

LORD DE VILLIERS AND HIS TIMES



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*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

ERIC A. WALKER

PROFESSOR OF HISTORY IN THE UNIVERSITY OF CAPE TOWN
AUTHOR OF "HISTORICAL ATLAS OF SOUTH AFRICA"

"Justitiæ cultor, rigidi servator honesti"

LUCAN, *Cato*, v. 389

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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.

CHAPTER I

EARLY DAYS

ON May 6th, 1689, at the end of a four months' voyage from the Texel, the "Zion," with a party of refugee Huguenots on board, dropped anchor in Table Bay. Among the emigrants were three brothers, Abraham, Pierre and Jacob, sons of Pierre de Villiers of La Rochelle. They had left the realm of France for conscience' sake and found a temporary refuge in the free Netherlands. Now, like so many of their friends, they came out under the auspices of the Dutch East India Company to invigorate the little European society which was making good its foothold at the southern horn of Africa. The brothers brought with them a letter from the Chamber of Delft to the Governor. "We are informed," wrote the worthy Directors, "that these persons have a good knowledge of laying out vineyards and managing the same, and thus we hope the Company will acquire their services. You are recommended to give them a helping hand."

The helping hand was duly given, for the Governor, Simon van der Stel, had ambitions to make the halfway house to India a real Colony, able to support itself and to furnish the Company's ships with meat and corn and wine. Of course, the Company had its own gardens behind the little town on the Bay, orchards and storehouses behind the Devil's Peak, and cattle-runs lying out in a ring for thirty miles or more beyond the Castle; but it was also looking for help to its free burghers. They were a mixed body, mainly Dutchmen and Germans, but they mustered at least one settler from Dantzic and the inevitable man from Aberdeen. Already their farms were strung out through the northern half of the Cape Peninsula and away eastward to the Berg River valley. There, on the frontier, the Governor granted

farms to the three brothers; and thither they travelled out, past the Castle, where the masons were still at work on the new gateway, along the desperate track which served for a road across the sandy Flats, and so into the French Hoek. At the inner end of the valley they found their three farms close together. But they noted that, like the farms of other Frenchmen, they were ringed round by those of sturdy Dutch and German burghers by order of the Company, which was more than a little suspicious of its new subjects. Protestants though they were, they were ex-subjects of His Most Christian Majesty Louis XIV., who, if he loved Netherlanders too little, loved the Netherlands too well.

The brothers brought their newly-wed wives with them. Abraham and Jacob married two Provençale sisters, Susanne and Marguerite Gardiol. Abraham's wife bore him several daughters but no sons; hence, on his death at his farm "Champagne," his name died with him. In his day, however, he took an active part in the little public life that was then open to the free burghers. He was one of the first deacons in the French congregation in the valley and, presently, Captain of the Burgher Cavalry at Drakenstein and then Heemraad, bound to assist the Landdrost of Stellenbosch in the dispensing of justice and the administration of the district. Jacob, the youngest, seems to have led a quiet existence at "La Bri." His wife became the mother of children, sons as well as daughters, from whom many of the South African de Villiers are descended.

Pierre, the second brother, called his farm "Bourgogne." He married Elizabeth, daughter of Isaac Taillefert, the hat-maker from Chateau Thierry in the province of Bri, owner of the farm "Picardie" near the Paarl mountain. Pierre, like his elder brother, was an active man, elder of the congregation at Drakenstein, a correspondent with Adam Tas, the Samuel Pepys of Stellenbosch, but the friend also of the officials at the Castle; for Grevenbroek, Secretary to the old Governor, Simon, bequeathed him his "gold ring set with garnets in acknowledgment of the kindness formerly received from his co-religionists in France."¹ Pierre de Villiers died in January 1720, leaving his widow and a son, Pierre, aged fifteen. Young Pierre in due course married Hester Roux, widow of J. H. Melius of Saxony, who in 1725 bore him a son; and, since the French tongue was

¹ Botha, *French Refugees*, p. 90.

dying out at the Cape, they christened him Pieter. Pieter married twice and became a notable parent. His first wife bore him nine children; his second, Johanna de Villiers, eight more. The younger children were born at the Paarl, the sixteenth, Jacob Nicolaas, in 1786. Jacob, in December 1810, married Suzanne Maria Bernhardt, daughter of Carel Christiaan Bernhardt of Mannheim in the Palatinate but now of the Paarl, after whom, in October 1811, they named their eldest son. Young Carel Christiaan grew up in his native town and, in December 1834, married Dorothea Elizabeth, daughter of Johannes Hendrick Retief likewise of the Paarl. In their twenty years of married life she bore nine children, four sons and five daughters. The fourth child and second son was John Henry de Villiers.

John Henry or, as he was christened and sometimes signed himself in his youth, Johan Hendrik, was born at "Rosenfontein" at the Paarl on June 15, 1842. His stock was deeply rooted in the long straggling town with its whitewashed houses dotted on either side of the oak avenue which winds below the Paarl Rock. Three generations of de Villiers had lived and died there and, on his mother's side, as many of Retiefs. In later years it became a matter of pride with him to dwell on his Huguenot descent. "In race I am French and not Dutch," he boasted, and in the main he boasted truly.¹ His father's father was purely French in blood; his mother's father was almost entirely French. But his father's mother was Dutch with a strong dash of German blood in her veins; his mother's mother was mainly of Dutch descent. John Henry, as God made him, was a product of that admixture of Netherland, West German and French blood, with the last predominating, which has produced so many leading men in South Africa.

The house in which he was born still stands on the main road facing the Paarl rock. It is a sober, whitewashed, double storied building with a grey slate roof. The garden, surrounded by a low white wall, stretches to the right of the house and, behind it, falls away downhill for one hundred and fifty feet or so. The vine trellis down the centre of the garden and the stumps of plum trees and December pears still stand as they did when de Villiers was a boy. Altogether a solid house and pleasant garden, though small for so large a family.

¹ de V. to Milner, Oct. 6, 1899.

The family lived very simply. No one in the Paarl did otherwise in 1842, and Carel's salary as a Government land surveyor was not large. Neither was there much hope of an increase to keep pace with the growing number of mouths to feed; for the prosperity of the Colony, such as it was, had been seriously checked by the inadequate compensation paid to the owners of the recently emancipated slaves, and by the loss of the burghers who were even now trekking with all their worldly goods beyond the Colonial frontiers. Worse still, the hard-pressed Government was struggling to wipe away the last evil effects of an inconvertible paper currency.

Carel de Villiers was still a young man of thirty-one when his fourth child was born; but his son saw little of him, for he was often absent from home for long periods helping to survey the hard road across the Flats which was at last to replace the sandy track along which Pierre de Villiers had travelled to his new home in the Oliphants Hoek. Carel's brother, Pieter, took an avuncular interest in his nephews and nieces; Grandfather Jacob Nicolaas, "Vrede Regter," was still alive, destined indeed to outlive his son Carel by a few months; but inevitably the main task of bringing up the family fell upon the mother. She and her husband were folk of deep piety. The strict religious training of the home had lasting effects. If, in later years, Henry was not so punctilious in his attendance at service as some, to the end he was a stalwart supporter of the Dutch Reformed Church of the Colony.

He and his brothers and sisters, then, learnt to fear God. They were also taught to honour the Queen. "As to tradition," de Villiers wrote to Sir Alfred Milner long afterwards, "our family has for several generations been British."¹ The Cape had passed into British hands in 1806, when Jacob Nicolaas was a youth of twenty; his son Carel had been born under the folds of the Union Jack. Father and son alike had served under the British administration; Carel's children were born British subjects and, like so many of the old Cape families of that day, accepted the position as a matter of course, nay more, as a source of pride. School influences reinforced those of the home. According to the Colonial standards of the day, the Paarl was well supplied with schools as became the town which ranked fourth

¹ de Villiers to Milner, Oct. 6, 1899.

in the whole Colony. As a small boy Henry attended the school conducted by the three Misses Barker, daughters of a missionary. Miss Marion taught the infants, Miss Elizabeth the older children, while the third sister presided at the piano. Thence he went to the local state-aided boys' school ruled by the Anglican clergyman of the town, Mr. Inglis. There, at the tender age of eleven, if the regulations for the examination of free scholars at the South African College in Cape Town may be taken at their face value, he had mastered "1st, the English language, oral and written; 2nd, the Latin language, as far as the translation and parsing of passages from Caesar and Cornelius Nepos; 3rd, elements of Descriptive Geography; 4th, Arithmetic, as far as vulgar and decimal fractions"; and last but by no means least, the art of writing "a fair and legible hand." His early school education was thus purely English and permeated with ideas of loyalty to the young Queen. "You know," wrote his elder brother Jacob long afterwards, during the war which did so much to kill this warm feeling in the hearts of the Cape Dutch, "how we have been brought up to love our Queen and admire the English nation and its institutions and that I am incapable of saying or doing anything seditious or disloyal."¹ That loyalty de Villiers retained to the day when he died acting-Governor-General of the Union of South Africa.

One other lesson he learnt, this time undoubtedly from his father. Carel de Villiers had great influence among the coloured folk of the Paarl. Throughout his long life his son maintained the best Cape tradition of fair dealing to the coloured and native peoples of South Africa and, when his own time came to die, there were none who mourned him more sincerely than they.

As soon as Carel de Villiers realized that Henry was the cleverest of a family well endowed with brains, he, like so many South African and Scottish parents of that generation, set him aside for the service of the Church. Henry therefore grew up on the tacit assumption that he was to become a predikant; while his brothers and sisters—especially his sisters—looked forward to the day when "Boeta Hennie" should preach his first sermon from the pulpit of the old Paarl church.

If that sermon was ever to be preached, Henry must have the best education the Colony afforded. He gained a scholarship

¹ J. de Villiers to de V., Dec. 1900.

at the South African College and in 1853 he departed in the Paarl omnibus for the five hours' journey across the Flats to Cape Town. The South African College was just emerging from the most gloomy period in its history. Founded in 1829, it had touched rock bottom in 1850 with a roll of seventeen students all told, nine of whom were free scholars. Since then numbers had increased, and young de Villiers found himself one of some seventy school-fellows ranging from the age of 12 to 17. Beside the Colonial boys, there were lads from the far distant and much troubled new republic beyond the Vaal as well as from the Sovereignty beyond the Orange River. These boys were cut off from their friends by great distances and well-nigh non-existent roads. Home letters were so few and far between that the Cape boys used to pass on their home letters to their less fortunate companions. It is, however, a point of the utmost importance that de Villiers spent many of the most impressionable years of his life at a school which drew its boys from all parts of European South Africa, and which paid no heed to what a later generation learnt to call "racial" distinctions.

The College building stood in its own grounds, a long strip about 100 feet wide. The gardens cut it off from all contact with the city. But it had neighbours. The new building (there was but one) with its heavy Egyptian pillars just within the Lion Gate had been in use since 1840 and still afforded ample room for classes, assembly, senate, and the remains of the museum which an unwilling Council housed for the sum of £25 a year to eke out its annual revenues. But if the Council looked askance at the birds and beasts in the last stages of disintegration, much more did the professors and pupils. Outside, conditions were almost worse. The ground on which the College stood had once been used as a zoological garden. The ruins of dens and cages, receptacles for the dust and rubbish of years, surrounded it on two sides; while, beyond a rickety fence, stood the female House of Correction. De Villiers had been two years at the College before the long overdue removal of this institution was effected.

Poorly housed and badly situated, the four professors received the inadequate salary of £100 a year in addition to class fees; though for a time two of them, by a process the secret of which has since been lost, contrived to draw double pay. Nevertheless,

some of the men were good, notably Dr. Langham Dale, Professor of Classics, and the Rev. G. F. Childe, a master of his subject, mathematics. The Rev. D. P. Heynes taught Dutch in a cheerful and lackadaisical but none the less effective fashion, though he defied the Council by refusing to teach Dutch literature on the grounds that none of his pupils were sufficiently advanced in High Dutch to profit by the instruction.

