in-Council extends Cape law over Europeans as far as the Zambezi. Anglo-Portuguese Convention. Adendorff Trek . . . November. B.S.A. Company acquires Lippert concession. Sivewright-railway agreement with Transvaal.
1892. Cape adopts English Company Law . . . National Union formed by Rand Uitlanders . . . (August. Gladstone takes office) . . . November. *De Villiers visits Transvaal with a view to standing for the presidency.*
1893. April-May. *Cabinet negotiations between Rhodes and de Villiers* . . . May. *De Villiers declines to stand for Free State presidency* . . . June. Responsible Government in Natal. Loch visits Pretoria. . . . October. Matabele war.
1894. Rhodes wins general election . . . (March. Rosebery succeeds Gladstone) . . . May-September. *De Villiers at Ottawa Colonial Conference* . . . June. Loch visits Pretoria . . . July. Matabeleland Order-in-Council . . . August. Glen Grey act . . . Rhodes obliged to give up idea of buying Delagoa Bay.
1895. January. Rhodes in London preaching federation "within the year." Cape-Transvaal railway war . . . April. Exeunt Loch and Hofmeyr. *De Villiers declines to come forward as Prime Minister* . . . (June. Chamberlain Colonial Secretary) . . . July. *Judgment in case of Sigcau* . . . August 28-November 5. Drifts Crisis . . . November. *De Villiers declines to stand for O.F.S. presidency* . . . December 29. Jameson Raid.
1896. January. *De Villiers offers his services as Prime Minister.* Sprigg forms ministry . . . March. Steyn President of O.F.S.

- ... Matabele rebellion; Mashona rise in June ... April. *De Villiers appointed to the Judicial Committee of the Privy Council* ... September. Bloemfontein Customs Conference ... Ill-judged Transvaal legislation. *Failure of de Villiers' attempts to form a federal university.*
1897. March. *De Villiers intervenes in "Judges Crisis" at Pretoria. Henceforward he and Steyn urge Kruger to set his house in order.* Transvaal-Free State federal alliance ... April. Van Boeschoten's "independence" despatch ... May. Arrival of Sir Alfred Milner ... July. *De Villiers sworn in and delivers judgment in Privy Council.* Committee of No Inquiry reports. Chamberlain "whitewashes" Rhodes ... October. Chamberlain's "Suzerainty" despatch ... Kruger waters down the report of his Industrial Commission.
1898. January-March. Cape Legislative Council elections ... February. Kruger dismisses Kotze, C.J. ... March. Milner at Graaff Reinet ... April. Renewal of Customs Union, including Natal. (First German naval law) ... September. Cape Assembly elections. (Omdurman) ... October. S. Rhodesia Order-in-Council. Schreiner Prime Minister of the Colony ... November. Milner goes to England. Renewed agitation on the Rand.
1899. Merriman tries to arrange conference of S. African governments ... February. Milner returns ... April. *De Villiers goes to Pretoria to arrange conference between High Commissioner and Presidents* ... May-June. Bloemfontein Conference ... October. War.
1900. Fall of Schreiner ministry ... (July. Australian Commonwealth act) ... August. *Publication of the "Bloemfontein letters"* ... October. "Khaki" election in United Kingdom ... December. Martial Law extended over most of the Colony.
1901. January. Merriman and Sauer go on peace mission to England. *De Villiers follows them, but breaks down.* Judicial reorganisation in Transvaal and O.R. Colony ... November. *The Marais judgment* ... December. Modus vivendi with Mozambique.
1902. *De Villiers receives Cape LL.D.* ... March. Death of Rhodes ... May 31. Peace of Pretoria (Vereeniging) ... May-June. Attempts to suspend the Cape constitution. *De Villiers offers to return to political life to help stop the movement* ... July-August. *Judgments in cases of Smit and van Reenen* ... December. Chamberlain visits S. Africa.
1903. January. Hofmeyr revives Taalbond ... March. S. A. Customs Union.
1904. January. Botha forms Het Volk party. First cargo of Chinese labourers arrives ... February. Jameson Prime Minister in the Colony. Steyn returns to S. Africa.

- 1904-6. *Partial reform of Cape Courts on de Villiers' lines* . . . Herero revolt in G.S.W.A. . . . November. Kruger's funeral.
1905. February. Interim report of Railway Conference . . . April. Lord Selborne High Commissioner. Lyttelton Constitution . . . Steyn forms Die Oranje Unie . . . [Campbell-Bannerman takes office.]
1906. March. Customs Conference at Pietermaritzburg . . . Native rising in Natal followed by another in Zululand . . . West Ridgeway Commission.
1907. February. Botha Prime Minister of Transvaal . . . April. Botha, at the Colonial Conference, proposes S. A. Court of Appeal . . . June. Publication of Selborne-Jameson correspondence . . . December. Fischer Prime Minister of O.R. Colony.
1908. February. Merriman Prime Minister of Cape Colony. *Merriman-Smuts-de Villiers correspondence on closer union* . . . May-August. *De Villiers in London and Quebec* . . . May. Pretoria Conference . . . October 12. *De Villiers President of the National Convention at Durban.*
1909. January-February. Cape Town Sessions of Convention . . . Bloemfontein Sessions . . . June. *De Villiers sails for England in advance of drafting delegation.*
1910. Lord Gladstone Governor-General . . . May 31. Union Act in force. *De Villiers created Baron and (June 4) opens Appellate Division as Chief Justice of the Union* . . . November 4. Parliament opened.
1912. July-November. *De Villiers acting-Governor-General* . . . December. Botha reforms his ministry without Hertzog.
1913. May. Rand strike . . . Land act . . . July. Death of Sauer.
1914. January. General strike . . . July 27. *De Villiers goes to Pretoria as acting-Governor-General* . . . August 4. War declared. Botha returns from S. Rhodesia . . . August 15. Treurfontein meeting . . . September 2. *Death of de Villiers* . . . September 8. Lord Buxton arrives as Governor-General. Sir James Rose-Innes appointed Chief Justice.

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