De Villiers lodged with other boys at the house of the Rev. G. W. Stegmann, a member of the College Council, in what is now No. 60 Kloof Street. His school career was, however, almost wrecked before it had well begun. In May 1854, his father died at the early age of 42, leaving his widow to bring up nine children, the eldest of whom was aged nineteen years and the youngest nine months. Nevertheless, she and Pieter de Villiers, her husband's brother and guardian under the will, determined that Henry should continue at the College. It was a hard struggle even after Jacob, the eldest son, had become clerk to the magistrate of the Paarl. The house had to be mortgaged and, presently, to make ends meet, Helena, the eldest daughter, had part of the front of the house turned into a shop, which she managed with great success. Then in July 1857 Mrs. de Villiers died and, although Oom Pieter was always at hand with good counsel, the burden of bringing up the younger children and of guiding Henry to the pulpit of the Paarl church fell upon the elder brother and sister.

De Villiers remained at the College till the end of 1860. He saw many changes, which could not have failed to impress his eager mind. Better times came to all South Africa in the later fifties and, as its numbers increased, the College took heart of grace. The Governor, Sir George Grey, with all his experience of struggling Colonies in South Australia and New Zealand, helped the College out of its most pressing financial difficulties, saw to it that the lion's den with its piles of rubbish was cleared away and lent the paddock on the opposite side of the avenue as a playing field. De Villiers must have heard the Governor speak at the prize-giving in December 1856 and again when he bade farewell to the College in 1859. Grey had tried to encourage education in British Kaffraria and in the recently abandoned Free State; he had even tried to federate that Republic with the British Colonies and was now recalled for his pains. Yet he

told the College boys that "to have been permitted thus to labour—not only within the limits of the Colony but beyond it—was to live a life worth living." Here was a man who saw South Africa whole, and one of his audience at least never lost sight of that vision.

As a schoolboy de Villiers' work was solid rather than brilliant. He studied the customary round of Latin, Greek and mathematics and, in 1859, shared the prize for mathematics with J. H. Hofmeyr, the future leader of the Bond. The professor who influenced him most was Roderick Noble, one of those Scots who have done so much for the cause of education in South Africa, a born teacher, an upright man and a good judge of character. Noble combined the comprehensive Chair of Physical Science with that of English Literature. Luckily the demand for science was slight. It is not clear whether de Villiers made much progress therein, but it is certain that he learnt from Noble to love English literature. When he began his diaries at the age of eighteen he had already formed the reading habit, while his letters show the clearness of mind and command of language which only come with practice.

For the rest, there is no record that he shone at sport. He was an active, good-looking lad, reserved, gentle and fond of animals. He was already, as he remained to the end of his days, a lover of bees, and his younger brothers looked forward to his return home for the holidays, for then he took the honey from the home-made hives. He had many friends among his school-fellows at Cape Town and at the Paarl, notably one, Rossouw, afterwards a prominent clergyman in the Dutch Reformed Church, who would delight him and his friends by mounting a table and thence delivering impromptu sermons with much vigour and unction. Rossouw did not seem to mind being made fun of; but, if he did, he probably felt he owed de Villiers and Julius Ortlepp some reward for rescuing him from drowning in the Berg river.

The shadow of examinations at last fell across de Villiers' path. In 1858 a Board of Examiners had been invested with power to issue certificates qualifying their holders for the professions and certain posts in the civil service. The preliminary examination was something of a terror to the youth of the Colony, for three faults in spelling entailed a plough; but

de Villiers successfully underwent the ordeal in July 1860. Thereafter he began to read for the second class certificate whereon hung his chance of gaining a bursary, the one means of attaining to the University. He took private lodgings in Cape Town and evidently worked hard, for among the earliest entries in his diary (January 1861) is the record that he was studying "Creasy, Hallam, Cicero, Horace, Greek history, Homer, Spalding's English Literature, Dutch, Roman history, Logic, Arithmetic and Algebra." Mindful of his clerical destiny he attended prayer meetings of the Christian Conference; for a religious revival was in full swing in the Colony with the Dutch Reformed and Presbyterian clergy working side by side. But his main interest for the moment centred on his books. The examination was over at last and, in the middle of January 1861, he joined his brothers and sisters at the sea, fishing, shooting, bathing and "riding a good deal with the Misses Versfeldt."

In the midst of these varied joys came the news that he had passed top of his year and had thus won the coveted bursary. A small legacy also fell due to him at this time which, in addition to his bursary, would furnish £120 a year. The road to the University was thus open and the next few weeks were busy with preparations for departure.

His friends and above all his family saw him go with some anxiety. A voyage of 6000 miles in those days was no light matter for a lad of eighteen not blessed with the best of health. His first attempt to take out a life insurance policy had ended in failure. The company rejected him on a suspicion of congenital weakness; but his second attempt to insure was successful, and he rewarded the company by living to the age of seventy-two. Nevertheless, in 1861, he was not robust, and his friends were anxious as to how he would stand the voyage. But, in their eyes, the perils of the sea were as nothing to the perils of the land. Henry, at his father's dying wish, was to go to Utrecht. There, unknown temptations would await him. His watchful elder brother noted that some of the Cape students had recently earned a bad name there for their lax morals; but, worse still, the Universities of the Netherlands were riddled with heresies. The Reformed Church in the Low Countries and in South Africa was sorely troubled. Doctrines hitherto accepted without demur were being freely questioned by clergy and laity alike. Leyden

was the fountain-head of this stream of false doctrine which the good folk of the Paarl understood had "rationalized" the beliefs of nearly all the four thousand clergymen of Holland. Utrecht was safer, but even there the tide of heterodoxy was rising.

The risk, however, had to be taken. On the afternoon of February 21st, de Villiers sailed out on board the "Athens" past the raw beginnings of the Breakwater into the Bay. The fog soon hid Table Mountain from those on board. It was the last sight he was to have of his native land for nearly five years.

CHAPTER II

HOLLAND, GERMANY AND ENGLAND

DE VILLIERS embarked on the voyage which was intended to lead by devious ways to the pulpit at the Paarl, with all the pleasurable excitement proper to eighteen at the prospect of an adventure. But he also suffered from the inseparable doubts and hesitations. Was he really called to the ministry? His father, his near relatives and the friends he valued most had always taken it for granted. He was not so sure, and had told them that he had not finally made up his mind. Meanwhile, the fogs of Table Bay were far behind, and he found himself sailing on that same ocean which had borne his ancestors from the Texel to the Cape. But Pierre de Villiers had voyaged for four dreary months over those waters; his great-great-grandson might hope to reach England in five or six weeks if the "Athens" proved as good as the promise of her owners.

As far as the diaries are concerned, the first week of the voyage is almost unbroken silence. De Villiers was never a good sailor, and the ship, a little vessel of 900 tons, rolled terribly. At last the green hills of South Devon hove in sight and, on the evening of March 30th, he set foot in London.

The morrow of his arrival being Sunday, he heard Spurgeon preach in Exeter Hall in the morning and the Bishop of London in St. Paul's in the evening. The next few days he devoted with all his might to sight-seeing. The Crystal Palace, then in its pristine glory of glass, iron and plaster statuary, claimed him for one whole day. Then came the British Museum, where he "admired chiefly the mummies," the Zoo in the afternoon, and the "Amber Witch" at Drury Lane in the evening; not a bad day's work for a budding parson. At last he tore himself away, and sailed for Rotterdam, and so to Utrecht. There he found

many friends, young South Africans of Dutch and Scottish descent, all studying for the ministry. He soon established himself, his worldly goods and a newly purchased canary in two upper rooms in the Schoute Steeg, whence his new pet presently escaped. But he had little time for laments. At the end of May he passed his examination in Groot Mathesis, *cum laude*, and celebrated the event by a week-end trip to Amsterdam, "a large town, but the inhabitants chiefly Jews." Then once more back to the Schoute Steeg, reading Homer, Latin and Hebrew grammar or joining in the excitements of the processions and masquerades with which the students, at the end of each lustrum, commemorated the founding of their University.

At the beginning of the long vacation in July he set off for Heidelberg. There he stayed for a fortnight with a German family, and wrote home in high spirits that he was "going on first-rate with Hebrew, German and what not else." What not else included escorting the young ladies of the family to dances and observing the manners of the University students who were "much given to duelling and drinking beer, which is good here." He bade farewell to Heidelberg and went by boat up the Neckar to Diesbergen where "the ugliest set of people in the world" were redeemed from utter condemnation by the inn of the White Swan. His companions, two Cape medical students, the Albertijns, urged him to join them at Berlin. But he was not to be tempted, and from Diesbergen he turned back to Utrecht. He had not, however, seen the last of Germany.

De Villiers did not care for Utrecht, and the longer he stayed the less he was tempted to stay. He resented the loss of time entailed by tramping from one lecture to the next, for there were no University buildings other than the auditorium and each of his seven professors held his classes in his private house. He complained "of the exactions the Hollanders make on your purse" in the way of fees; worse still, most of the professors were "rather old," hence their lectures were usually dull, especially the classical lectures which were for the most part couched in Latin. What could be made of a man like the worthy Boumann who, having a Ciceronian reputation to maintain, had recourse to "*da mihi plantam narcoticam in formam cylindricam reductam*" when he merely wanted a cigar?

Not only did he find most of his masters and pastors uninspir-

ing, but he began to suspect that they were men of small attainments. This, however, had its compensations. They might be defeated easily and, on his return from the Rhineland, he demanded permission to take the "propaedeutic examen" admitting him to the theological course in one year instead of two. His request was not favourably received but he determined to have his way, for there was the education of his younger brothers to be considered; and at the end of September he settled down to a steady grind, in spite of the trials of a Dutch winter and consequent ill-health.

Skating on the frozen dykes was good enough in its way even though attended by the beginner's usual trials; but the cold was unlike anything he had ever experienced at home and the snow leaked through the roof on to his bed. He spent his first European Christmas shivering in his attic, racked by toothache, with the chosen companion of his woes, that book beloved by all Cambridge men, Paley's *Evidences of Christianity*. New Year's Eve saw him homesick and conscience stricken, noting in his diary the "names of friends with whom I must correspond," some thirty in all, of whom but six are ticked off as actual recipients of letters. In March 1862 his troubles were increased by heavy coughing; but he stuck to his guns and wrote in triumph to his brother that "in the last nine months I have read more useful works than I have done during the preceding nine years";¹ Schiller and Goethe—his admiration for German literature, he wrote, was growing stronger—but most of all good English literature: Macaulay, George Eliot's *Adam Bede*, "a very interesting novel suited more especially for the young ladies"—George Eliot would never have forgiven him that—Shakespeare, Goldsmith, Addison, Prescott, Carlyle, Lytton, and then, significant of the change in his plans that was coming, Roger's *Eclipse of Faith* and Campbell's *Lives of the Lord Chancellors*.

He found time for other interests. He began to practise the piano and took up fencing and gymnastics. He records in his diary an occasional week-end trip, partly on foot, to Het Loo, Deventer, Amsterdam. He joined the 'Ελθετω missionary society and the students' club Pro Patria, where he defended the proposition that the study of "mathematics is essential to a

¹ de V. to Jacob de V., Mar. 1, 1862.

sound education," and for whose enlightenment he began an essay on the German universities. Clearly his head was turning more and more towards the land that lay beyond the Rhine. He took special classes to improve his High Dutch. As a predikant he must master that language, and already he had, as in after life, a poor opinion of the literary possibilities of "Afrikaansch," the spoken Dutch of the Cape; for he urged his brothers and sisters not to neglect their English or "good-Dutch." His early letters display a pronounced strain of piety due to his upbringing and to what his friends expected of him and he hoped of himself. His relations encouraged him in the way he should go, though his youngest brother, boy-like, limited his exhortations to the subject of postage stamps. They kept him informed of the progress of ecclesiastical politics in the Western Province and in the Paarl especially; the strife between the Orthodox Church and the liberal State, and the war against the Sunday excursions run by the railway company whose line from Cape Town was fast approaching Stellenbosch. The railway was disliked by many of the country-folk who feared that the roads, like the British canals, would be neglected in the interest of the iron horse. Stellenbosch meetings lamented that their town would be inundated weekly by the people of "scarcely Christian Cape Town"; though some speakers imprudently consoled their audience with the thought that, if railways must come, it were better that they came through Stellenbosch, the Paarl and Wellington than through the abandoned villages on the alternative route. At the Paarl, the Rev. Mr. van der Lingen at first held that conscientious men must trek to the interior rather than connive at the iniquities of the railways, but he compromised by organizing a service of 'buses to Cape Town with such success that, in face of his competition, the loss of Cape Town's taste for joy-rides and the return of bad times to the Colony, the company discontinued their Sunday excursions.

The railway question was a bridge between religion and politics, and de Villiers almost insensibly crossed it. Politics and history steadily ousted theology from pride of place in his letters and Jacob in his replies found himself following suit. But it was from Ludwig Goldschmidt, a Cape Town friend, that de Villiers got most of his information on the dreary course of South African politics in the early 'sixties. The idea of a separation

of the Eastern Province from the West was being revived at Grahamstown and Port Elizabeth, a long-continued movement which de Villiers was destined to oppose all his life; drought was sweeping the sheep farms of the East; in the West vineyards were being uprooted to check disease; the rate of interest was ten per cent.; and now, in face of a deficit and a discontented people, Sir George Grey, "the best of governors," was leaving the Colony. "What will become of us?" lamented Ludwig. Matters were no better in the new Republics. Both were short of money, and brother Jacob wrote that he had seen President Pretorius on his way to Cape Town to demand, in vain, a share of the customs duties levied at the Cape ports, "a big man," he wrote, "nothing out of the way in intelligence—(but) capable of handling a turbulent people like the Orange Free Staters have always been."¹

It was all rather gloomy but de Villiers found it more fascinating than theology, much more so than the worthy Boumann's "Latinity with a vengeance." He wrote to Goldschmidt asking him to keep him supplied with Cape blue books. His interest in South African history, too, was becoming more marked. He read what he could of books on travel, ethnology and the Kaffir wars. John Noble's pamphlet on the old Cape families fired his imagination; he was already trying to piece together the links of the chain which bound his family to La Rochelle and to identify the de Villiers coat-of-arms. He noted the "strong aversion" of the Cape folk to this kind of inquiry. "In no country but the Cape," he wrote, "this could be the case."² He lived to see a revolution in that respect.

If Cape politics and history were absorbing, much more so was the history in the making in Europe and North America. De Villiers was in Europe at the beginning of the decade which saw the making of Italy and the German Empire, the maintenance of the American federation at the cost of a terrible war and the formation of the Dominion of Canada. He was old enough to remember the failure of Grey's federation policy in South Africa; his home letters, his newspapers and his blue books soon showed him the results of that failure. If, from the time of his return to Cape Town till the day of his death, he made the federation

¹ de Villiers to de V., June 1862.

² de Villiers to J. de V., May 2, 1862.

of South Africa one of the main aims of his life, he was merely following the bent which the course of events during his five years in Europe had given to his mind.

His early letters, while still a youth of nineteen, show that power of seeing a problem whole, of weighing it up and of stating his conclusions clearly and shortly which in after years sent Governors, Ministers and Republican officials to seek his advice even if they did not always follow it.

De Villiers to F. de Villiers.

Sept. 29, 1861.

The whole of Europe seems to be preparing itself for some great conflict. Prussia, in addition to her vast army is busy raising a fleet and uniting under her crown most of the smaller states of Germany. . . . The improvements in the French Army are gigantic; the French Fleet nearly equals that of England in the number of the men-of-war; entirely in the quality. . . . Last though not least Old England looks on France with a jealous eye and Ministers' speeches in Parliament and at feasts betray the most inner feelings of the English nation. . . .

De Villiers to F. de Villiers.

March 1862.

. . . The state of Italy has undergone no change since last month. The Pope is still obstinately refusing to part with his temporal power and answers every overture from France tending to that end with the words '*Non Possumus.*' . . . But he has not yet lost all hope; neither the King of Prussia nor that of Russia has yet recognized Victor Emmanuel as King of Italy; a powerful party in France has openly accused the King of Sardinia of malicious and extremely ambitious designs. . . .

On the dismissal of Renan from the Chair of Hebrew at Paris for his neologian opinions, he added:

It is certainly not the best policy to oppress those whom we think to be in the wrong. . . . But the Emperor was placed on the throne chiefly through the influence of the Roman Catholic priests and is bound to give the Ultramontane party their way now and then. . . . Germany is preparing itself for great changes in its political system. . . .

This growing interest in politics caused no fear at home. But now came a more disquieting letter. Early in 1862 de Villiers urged his elder brother to read Roger's *Eclipse of Faith*. He ended with the comforting remark that the inconsistencies of

Roger's doctrines were apparent; but Jacob in alarm bade him avoid "evil companions and modern Dutch religion." Nevertheless, de Villiers repeated his advice to Jacob to read the book.

If Jacob had but known all, he would have been still more disquieted. Darwin in 1859 had given the signal and the forces of science and theology had joined battle with a resounding crash which must have startled that studious biologist. De Villiers found himself on the side of Darwin. He read his work with delight and enthusiasm. His essential orthodoxy was not shaken for, in March 1862, he was confirmed; but how could he square his Darwinism with the standard of orthodoxy demanded of a predikant of the Paarl? However, sufficient unto the day is the problem thereof and the immediate problem was how to pass the "*propaedeutic examen*." He shut himself up with his books and, in spite of ominous pains in his side, read hard. In May he renewed his request to be allowed to take the examination, calling on his Professors *seriatim* and then assailing them collectively in the Faculty. At last they gave way. Contrary to their expectation and his own he passed *cum laude*. It was his first diplomatic victory.

The long vacation was before him. During the next three months he must make up his mind on his future course, unless he was to throw away the year he had so hardly gained. Doubts and hesitations crowded in upon him. News of the rising tide of *odium theologicum* in South Africa did not encourage him to pursue his Pilgrim's Progress in the face of such lions as Darwin and Rogers. He therefore decided to take counsel with someone older and more experienced than himself. He crossed over to London and went to stay at Upper Norwood with Mr. John Merrington, a friend of his uncle Pieter, through whom he himself drew his quarterly allowance. Merrington urged him not to go forward unless he felt a real call to the service of the Church, but rather to study law as there was a good opening for a clever advocate at Cape Town. Over and above these momentous conversations, de Villiers made good use of his time. He was living next door to his beloved Crystal Palace, where the Exhibition of 1862 was in full swing. One thing in all the Exhibition marred his pleasure. Alone of British Colonies, the Cape made a poor show with "a few bunches of palmiet and some sea-bamboes." Such an exhibit might well appear to so ardent a

patriot as a sign of rank negligence and to strangers a proof of irremediable poverty. He found his way slowly back to Utrecht through London, Paris and Antwerp. From his rooms in the Old Kent Road he made a round of the sights and then crossed over to "la douce pays de France," in all probability the first member of his branch of the family to tread its soil since Pierre de Villiers had left it with who knows what fears and forebodings in 1688. At Paris he stayed with "his Hungarian friends" in the Rue des Magazins. Paris appealed to him immensely, and at the end of a well-spent fortnight he visited Brussels and the field of Waterloo "with a philosophising Englishman and a criticising American," and thence, after a day in Antwerp with the glorious Rubens in the still more glorious cathedral, returned to his rooms in the Schoute Steeg. It was for the last time. He had made up his mind that the pulpit was not for him, but he had not yet decided on any alternative. Nor, although his mind was running on the Universities of Germany, could he as yet summon up courage to abandon Utrecht as well as theology. He spent the remainder of the vacation in Utrecht, discussing *inter alia* the nature of the Deity with a fellow-student, John Öreg, evidently one of his Hungarian friends. He had the power of making friends, for, though he seems to have forgotten Öreg after leaving Utrecht, Öreg did not forget him. Nearly forty years later he wrote asking for news: "At Utrecht you were good enough to guide me learning the wondrous English language—I have you ever since in my memory, and I could depict you truthfully if I had the talent of a painter."¹

He resumed his reading in desultory fashion, but at last his doctor helped him to take the decisive step. The climate of Utrecht was telling on his health; hence, at the end of October he cut the painter and set out *à Berlin*. His first letter from the Prussian capital is full of enthusiasm for the city and the University:

De Villiers to J. de Villiers.

Nov. 2, 1862.

Berlin is a fine town. It unites the gaiety of the French with the sobriety of the English. . . . The University here is one of the best, if not *the* best, in the world. . . . For almost every subject there are two or more Professors, so that the student is free to choose the

¹ Öreg to de V. 1899.

Professor whose classes he wishes to attend. The College fees are cheaper than in Holland. The Professors in Theology are generally orthodox and so are most of the ministers of Berlin. This cannot be said of many universities or towns in Germany or in Holland.

After despatching this skilful appeal to the frugal and orthodox souls at the Paarl, he settled to his work. His health improved and his spirits rose. "I study here," he wrote vindictively, "with much greater pleasure than I did in that miserable valley that goes by the name of Holland."¹ He heard the great Droysen lecture; Meyerbeer, the pianist, was there to delight him with his music; there were the two great libraries attached to the University; there was the "Merchant of Venice" at the theatre. Failing all these, he could fall back on readings in English "as usual with the young lady of the house," readings this time from the *Decline and Fall*. Hence probably the rumour which reached the Paarl that he was engaged. "Why," he wrote to repel the soft impeachment, "I have been in love with ladies of every country (except Holland), but that does not mean marrying. I am still in love with two or three Cape ladies, who do not perhaps expect it in the least."

Prussian and German politics excited him intensely, as well they might; for, in the Berlin he saw, Bismarck had just begun his struggle with the Landtag which was to decide whether the Prussian monarchy was to be controlled by the legislature and whether or not the army reforms of von Moltke and von Roon were to be carried out. ". . . The town," wrote de Villiers, "swarms with military men of all ranks. Last night I saw the King of Prussia. . . . His popularity is very low just now, owing to his obstinate contest with the Haus der Abgeordneten."²

The further proceedings of the King and his Prime Minister moved him to wrath. The processions of veterans of the war of Liberation to beat up martial enthusiasm were all part of the game; what followed was not the game at all.

De Villiers to J. de Villiers.

Feb. 1, 1863.

. . . I told you how unconstitutionally the King has acted in several affairs; how he has violated the law of Prussia . . . how he has violated the liberty of his subjects by imprisoning Editors who

¹ de V. to J. de Villiers, Jan. 2, 1863.

² de V. to J. de Villiers, Nov. 2, 1862.

try to mend the state of affairs, by displacing all functionaries who in any way show that they sympathise with the Parliament. . . . Since that time Parliament has assembled. Already at the opening the King displayed his contempt for the Commons by not having a short speech read to them by the Minister and by giving orders to the men of note (and they of course are the Military) not to honour the ceremony with their presence. . . . It is very plain that the King has set his heart upon making monarchy in Prussia but another name for stern despotism.

Decidedly there was another side to the gaiety and culture of Berlin. De Villiers was seeing a thing that he had never seen before, militarism in action. He conceived a loathing for it which he retained to the end of his life. One little incident brought home to him the fact that he was living under the watchful and omnipresent State against which Nietzsche fulminated. Incidentally it helped him to decide on his future course of study. He had been unable to choose between matriculating in medicine or law and had therefore begun to study both. There was another reason for this delay in coming to a decision. Before leaving Utrecht he had written to Jacob telling him that he proposed to go to Berlin. He feared that his guardians might insist on his return to Utrecht or even to the Cape and therefore put off definitely entering himself at the University. But at last he was warned that he must wait no longer and, on November 8, he matriculated in the Faculty of Law. It is well that he did so, for a few days later he was summoned by the Police—to show his matriculation card.

The news of his removal to Berlin duly perturbed his elder brother and Uncle Pieter. As yet they did not know that he had abandoned theology, for de Villiers had shrunk from telling them the full extent of his change of plans. All that his guardians knew at first was that he had abandoned Utrecht. This was serious enough for, as far as they could tell, he had thus thrown away more than a year of his academic life; and this in face of the fact that Jacob had already dissuaded him from returning to the Cape to enter for a larger bursary, lest he should lose time. But change of place was even worse than loss of time. Theological lectures at Berlin might be on evangelical principles, but the German Universities were none the less "the homes of the false doctrine which had infected Germany and even South

Africa," and Jacob fairly warned him that any departure on his part from the simple faith of his fathers must lead to a terrible social and religious breach with his friends.¹

De Villiers needed no warning on that score. His home letters were full of the religious and political storm raging in the Colony.² The Cape Synod met towards the close of 1862. It was faced with doctrinal, constitutional and personal issues of the first importance. Were clergymen to be elected by their congregations, as the Liberals desired, or were they to be appointed as heretofore by the Government? It was the rock on which the Scottish kirk had split twenty years previously. Was the Church in South Africa to maintain any legal connection with the parent Church in the Netherlands, a parent so deeply infected with the heresies of Leyden? Were clergy from beyond the borders of the Colony to be allowed to sit in the Synod, as in those of 1852 and 1857, since the Synod exercised its functions under the Colonial ordinance of 1843? At that time the Colony had been the only recognized European State in South Africa, and now it was one of many. Finally, Darwinism had arrived to inflame the Rationalist controversy; the Liberal, S. P. Naude of Queenstown, complained that he had been attacked by one of his clerical brethren, and laid his case before the Synod. His friends, the Rev. J. J. Kotze of Darling and T. F. Burgers of Hanover, had the better of the debate, but the orthodox party won on a division and Naude was censured.

The Synod duly severed its constitutional connection with the parent Church in Holland and, by a narrow majority, upheld the nomination of predikants. The Liberals then called in the secular arm to check the Synod's proceedings against Kotze, who in the course of the debates had denied several articles of faith. They appealed to the Supreme Court to decide whether or no the presence of extra-Colonial clergy in the Cape Synod was legal. The Supreme Court decided that it was not; whereupon the clergy from the Free State and Natal and the specially admitted professors from the Theological Seminary at Stellenbosch were obliged to withdraw. This famous decision not only weakened the orthodox majority in the Synod but severed the last links which bound the Transvaal and the Free State

¹ J. de Villiers to de V., Nov. and Dec. 1862.

² *Ibid.* and Goldschmidt to de V., Nov. 1862.

ecclesiastically to the Cape. South Africa was now as completely divided ecclesiastically as it already had been politically.

De Villiers listened to the distant clamour with dismay not unmixed with thankfulness that he had abandoned the study of theology so clearly dangerous for a disciple of Darwin. But the conflict and the possibility of a breach with his family made it more difficult than ever to tell his brother that he never would preach that eagerly anticipated first sermon from the pulpit at the Paarl. At the New Year his health once more failed him. Worry and a cold caught through sitting about after skating afflicted him for the next two months with pain in his side and continual coughing. The gilt, too, was wearing off the gingerbread of Berlin; even the Museum disappointed him. As a building it was fine, he wrote, but it housed merely the minor works of great masters and replicas of statues whose originals were in London, Paris or Rome; altogether too typical of Bismarck's Prussia to be congenial to him. Finally he found that reading law at Berlin would not open the way to the Cape Bar so easily as he had believed. Early in January 1863, he once more betook himself and his troubles to the shrewd and sympathetic Merrington.

Merrington gave him two good pieces of advice; first to tell his friends at home exactly what he had done and what he meant to do; and then to enter the Inns of Court and be called to the English Bar as the best preliminary to practice at the Cape. Besides, his health must be considered, and the trials to which he had been subjected by two Continental winters suggested that he would do well to pursue his studies in the milder climate of England. So from Norwood, in January, de Villiers made a clean breast of it to Jacob. "I feel more and more that I have acted quite properly in not adhering to my original purpose of becoming a minister of the gospel. . . . The practice of the law will be far more suited to my character and to my abilities."¹

This was definite enough; but the letter missed the monthly mail, and it was only in March that his guardians received it. Up to that time they had only been concerned about his health and his growing dissatisfaction with Berlin, and had talked of his going back to Utrecht or, if his health would not stand another European winter, of returning home. Money, they wrote bravely,

¹ de V. to J. de Villiers, Jan. 5, 1863.

need not be considered too closely where his health and good spirits were concerned. Now came this ultimatum. At first Jacob and Uncle Pieter were inclined to withhold their consent to the change of plans. Change of plans! It was a revolution in all the preconceived notions of the family about Henry; it was a flouting of the dead father's last wish; it was a sheer waste of nearly two years of time and money; moreover, the reasons for the change were by no means clear to them.

While they yet debated, de Villiers left Berlin. At the end of March, after a final brush with the officialdom of Prussia in the matter of passports, he embarked at Hamburg on the "John Bull" for London. He took up his quarters with the Searles, friends of the Merringtons at Norwood, and was delighted to find his health rapidly improving. He could not enter at the Inns of Court till he knew what his guardians thought of the step; but he went on steadily reading the *Cabinet Lawyer* and Roman Law and attending the sittings of the Courts. He read much else: Kinglake's *Crimea*, *The Wealth of Nations*, Coleridge's *Table Talk* and Disraeli's *Curiosities of Literature*. Nor did he confine himself to his books. He worked vigorously in the Searles' garden and sought further information at Kew; heard Fanny Kemble read Shakespeare, and Charles Dickens, black screens, curtains and all, read *David Copperfield*. There were concerts too in London, the Royal Academy, "a poor collection," and always at his very door the Crystal Palace.

He wrote to his friends at the Paarl that he could finish his legal course in two years; that the usual £120 per year would be enough, as the law was cheaper than theology; and that there was a bursary of £150 to be won. But he also made his own plans in case his guardians withheld their consent and the contingent cash. He had decided to be a barrister and a barrister he would be, even if he had first to become a clerk in a lawyer's office and translate German works for a friendly publisher. At last, however, their consent was forthcoming and on June 5, 1863, a few days before his twenty-first birthday, he was entered as a member of the Inner Temple.

At the end of two full years of difficulty and hesitation his course was now clear, the course which was at last to lead him to the chief place on the Bench of a United South Africa and, first of all Colonial Judges, to a seat on the Judicial Committee

of the Privy Council. He wrote to Jacob, full of hope, seeking to soothe the natural disappointment of his family.

De Villiers to J. de Villiers.

July 6, 1863.

. . . I know that it had always been papa's wish that I should become a minister, and I felt myself some inclination, at the time, to become one. . . . The moment, however, that I came to realise it, I saw that more than this is required for a Minister of the Gospel in the Dutch Reformed Church at the Cape. To be an ideal minister at the Cape, one requires to lay aside all independence of thought and all individuality of spirit. I am *not* sorry to say that the considerations are too hard for me. He must, moreover, possess that zeal and energy in his cause which is indispensably necessary for a minister of the gospel. I *am* sorry to say that I *am* deficient in these qualities. You rightly say that by incessant prayer all things needful will be granted to us, but you will I am sure not maintain that we ought first to enter upon a course for which we do not feel sufficient inclination, and then to pray for such inclination. It would be worse than tempting Providence.

This was hard hitting, but twenty-one at the cross-roads hits hard. De Villiers' difficulties during his first two years in Europe burnt one lesson into his very soul. Twenty years later, as Chief Justice, he bade the students of his old College at Cape Town choose their professions well before beginning. . . . "The worst is that a student and his friends generally consider it a disgrace to withdraw from a decision even after its folly has been demonstrated, but there can be no greater mistake than this."

De Villiers thus entered upon his studies at the Inner Temple under something of a cloud. The process of making a barrister in those days struck him as a mixture of the dignified, the dreary and the comic.

De Villiers to J. de Villiers.

Nov. 27, 1863.

. . . The first qualification for a barrister is that his digestion should be good. To prove this, intending barristers have to attend six times every term . . . to go through a course of eating, or rather stuffing, till he feels that he can eat or drink no more. . . . The second qualification is a sound knowledge of the law. For this purpose five prosy old readers have been appointed who . . . read on the most important branches of the law. I need hardly tell you that the dinners are much better attended than the lectures. . . . The Inns are monuments of the truly conservative spirit which has

been the salvation of England in times when the institutions of other countries have been destroyed. . . . There are four Inns of Court . . . and it is to the second of them, viz. the Inner Temple, that I belong. Most of our Cape advocates have studied there. It is perhaps the most fashionable, as most of the University men from Oxford and Cambridge enter themselves there.

He celebrated his admission to the Inner Temple and his coming of age by visiting Oxford. It was Commem. and he saw the Prince of Wales and his Danish bride pass in procession to the Sheldonian Theatre. Then came the long vacation and in August, giving way to what he called the English "mania of holiday travelling," he made a three weeks' tour, mostly on foot, through the Highlands and Scott's country; at a total cost, he boasted, of only £8. His visit, in spite of the rain, redoubled his enthusiasm for Scott's novels, an enthusiasm which a perusal of *Guy Mannering* failed to damp. In 1896 he told a Paarl audience to read Scott's novels again "before you make a change. I have read the *Heart of Midlothian* three times with ever increasing admiration for the man who could create so noble yet so lifelike a character as that of 'Jeanie Deans.'"

Back once more in Upper Norwood, he read voraciously. He heard Henry Ward Beecher thundering in Exeter Hall against the "Slaveholders' Republic" of the Southern States. In Norwood he took part in the literary and debating societies so common at the time in the suburbs, and it was there that he made his first acquaintance with mesmerism. "A Mr. Hare," he wrote, "first tried to mesmerise several of the company but completely failed. He then acted upon his own subjects—a ridiculous performance. The miracle is that any sensible person ever believed in him." Nevertheless, in later years, de Villiers studied mesmerism in the hope that it might be made to serve the ends of justice, and came to the conclusion that it could not.

With the return of good health his interest in outdoor life revived. He spent much of his time at the Searles gardening and tending his beloved bees, which once, after being chloroformed, yielded him as much as seventy pounds of good honey. He took up gymnastics again, as well as cricket and skating when opportunity offered, and, to the anxiety of his friends at the Paarl, who could not imagine Henry in the "Devil's Own," he talked of joining the Inns of Court Volunteers.

His interest in current politics slackened somewhat in 1864. Like so many folk in England outside Court circles, he was an ardent champion of "the brave Danes" in their hopeless struggle with Austria and Prussia; he cheered with the huge audience which in April presented addresses to Garibaldi at the Crystal Palace; and, though at first with his family and many other Cape Colonists, he had supported the North in the American Civil War, now he called forth indignant interruptions from several members of the Hardwicke Club by defending the Confederates. "I wish the Southerners well with all my heart," he wrote, "for slaveholders though they be, they have shown that they are worthy to become an independent nation, and have proved themselves morally far superior to their Northern enemy." Had not Gladstone hailed the birth of a new nation? He talked much with Saul Solomon, the owner of the *Cape Argus*, "the biggest man from the shoulders upwards" in the Cape Parliament, who spent a few days at Norwood in February. The two men must have presented a strange sight walking together, for de Villiers was above the average height while Solomon was a dwarf; "indeed," wrote de Villiers, "his appearance . . . was the signal for shouts from little boys calling out: 'There is the little man.'" Little or not, Solomon gave his companion good advice, bidding him finish his course and return home as quickly as possible since there was likely to be a dearth of good barristers at the Cape. Jacob also wrote telling him that the Governor meant to institute a new Court at Grahamstown in the Eastern Province which would create a further demand for barristers.¹

His friends were evidently taking a more hopeful view of his legal studies. Even Jacob, confessedly predisposed towards the ministry, was becoming hopeful that he would make his mark at the Bar and possibly on the Bench.² This encouragement was very welcome, for the examination on which the coveted bursary and the possible shortening of his course depended was drawing near. Early in April he ran over to Utrecht once more to polish up his Roman Law and *Medicina Forensis*. He stayed little more than a week and returned to London amid "a dirty cargo of pigs, oxen, cows, calves, shrimps and Jews." For the law was not the only subject of his affections. There is much

¹ J. de Villiers to de V., March 1864.

² J. de Villiers to de V., Jan. and June 1864.

mention in his diaries about this time of a Mrs. Evans of Broomfield and still more of her friend, Miss Fanny Field, including the record of cutting of lectures to escort the two ladies to the Crystal Palace—a not uncommon occurrence at twenty-two. Other friends were looked upon with less favour by Mr. Searle who, after all, stood more or less *in loco parentis* to him. A certain Kotze¹ had introduced him to the delights of billiards and loo; it was with him that de Villiers now spent a “jolly day” at the Derby. The result was a scene with Mr. Searle, which ended, “owing to his offensive and personal remarks,” by de Villiers marching out of the house! Peace was made a few days later, but, except as a visitor, de Villiers did not return to Norwood. He moved into rooms in London and there, early in July, sat for his examination. He tied for first place and might have gained the bursary by drawing lots, but, as the loser would be debarred from competing again, he declined to take the risk. He had, however, done so well in spite of his distractions that the Benchers decided to deduct a full year from the remainder of his course.

For the next few months he enjoyed himself and devoted less of his time to his books. He did indeed read *L'Esprit des Lois* and *De Legibus*, but *Tom Jones* and *The Tale of a Tub* ran Cicero and Montesquieu very close. He varied his reading at the British Museum by visits to the theatre. He reassured Jacob that he was mistaken in believing that he was not attending lectures at King's College, but he did not add that his one connection with the University of London was the billiard club. Many gaps adorn his diary and, in September, with his usually methodical accounts three months in arrears, he confesses that he has been “rather negligent.” In spite of his contrition a month later he records “I frequent the Billiard Club nowadays.”

It was all magnificent but it was not work. Towards the close of the year he pulled himself together, recorded that he was tired of balls, dinners and evening parties, moved to fresh rooms and began to read hard once more. He found that his success in the July examination had convinced his friends at home that he had at last found his vocation. The Church was involved in a series of law-suits issuing from the Synod of 1862, and the orthodox clergy were looking round for a defender. His friends hoped

¹ Not the future Chief Justice of the Transvaal but another.

that he, with his theological and legal training, would fill the rôle. De Villiers himself was dubious of his ability to act, if not as a pillar of the Church, at least as a buttress. "I don't exactly know," he replied, "whether to be pleased or pained, pleased that men of knowledge and standing are disposed to look on me with an eye of favour and encouragement, pained because I feel how utterly incompetent I shall be to fulfil those hopes, and how difficult it will be for me to keep up the favour of one party without losing the countenance of the other."¹ That was a difficulty which he, more than most men, was to experience throughout the course of his long life in South Africa.

The New Year of 1865 saw the last of his good time; a round of theatres, the purchase of a meerschaum pipe and one hundred cigars, and another week-end at Broxbourne where the new purchases were doubtless duly displayed. Then he began to get into his stride again. Jacob, it is true, urged him not to sacrifice thoroughness to speed, for the financial stringency at home was slackening.² He himself was now secretary to the Paarl Divisional Council; the two younger brothers were safely installed with scholarships at the South African College, Melius destined to become, not the engineer his family expected, but Chief Justice of the Free State; Charles, who was reported to be good all round, a wealthy solicitor in Cape Town. On the other hand, Jacob reported that several candidates were qualifying for the Bar by taking the Cape Law Certificate.

This news acted as a spur to de Villiers. Time was running on; he felt too that he must set a good example to two newly arrived aspirants to legal honours from South Africa—F. W. Reitz, the future President of the Free State, and J. G. Kotze, destined to become Chief Justice of the Northern Republic. He set to work, reading for twelve or fourteen hours a day, intending to take his final examination in May and to return home in August or September. He had already enquired from Jacob what law books were most in vogue at the Cape and had been told, Van der Linden's *Institutes* and Voet. It was his first introduction to Voet, his great stand-by during nearly half-a-century's work at the Bar and on the Bench. But his more pressing concern was with the English and Roman law books prescribed

¹ de V. to J. de Villiers, Feb. 5, 1865.

² J. de Villiers to de V., Jan. 1865.

for the examination. "Most men take four years to read for it. I shall have had only six months. You will not therefore be surprised that I have very little time for anything else. I have even had to give up attending the Law Courts." For, in spite of Miss Fanny, meerschaum pipes and billiards, de Villiers had attended the sittings of the Courts regularly. He was in his element there, and he knew it. The last case which he attended was one which profoundly affected South Africa and turned upon a point analogous to that on which he afterwards delivered one of his most famous judgments. The Dutch Reformed Church was not the only Christian community in South Africa to be involved in law-suits. A furious controversy had been raging for some time past in the bosom of the Anglican Church. Colenso, the versatile Bishop of Natal, mathematician, champion of the Bantu, and Biblical critic, had carried his Biblical criticism so far that in 1864 he was summoned by the Bishop of Cape Town before a Court of his fellow South African Bishops and sentenced to deprivation. Colenso, who had been appointed by Letters Patent, refused to recognize the authority of the Court and appealed to the Privy Council. That Court upheld him, declaring that Colonial Churches were merely voluntary associations; and, further, that they had no legal connection with the Church of England "as by law established." The immediate consequence of the judgment was disruption in the Church in Natal. The Bishop of Cape Town and his brethren consecrated Dr. W. K. Macrorie Bishop of Natal in the Church of the Province of South Africa, while Colenso, with the support of many of his flock, held his own—and, by judgment of the Courts, the existing Church property—as a Bishop of the Church of England.

De Villiers eagerly followed the course of this quarrel in its final stages.

De Villiers to F. de Villiers.

Feb. 5, 1865.

... I am not surprised that S— thinks the lawyers look upon ecclesiastical cases from too worldly a point of view. . . . But surely, S— cannot expect lawyers to leave the safe region of law and common sense, and weaken their case by theological disputes and by appealing to dogmas which they cannot prove, and in which the judges themselves may not believe.

There has been a good deal of controversy lately, whether lay judges are competent to decide questions of this kind. I daresay

you have read Disraeli's speech at Oxford a few months ago, in which he recommends a court of final appeal for ecclesiastical cases, where judges shall for the greater part be spiritual. . . . Public opinion, however, seems dead against any measure of this kind. The "Times," whenever it is not too much taken up with the state of the weather . . . generally has a long letter from some eminent clergyman, on the proposed final court of appeal. One of the chief contributors is Dr. Pusey, of High Church celebrity. . . .

Bishops might wrangle as they must, Disraeli might choose the side of Dr. Pusey and the angels if he cared; de Villiers shut himself up with his books. He did not get much systematic help, for poverty prevented him from being articulated; but many experienced friends gave him a helping hand and, towards the end of May, he sat his examination and was "successful beyond anticipation in passing."¹ He did not, however, return to the Cape so soon as he had expected. He had discovered that his course would only be shortened on one of two conditions; either he must submit to a prohibition against practising in England or he must gain a studentship towards the end of the year. He was determined to leave no barrier in his path and therefore settled down to read for the studentship. This time he did not work alone. His work in the examination had attracted the attention of Dr. David Lyall, of the Temple. It fell to Lyall's lot to help train two future Chief Justices, for he later on coached J. G. Kotze. Now he guided de Villiers in his reading for the studentship.

De Villiers' determination to remain for another six months in London caused a not unnatural anxiety to his guardians, both on the score of time and expense. They urged him to come home, prohibition or no prohibition. De Villiers would have none of it. "I am fully determined," he replied, "if I do not succeed at the Cape, either to return to England or to go to India. . . . Shall I throw away these advantages for the sake of six months' allowance?"² The truth is that he was in love with London with its three million souls, four times the number in the Cape Colony, and its East End people "as different a class of people from the West, as Hottentots are a different kind of people, say, from Frenchmen." Worse still, he shocked Jacob by referring

¹ de V. to J. de Villiers, June 5, 1865.

² de V. to J. de Villiers, Sept. 1865.

to the Cape in comparison as "a wretchedly poor country." Jacob could only reply, with a somewhat rueful smile, that "the poor community is generally the most litigious on the whole, so that I don't think that a lawyer's fees would be affected by its comparative poorness."¹ Jacob was right but de Villiers knew his own budding powers better than his distant relatives could do. It was more than four years since they had last seen him and a prophet is rarely without honour save in his own family. "I meant no harm," he replied, "when I spoke of the Cape as a poor country. . . . The prizes in this country to a good working lawyer are so great . . . the number of young barristers who are worth anything so small—that if one can afford to live here for a couple of years . . . it would be simple folly to leave for a place where the chance of a moderate income is greater—but ultimate success in the true sense of the word very doubtful."²

In 1865 the Cape Colony could hold out few prospects to him. Even if, as Jacob wrote, the Attorney-General was about to resign, his place would simply be filled by an official from Great Britain; as indeed it presently was. The Colony, too, *was* wretchedly poor. Since 1861 all the news which reached de Villiers told the same tale. In Sir George Grey's time nearly everything had gone well; times had been good on the whole; few had been disposed to grumble; even the compromise between Crown Colony and Parliamentary government under which the Colony was governed had worked satisfactorily. So long as Grey was in the Colony it was unnecessary and, so long as the Imperial Government maintained five battalions at the Cape, it was idle to talk of taking control of policy out of the hands of Great Britain. But, soon after de Villiers sailed for Utrecht, Grey had been replaced by Sir Philip Wodehouse, that compleat official, whose many virtues did not atone for his lack of tact and inability to understand the Cape Colonists and still less the Republicans beyond the border. The very stars in their courses fought against him. Drought set in in 1862 and did not really break till after his departure in 1870. Acute commercial and agricultural depression followed; public works had to be abandoned; state-aided immigration ceased and emigra-

¹ J. de Villiers to de V., Aug. 12, 1865.

² de V. to J. de Villiers, Sept. 1865.

tion began to New Zealand, to the United States and to the Republics where, if a man could not escape the drought, he might escape taxation. Thanks to the undue extension of credit, there had been wild speculation on the Port Elizabeth wool and Durban sugar markets. The American wool market then collapsed; British manufacturers demanded long wools instead of "Cape shorts"; merchants and bankers suddenly drew in their credits with the inevitable result.

The Free State suffered from the same evils and more also. President Brand had been forced to issue paper money and now, in the middle of 1865, he was engaged in a life and death struggle with the swarming Basutos. North of the Vaal, Pretorius, at the close of a long desultory civil war, was struggling to maintain the authority of the South African Republic; but the Europeans in the Alsatia of the Zoutpansberg did as they chose, the native clans raided freely from the mountains, there were frontier disputes with the Zulu, Cetewayo, and with the Free State, and Pretorius too was issuing paper money. In Crown Colony Natal, the elected members fought bitterly with their official colleagues on the Legislative Council for control of expenditure and reduction of official salaries. Lack of money had made the separate existence of the Crown Colony of British Kaffraria impossible. The Kaffrarian question had become entangled with the agitation for separation from the Western Province revived by the Easterners, and that issue again inflamed the growing quarrel between the Cape Executive and Legislature over the control of policy and finance.

The Eastern Province hoped that by absorbing Kaffraria the balance in the two Houses would be upset against the West; the Westerners, holding a slight majority, feared it for the same reason. The Kaffrians dreaded annexation by Port Elizabeth and Grahamstown and desired a separate existence for their Colony, enlarged by the annexation of empty lands in the Transkei to the east. This annexation Wodehouse had hesitated to recommend at first for fear of expense. He had rather sought a comprehensive settlement; annexation of Kaffraria to the Colony, equality of representation between the West and the enlarged East, and alternate sessions of Parliament at Cape Town and Grahamstown. His scheme was rejected. So were most of his proposals for new taxes, and he had to borrow on an empty

treasury. In 1864 Parliament met for the first and last time at Grahamstown, passed most of the Government's financial measures and, to placate separatist opinion, set up the Eastern Districts Court at Grahamstown, the Court which was destined to be such a rock of offence to a young South African law student far away in London. Wodehouse also tried to carry out the belated colonization of the Transkei; but, while Parliament yet spake at Grahamstown, a panic arose on the Frontier that the Kaffirs were coming, and H.M. Government ordered the abandonment of the territory. It was part of a general Imperial policy of retrenchment and gradual withdrawal of Imperial garrisons; but the result was that a section of the Kaffrians, robbed of all hope of expansion, declared in favour of absorption by the Cape provided the whole Colony became self-governing. To assist in pressing this annexation policy at the Cape, the Imperial Parliament passed an Annexation Act to be held in reserve lest the Colonial Parliament declined itself to pass the necessary legislation. In the session of 1865 the issue of Responsible Government was forced to the front; Wodehouse indeed carried the annexation of Kaffraria by tacking the Bill to another increasing the membership of the Houses and maintaining the preponderance of the West; but the Assembly withheld supply till the joint bill was through, for fear lest the Imperial Act should be promulgated, and John Molteno and Solomon wound up the session by carrying a protest against the *in terrorem* Act and against the Governor on the score of his annexation and Native policies.

As he looked at South Africa in the September of 1865, de Villiers could not help feeling that as a sphere of labour it was not attractive. Depression, distress, division, disputes in Church and State, and no sign of recovery. Rather the reverse; for, if the French succeeded in cutting their Canal at Suez, the Eastern trade route would be deflected from the South African ports in general and from Cape Town in particular. What would then become of the Cape Bar? Much better stay in London or at least go to India. But there were obstacles in the way of either course. Not only had he boasted to Jacob that he was "every inch a South African," not only must he consider his brothers and sisters who had made such sacrifices on his behalf, but he was in debt to his guardians for part at least of the cost of his

education. He therefore faced the fact that he would probably have to return home, at least for a time.

De Villiers to J. de Villiers.

Sept. 1865.

... I think of my course from the time I left the Cape up to the time I entered the Temple as a grand mistake. . . . What I ought to have done—and I say it after much deliberation—was to have entered one of the English universities, where from my mathematical reading I should have been sure of an immediate scholarship of £100 a year for five years. I should then have gone up for mathematical and law honours—and I flatter myself I should at this moment be worth a Fellowship of £300 a year for life without a farthing of debt at the Cape.

Here at least was a young man who had no doubts of his own abilities. However, his decision now was, if he gained the studentship in November, to be "called" at once and then sail for the Cape; if not, to stay in London till April 1866 and then return home. If, however, a chance arose for him to enter a solicitor's office at £500 or so a year, he would stay in London for good.

There was an ungracious irritability in de Villiers' ultimatum to Jacob which is rare in his letters; but already in September he had overworked himself reading for the examination on which the studentship and so much else depended. He was working, too, under a sense of grievance against those who might have guided him better, against himself for not having made better use of much of his time, and against the world in general for all that he had missed by not entering one of the ancient English universities. Oxford, seen for a day, had fired his imagination; but now he had spent nearly two months in Cambridge. Early in July he went thither to read. But the fens and overwork were too much for him; *ague*, headaches, *neur-algia* and *tic douloureux* drove him back to London. There, at the end of August, Lyall had hard work to keep him going. "Pray bear up another week," he wrote, "for I mean to get you to the top of the list." Lyall tore him away from his books for a week-end at Ramsgate and a day's excursion to Boulogne—"an awful experience," de Villiers complained, "the men mostly drunk"—and finally conducted him safely to the door of the examination room. De Villiers did not gain the coveted studentship but he

did so well that all question of further residence was waived and, on November 17, he was called to the Bar.

A week later he sailed for Cape Town. If he was loath to leave England, England was loath to let him go. The "Natal" was driven by a gale to seek shelter behind Portland Breakwater and, when she ventured out again two days later, one of her boilers burst and she had to crawl back to Southampton. De Villiers occupied the ensuing week with visits to Winchester and the Isle of Wight; then, on December 8th, he sailed in the "Briton."

Thus the year 1865 ended, "a year of trial for me," he noted, "and a year of disappointment." He wrote that some 2000 miles from Table Bay alone on shipboard with his thoughts. And some of his thoughts were not pleasant. The failure to gain the studentship galled him; his heart, it may be conjectured, was in Broxbourne rather than at the Paarl; his health was poor; he was in debt and he was returning after all to a "wretchedly poor country." Nevertheless he resolutely turned to the future. "Three things I hope to eschew," he wrote at the end of his diary, "viz. ill-manners, wine and good living. Three things I hope never to neglect, viz. bodily exercise, mental exercise in the way of composition and above all close application to work."

A detached observer may, however, be pardoned for taking a more cheerful view of his career during the past four-and-a-half years. He had had experience of three very different European universities as well as of the Inns of Court. In spite of indifferent health, he had surprised his professors at Utrecht and the Benchers at the Inns of Court by his capacity for concentrated work. He had read widely and well; besides his native English and Afrikaans, he could speak Dutch and German and read Latin, Greek, French, and a little Hebrew; and, better still, could translate his ideas into clear sinewy English. Mathematics had always been a strong subject with him. He had proved himself active in body as well as in mind; he had achieved the art, no mean achievement, of having a good time and then getting back to the work in hand without delay or weakening of purpose. He had travelled as widely as funds and time would allow in Great Britain, Northern France, the Netherlands, the Rhineland and Northern Germany, and everywhere he had made new friends without losing touch with the old. He had

learnt to weigh men and movements intelligently by following the complicated and highly important politics of the day in Europe, North America and South Africa. Above all he had seen two diametrically opposed political systems at work, Bismarck's Prussia and the England of Palmerston, Gladstone and Disraeli. He had no doubts as to which was the better system. He returned home with an immense reverence for the institutions and the laws of England, a reverence which he never lost however much the actions of certain British politicians may have angered him, a reverence which he showed by helping to develop similar institutions in South Africa and welding what was best in the English law into the body of the Roman-Dutch code of his native land. Thus equipped and full of good resolutions, he stepped ashore at Cape Town, a lean young man of twenty-three, on January 12, 1866.

CHAPTER III

BAR AND PARLIAMENT

DE VILLIERS was called to the Cape Bar on January 18, 1866. Bench and Bar alike were small in those days. For many years past the Supreme Court had consisted of the Chief Justice and three Puisne Judges, but in 1865 the number of Puisne Judges had been raised to four and the two juniors stationed at Grahamstown to man the new Eastern Districts Court. Contrary to the wishes of the Easterners, who desired judicial as well as political separation from the West, the Supreme Court had been made the Court of Appeal in all cases in which the Eastern Judges differed, and in certain civil cases even where they were of one mind. When de Villiers was called Sir William Hodges was Chief Justice, and with him, at Cape Town, were Sir Sidney Smith Bell and E. B. Watermeyer. Henry Cloete had retired three months previously and Henry Connor had been summoned from Natal to start the Grahamstown Court with the assistance of the newly appointed Judge, P. J. Denijssen. Further changes took place during the course of the year. The Kaffrarian Supreme Court was extinguished; its Judge, J. C. Fitzpatrick, went to Grahamstown with Simeon Jacobs, ex-Attorney-General of Kaffraria, as Solicitor-General; and Connor returned to Natal where, in 1874, he became Chief Justice.

The Cape Town Bar had recently been weakened by the death of F. Watermeyer and the departure of Brand to take up the thankless task of ruling the Free State. It consisted of four advocates, William Porter, the Attorney-General, A. W. Cole, W. P. J. Purcell and James Buchanan. De Villiers thus ranked fifth. Attorneys were more plentiful; "Long John" Hofmeyr, who gave de Villiers his first two guineas two days after he had been called and who presently found him a seat on the Board of

Executors; Fairbridge and Arderne, from whom he received most of his work during his first year; Tredgold and Watermeyer, Redelinghuys and Wessels, Berrangé and de Villiers, Steytler, Tennant, de Korte, Reid and Nephews; the names of all these firms appear in de Villiers' first fee book. Jacob had been right; though the Colony was poor, it was litigious and, at the end of his first term, de Villiers had earned £101 17s. in fees. His first important case arose out of the Synod of 1862. The Synodical Commission, a standing body empowered to act for the Synod during the intervals between its sessions, had suspended two of the Liberal triumvirate, Kotze and Burgers. Both had applied to the Supreme Court which decided in their favour and, on appeal, the Privy Council upheld the Supreme Court. The commission had then excluded the two delinquents from their Rings or district clerical councils; whereupon they applied once more to the Court for redress. It was in Burgers's case that de Villiers appeared as junior counsel. Alas for the hopes of his orthodox friends! The long looked-for champion of the Church came forward as *advocatus diaboli* and, worse still, Burgers won his case in the Supreme Court and again before the Privy Council.

Twice at least during his first year de Villiers found himself pitted against Porter, no longer Attorney-General, for he had resigned in March, but none the less formidable on that account. In the first case¹ de Villiers defended and recorded that the plaintiff won; but he was less than fair to himself, for the Court found that there were two issues and gave one with costs to each party. In the second,² he also defended and this time won his case. Twice during the year he and Buchanan went on circuit. From March 6 till April 28, they jogged and bumped their way in a Cape cart over dubious roads round the Western Province, from Stellenbosch to Swellendam and Riversdale; then on to Mossel Bay, George and Oudtshoorn; north-east to Beaufort West; thence to Worcester (forty-six hours of actual travelling) and so home through Robertson, Tulbagh, Piquetberg and the Paarl. After a week's rest they were off again to Malmesbury, back once more to Cape Town and then, from May 25th to June 13th, they had to complete the remainder of the circuit. The process was repeated between September 11th and November

¹ Laubscher v. Rivé, June 1866.

² Visser v. du Toit, Aug. 1866.

14th. During the intervals de Villiers, in his rooms at Sea Point, found plenty of work. For the rest, he kept up his interest in British politics and, on August 9th, was admitted master mason in the Lodge De Goede Hoop under the Grand East of the Netherlands. He was a keen mason for a time, and in 1871 was appointed Provincial Grand Master; but after he became Chief Justice he gradually dropped out of active masonic life.

The knowledge of the country and the people gained on circuit soon proved useful to him. On January 12th, 1867, there appears in his diary the significant entry, "dined with the Speaker." His political career was, however, nearly cut short before it had passed beyond Mr. Speaker's dining-room. On the same day is the ominous note, "coughing and pain"; then, "too ill to attend Court." He had taken a chill from lying on the wet sands at Sea Point in the evening, and the doctor warned him that his lungs were affected; but he struggled on with his work till, early in February, he had to go home to the Paarl with inflammation of the lungs. Ten days later he insisted on returning to Cape Town, with the result that he became dangerously ill. This time Porter carried him off to his own house. Early to bed between the blankets, with hot rum and milk and the leader of the Bar standing by to see that he drank it, was the order of the day, and under this gentle restraint he rapidly recovered. But neither Porter nor the doctor could make him a strong man. His health had never been robust; henceforward it was indifferent, but, so long as body and soul held together, he never let the fact stand in the way of what he considered to be his duty. It always fell to the lot of other people to look after his health as far as he would allow them; first the Searles, now Porter and then his wife. But in 1867, four years were still to run before he was to experience the care of that indomitable woman.

Two results followed from de Villiers' sojourn in the house of the ex-Attorney-General. In spite of their disparity of age, the two men became fast friends. Porter engaged him as often as he could as junior counsel so that he might keep a fatherly eye upon him; de Villiers, on his side, learnt to admire his chief as a lawyer and still more to love him as a man. Secondly, it was under Porter's guidance that he entered political life. On his twenty-fifth birthday, June 15, 1867, he was returned at a bye-

election as one of the two members for Worcester. Three days later he took his seat in the House of Assembly.

The Cape Parliament was nearing the close of the session. If the State of South Africa had been bad when de Villiers returned from England it was now far worse. Depression had reached the lowest point it ever touched in the course of the nineteenth century, so low that, in 1866, for the one and only time in its history, the Standard Bank failed to pay a dividend. Now, in 1867, in the dorps and towns of the West, whither the unemployed coloured labourers flocked from the farms, low fever was scourging the Europeans and killing the coloured in hundreds. Beyond the Colonial border the political situation was alarming. The Transkei was swarming with returning Kaffirs; Natal, financially broken and overrun with hordes of Zulu refugees, lived under the shadow of the reviving Zulu military power; in the Transvaal, the government and many of the farmers were abandoning large tracts of the Zoutpansberg to fever, white scallywags and the natives; on the eastern border in Lydenburg and on the ill-defined western boundary the tribes were practically out of control. Worst of all, in the centre of the South African State system, the Free Staters, in the middle of July, were wearily taking down their rifles to compel Moshesh, the Basuto chieftain, to carry out the terms of the treaty imposed upon him a few months previously at Thaba Bosigo.

In the Colony, the constitution was drifting to a deadlock. Molteno had not ventured to raise the question of Responsible Government in 1866; the financial situation had been too bad for that; but, in spite of the fact that the expenses of government were increasing as the sheep farmers and copper miners spread into the northern Colony, he had succeeded in throwing out the Government's proposed new taxes, demanded retrenchment and seen to it that supply was granted for six months only. Parliament met again in April 1867, faced with the same problems as before. Wodehouse proposed large retrenchment, from which the Assembly shrank; an export duty on wool, which was rejected; and, under orders from London, an increased contribution towards the expenses of the Imperial troops, a proposal which he and the two Houses resisted so strongly that, in view of the peculiar position of the Colony in face of the natives, H.M. Government did not press the demand and only very gradually

reduced its garrison. Under these conditions Molteno's motion in favour of self-government was naturally rejected; on the other hand, the Governor failed to carry the abolition of the Legislative Council in the name of economy and the reduction of the number of elected members in the Assembly in the interests of efficiency.

De Villiers took little part in the business of Parliament till the Houses met once more in May 1868. It was the fifth and therefore the last session of the third Cape Parliament. It was quiet, quiet with the peace of exhaustion. The question of constitutional reform lay dormant, while the Governor, as High Commissioner, was busy with the affairs of Basutoland and the attempts of the Transvaalers to endow their Republic with liberal boundaries from Delagoa Bay to the newly discovered Tati gold-fields. De Villiers' votes in the House show how rudimentary the party system was in those days. It could not have been otherwise in the absence of a responsible ministry. Men supported leaders on personal grounds or voted for each measure as seemed good to them or their constituents. The two outstanding official members of the Assembly were Richard Southey, the Colonial Secretary, an early Imperialist, imperturbable, suave, resourceful, suspicious of the Republicans, determined to extend the authority of the British Government far northward into the interior; and W. Downes Griffith, the new Attorney-General, an Irishman whose brusque manners were not atoned for by intellectual brilliancy. These two were charged with introducing and defending government measures. Over against them stood John C. Molteno, the Lion of Beaufort, and Saul Solomon. Molteno, as a man of business and a large landholder, understood both the main interests into which Colonial society was divided. His sympathies were with the West, but from his home in Beaufort he was in touch with Midland opinion and near enough to the East to understand and on the whole to disagree with its point of view. Cautious, a fighter who did not mind hard knocks so long as he could return them, stiff in opinion, often in the wrong de Villiers thought, he was, though a Londoner born, the champion of Colonial liberties and the advocate of prudent administration. De Villiers often followed him into the lobby, but in 1868 as in 1867 it was with Saul Solomon that he usually voted; Solomon, with his big heart and brain and his

diminutive body, carrying the House with him in debate in spite of his shrill voice and over-rapid delivery, heir to Fairbairn and forerunner of the Schreiners as champion of the natives.

De Villiers voted with Molteno and Solomon in the minority against paper currency, and had the satisfaction of seeing the Bill thrown out in the Legislative Council; he opposed Solomon's reform of the Native law of succession on the ground that it would encourage polygamy; resisted Molteno's attempt to reduce the pension rights of the Chief Justice; and spoke and voted with Solomon against Molteno in favour of cutting off State aid to the churches. Solomon as an ardent Congregationalist had first introduced his Voluntary Bill in 1856; since 1866 it had been a hardy annual and was destined to remain so until it was carried in 1875. Some of the smaller religious bodies were already self-supporting, but the larger drew annual grants from the Government. Conservative opinion was against any change, but the jurisdiction exercised by the Law Courts in the affairs of the Anglican and Dutch Reformed Churches stimulated the "life and liberty" movement of the time in the Colony and also in Natal, which in 1869 withdrew all State aid. De Villiers himself approved of the establishment of the Church of England in England on the ground that it had grown up with the people and was still the Church of the majority; but since, in the Colony, government must support various churches if it supported any, he held that it should support none lest it support error as well as truth. In 1868 the Bill was thrown out in "another place" and Parliament was dissolved.

In those days a general election was a long-drawn-out proceeding; speeches and a newspaper campaign before the nominations, more speeches at the nominations, then the actual elections at the open hustings. De Villiers was asked to stand for Riversdale, but he decided to try his fortunes again at Worcester, though many of his constituents disliked his Voluntary policy. Luckily that topic played only a small part in the campaign which turned on retrenchment and "no new taxation."

It was as the elect of Worcester that he received his first offer of a Chief Justiceship. President Brand, in spite of boundary disputes, factions and desperate financial straits, had organized a fairly stable Government in the Free State. He had overhauled the Constitution and had induced his Volksraad to provide for a

trained Judge to conduct the Circuit Court in place of the three, usually amateur, Landdrosts. In June 1869 he came to Cape Town in the course of the negotiations for a settlement of the Basuto question. He had already met de Villiers two years previously and he now offered him the prospective appointment. De Villiers' reply is not recorded, but in any case the creation of the Court was postponed. Henceforward, however, he and Brand corresponded freely, mainly on the prospects of federation. Most of their letters have perished, but Brand always spoke of him as his successor in the masonic world and in the presidential chair at Bloemfontein.

Parliament met while the question of this Free State appointment was still undecided. Solomon lost his seat for Cape Town; but, as if to compensate de Villiers for that loss, Porter was returned for the same city. Many new members took their seats, some of whom were to play a leading part in South African politics. J. G. Sprigg came up from East London, a staunch Kaffrarian and responsible government man, shrewd, adaptable and uninspiring, but a most effective manager of Parliaments and of the three Cabinets over which he was in due time called to preside. From Aliwal North came John X. Merriman, tall, pugnacious, silver-tongued, gifted with a wealth of imagination and endowed, if it cannot be said blessed, with a taste for epigram and the retort descriptive which made him many enemies, destined to be Minister four times and Premier once in the last days of the old Cape Parliament. His acquaintance de Villiers first made in public life by presenting a petition seeking to unseat him, a petition whose failure allowed Merriman to begin a Parliamentary career which has lasted from that day to this.¹

The business of the session was governed by finance. There was the usual deficit, and the Executive declined to carry out further retrenchment and demanded an income tax and an excise on brandy. De Villiers half-heartedly opposed the former tax and strenuously opposed the latter. Both were rejected. He, with many others, flirted for a moment with the idea of a paper currency; but the idea was dropped, and the majority followed Molteno in demanding retrenchment. De Villiers, however, as often as not opposed these demands. He was even moved to make one of his rare appearances as a leader writer, declaring

¹ Mr. Merriman retired from parliamentary life in April 1924.

that the Governor was right to resist any attempts to tamper with the reserved list as a breach of faith with the leading officials who were really in the same position as the Judges whom Molteno left severely alone.¹ However, "Mr. Molteno," he wrote, "has a majority. . . . The hon. member cares nothing for constitutional principles."

Tempers were plainly being lost in the House and outside it. Retrenchment, taxation, Basutoland all forced the issue of self-government to the front. De Villiers did not deny that there was matter for the axe in the lower ranks of the Civil Service, and supported Molteno in refusing supply until the Executive consented to wield the axe. Wodehouse threw that duty upon Molteno, whose retrenchment proposals were carried. When, however, Molteno introduced a private bill increasing the customs, de Villiers drew back and seconded the Colonial Secretary's amendment which would have emasculated the measure. The idea of a private member introducing a money bill shocked all his notions of constitutional propriety. The Legislative Council threw out Molteno's Bill and thus produced the long-threatened deadlock between the two Houses. A little later a committee of the Assembly altered the estimates for the first three months of 1870 and thus achieved deadlock with the Executive. The constitution could march no further.

The Governor's Reform Bill providing for a Single Chamber Parliament met with its usual fate. During the election campaign de Villiers had cautiously advocated responsible government, but, true to his instincts for economy and that belief in quality rather than quantity which was the guiding principle of his attempted judicial reforms later on, he proposed a Cabinet of only two or three Ministers. Long years afterwards, when the prospects of federation were reviving after the South African war of 1899, he returned to this frugal conception of provincial ministries. He now refused to vote with Molteno and his own friends against the Governor's Bill; partly because they were not making responsible government the alternative but merely denying the necessity for change; and partly because the bill, with all its faults, did abolish the redundant Legislative Council, that Council over which he was destined to preside for thirty-six years! He wanted to take the bill and improve it in committee.

¹ *Advertiser and Mail*, Sept. 29, 1869.

"We have asked the Governor for a fish," he said, "and he has given us a serpent. Let us take the serpent and extract the sting." But honourable members felt that this would not change the nature of the reptile, which they returned whence it had come.

The tightening deadlock between the Executive and Legislative steadily crystallized de Villiers' political ideas. He was finding his feet in Parliament; he spoke more often, never at great length but always to the point; more than once he was chairman of committee and proved himself a useful member of the committee on standing rules and orders. Above all, before the close of the session, he had come to the conclusion that the only way out of the deadlock was by way of responsible government. The affairs of Basutoland completed his conversion. Between 1865 and 1868 the Free Staters had fought two heavy wars with their ancient enemy, Moshesh. The first had been successful enough to induce that born diplomatist to sign a treaty, which the Free State in 1867 had to take up arms to enforce. They pressed the Basuto so hard that Moshesh appealed to the High Commissioner, who, in March 1868, accepted him and his people as British subjects. Wodehouse was unfortunate in his methods, still more unfortunate in some of the arguments he advanced in support of them; but there was much to be said for what he had done. The first war with the Basuto had not been decisive; it was not clear that the second, unfinished at the time of the annexation, would be any more so. The Free Staters declared that they meant to break up the Basuto tribes. Could they do so and, if they did, could they maintain peace among those who remained without police? And where were the broken tribes to go? Already the wars had led to unrest among the natives from the Limpopo to the Transkei; Transvaalers officially and Colonists unofficially had taken part in it; Natal had been directly affected. Were the Basuto now to pour over into Natal, into Kafirland among the tribes on the vulnerable Colonial frontier, or into the Colony itself? In February 1869 the Free State and the High Commissioner signed the Treaty of Aliwal North which became the basis of a Basutoland settlement. Wodehouse had thus relieved the Free Staters of their native problems in such a way as to earn their undying hatred; infuriated Natal, which was looking for the reversion of Basutoland; earned no gratitude from the Basuto who resented control;

laid himself open to the attacks of every negrophilist in South Africa, England and France for not reinstating the Paris Evangelical missionaries and their flocks in all the lands they had held before the war; and redoubled his difficulties with the Cape Parliament.

De Villiers, in common with a large number of members in the Assembly, sympathized with the Free State. He attacked the High Commissioner's policy in the press and in the House, but declared that he was most reluctant to support Molteno's demand that the thirty-six Cape Police, sole representatives of law and order in all Basutoland, should be withdrawn. After all, there were the Basutos and "the Queen's government must be carried on." He therefore welcomed Porter's amendment, which merely stated that the Cape could not bear the expense.¹

So the fiery session drew to a close in the middle of October with a vote of censure on the Governor, who retorted by dissolving the Lower House. Wodehouse appealed to the electors to choose between his reform policy on Jamaica lines and responsible government. In the East, failing self-government for their own province, many were inclined to support his scheme; others in East and West favoured the abolition of the Upper House but opposed any increase of official membership of the Lower. De Villiers was returned once more for Worcester, and on the re-assembling of Parliament frankly enlisted under the banner of Porter and Solomon as an ally of Molteno in the struggle for full self-government. Granville, Gladstone's Colonial Secretary, had stated that if the Colonists would not allow themselves to be governed they must accept the responsibility of governing. The Cape Executive tested this issue by introducing their Reform Bill. It was promptly thrown out. It was now responsible government or chaos. Finance and Basutoland occupied the rest of the session. In face of a deficit and a debt of £1,000,000, the Assembly was obliged to levy extra taxation; but it had its revenge by voting the reduction of the Governor's salary—a *brutum fulmen* since it was on the reserved list—and demanding the withdrawal of the Police from Basutoland. Wodehouse prorogued Parliament in May and a few days later departed to seek equally honourable but more congenial employment in Her Majesty's service as Governor of Bombay.

¹ *Het Volksblad*, June 18, 1868, Sept. 16, 1869.

Parliament did not meet again for nearly a year. During the first half of that period government was nominally in the hands of the acting-Governor Hay, but really in those of the Colonial Secretary, Richard Southey. Within the Colony, the responsible government party gained ground slowly; in Basutoland, helped by the death of Moshesh and the quarrels of his sons, J. H. Bowker, the Governor's Agent, contrived to maintain some semblance of order; but beyond the northern colonial border the discovery of gold and diamonds promised to revolutionize all South Africa, politically, socially and economically. The discoveries were made at three points on the "Missionaries Road" which ran through the debatable lands on the Free State and Transvaal borders. Early in 1867, first one stone and then another was found near Hopetown in the Colony. Presently a third was picked up near the junction of the Harts and Vaal Rivers. At the close of the year gold was reported at Tati. Here was wealth in the desert and the Great North Road sprang at once into first class importance. So did the natural harbour of Delagoa Bay, where the Portuguese standard on the decrepit mud walls of the fort of Espirito Santo flapped defiance at the lonely Union Jack on Inyaka Island.

President Pretorius took the first official step to cope with the new situation. In spite of the partial abandonment of the Zoutpansberg by the Transvaal, he annexed a thin strip of territory running down to Delagoa Bay and a large area to the North and West of his Republic, including the goldfields at Tati, but prudently omitting the Matabele. In face of Portuguese and British protests, he withdrew and made a commercial treaty with the Portuguese fixing the limits of the Portuguese territory and therefore, by implication, those of the Transvaal to the east. Meanwhile, diggers of all nationalities began to find their way northward to the gold and diamond fields accompanied by a chorus of complaints from the speculators in land, gold, and diamonds at the ports of the Colony and Natal against the alleged slaveholding of the Republicans.

During 1868 and 1869 diamonds were found in large quantities at the River Diggings on the Harts and Vaal. The trickle of prospectors became a stream. De Villiers took part in the movement by proxy. He financed one, Abraham Brunt, who was to seek for stones on shares conducting himself "soberly, steadily,

and honestly" the while. History does not record how the impeccable Brunt fulfilled his side of the bargain, but de Villiers himself soon came into contact in his professional capacity with some of the problems raised by the diamonds. In March 1869, a native witch-finder picked up the famous "Star of South Africa" and managed to keep it long enough to sell it to a farmer, who in turn sold it to a certain Liebenfeld. A party of speculators, however, claimed the gem on the strength of a concession granted them by the Griqua chieftain, Waterboer, and obtained a temporary interdict against its further sale. The case was tried at Cape Town. The Attorney-General Griffith on behalf of the speculators made much of the rights of Waterboer, "paramount chief of the Griquas,"—some 600 all told—and his 12,000 square miles of territory; but de Villiers, briefed by Liebenfeld, proved that the luckless witch-doctor had been kidnapped by the concessionnaires' agent and had been hardly rescued by force by Liebenfeld and his friends. He won his case and the jubilant Liebenfeld sold the "Star" for £25,000.

The River Diggings north of the Vaal and much other land to the west of the Transvaal was claimed by the Republic and by various Bantu and Korana clans. The River Diggings and a wide territory to the South on either side of the Vaal, part of it within the presumed limits of the Free State, were claimed by the Griqua, Waterboer. All these native claimants acted on the advice of Europeans. Waterboer's interests, north and south, were entrusted to David Arnot, a shifty and able law agent, who had already urged the Griquas' claims in 1864 long before the gold and diamonds were thought of. Arnot was indeed a disciple, at a more than respectful distance, of Livingstone and a forerunner of Rhodes. He was not averse to feathering his own nest but he valued the road as much as the diamonds or even the land beside the road; for it was the road to the Zambesi along which he was determined the Imperial Government should advance. Wherefore, he was sure of the support of Richard Southey, virtual ruler of the Cape Colony.

Early in 1870 diamonds were found on the Free State side of the Vaal. Pretorius then "upset the applecart" by rushing a diamond concession to three individuals through the rump of his Volksraad. At once the diggers to the north of the Vaal, who had hitherto acted on the advice of Francis Bacon and meddled

not with jurisdictions, declared themselves an independent Republic! The question of jurisdiction now became pressing. The various claimants met but failed to agree, whereupon Waterboer, *videlicet* Arnot, asked to be taken over as a British subject. At that very moment, on the edge of the disputed Free State—Griqua territory, the all-important Dry Diggings were discovered at Du Toits Pan, where Kimberley now stands. The stream of prospectors became a wild rush.

Brand, on the ground of previous purchase, had already annexed the Campbell Lands to the west of the Vaal which were also claimed by Waterboer. He had also asserted Free State authority at the new Dry Diggings. A cry was, however, raised in the Colony that the Republic would be unable to maintain order and that the Colony, as a strong and stable state, must take over both the Dry and River Diggings, where most of the diggers were Cape or at least British citizens. In December 1870, a Cape magistrate with powers of criminal jurisdiction over British subjects was sent North to the diggings on the Vaal.

At this stage Sir Henry Barkly, the new High Commissioner, arrived at Cape Town. Brand met him and offered to submit his claim to the Campbell Lands to foreign arbitration, but declined to admit that the Free State rights to the Dry Diggings could be open to any question. Barkly travelled North and persuaded the Transvaal President to submit his claims to arbitration, but he failed to move the Free State authorities. Some settlement, however, must be made. The Colonial Secretary, Kimberley, was averse to any extension of the Empire, but he was becoming nervous as to the future conduct of the Republics and of the "English immigrants." Serious trouble over license fees and stand rents was indeed arising between the diggers on the Dry Diggings and the Port Elizabeth speculators who had bought the three diamondiferous farms. Divided control on the River Diggings on the south bank of the Vaal now led to a defiance of Free State authority. Brand called out a commando and Barkly sent up the Cape Police.

It was under these conditions that the Cape Parliament met at the close of April 1871. Finance was no longer a serious problem. The drought had broken, the price of wool was once more rising, the gold and diamond seekers were bringing money into the country. Three issues were before Parliament—Basutoland, the

Diamond Fields and Responsible Government. All three were closely connected. The main argument for annexing Basutoland to the Colony, as H.M. Government desired, was that a Colony which hoped soon to be self-governing must control the tribes on its frontiers. Hence Parliament passed the Basutoland Annexation Bill and de Villiers voted with the majority. On the other hand, he opposed the official Diamond Field policy. The Colonial Secretary bade Barkly annex Waterboer at his own request, provided that the land was really his and that the Colony would take over the territory. Southey therefore introduced the necessary Annexation Bill. De Villiers voted with Molteno and Solomon in favour of settling the dispute with the Free State first, and spoke and voted against the amendment, carried by one vote, approving of the annexation of "such portion as really is Waterboer's or other chiefs'." With that qualified permission the High Commissioner had to be content and in his hands de Villiers, for one, was prepared to leave the matter.

Molteno had been anxious to settle the issue of Responsible Government before dealing with Griqualand West. De Villiers, on the other hand, was one of the few in the Colony at that time who wished to combine the question of Responsible Government with the much larger issue of South African Confederation. The Diamond Fields dispute had forced this question to the front. The rush of the vanguard of civilization to the interior, the promise, already partly fulfilled, of prosperity, the prospect of railway extensions, the certainty, in a word, that the loosely drifting States and Colonies of South Africa were about to be drawn together economically willy-nilly, convinced him that, if they were so drawn together under separate Governments and separate legal and fiscal systems, they must collide. The session had opened with the Cape Police at Klipdrift glaring at a Free State commando on the other side of the Vaal.

"Federation" had been discussed for some time past, but the word in those days had a local significance in the Colony. The "1820 party" in the Eastern Province were asking for separation and had eagerly caught up the hint let fall by the Colonial Secretary of some form of responsible government for each of the two provinces under a Federal Government. But the Kaffrarians favoured a united self-governing colony and the Midlanders were only prepared to accept federation if their districts were

formed into a third province. With such a federation de Villiers would have nothing to do. "What a few extreme politicians mean by federation," he told his constituents, "is only separation with all its advantages for the East and none of its disadvantages." He admitted that some such "federation" on New Zealand lines must come if the Colony did not secure responsible government; but he hoped to secure that form of government for the whole Colony and to use it as a stepping-stone to a South African Federation.

J. H. de Villiers to President Brand. On Western Circuit.

March 20, 1871.

MY DEAR PRESIDENT,

We intend making a great effort next session to obtain Responsible Government for this Colony and I think we have every chance of success. In all other Colonies where it has been tried it has succeeded and I see no reason why our old Colony should be an exception. I am only sorry that there is a fresh dispute between the O.F.S. and the High Commissioner, for I had hoped that the introduction of responsible Government here would soon lead to a Confederation of all the States and Colonies of South Africa under the British Crown. All the Free Staters I have spoken to on the subject say that so long as our present form of Government continues there is no chance of their people caring to throw in their lot with us but that if we get self-government for ourselves the chief stumbling-block to union will be removed. I should like our government under the proposed new régime to be conducted in such a way as to be an object lesson to both the States and convince them that subjection to British rule is quite consistent with the largest power of self-government. So long, however, as there are causes of serious disagreement between you and the British Government, I can quite understand that you would neither make nor receive advances for a closer union. Could not the question of the ownership of the diamond fields be referred to an independent arbitrator? My own belief is—although I have no direct authority for my belief—that if the O.F.S. were to become a Province in a Confederation the whole of the disputed territory would be added to such Province, whatever the result of the arbitration might be. . . . —Believe me, My Dear President, Sincerely yours,

J. H. DE VILLIERS.

President Brand to J. H. de Villiers.

Bloemfontein, April 6, 1871.

MY DEAR DE VILLIERS,

I wish you every success in your fight for responsible government. You know from our last conversation that I and many

burghers of influence would be in favour of Confederation if we are now fairly treated by the British Government and if we are convinced that a full measure of self-government will be given to us after Confederation. We must first see, however, how responsible government works with you, and our burghers must be made to feel that the English are our friends and not our foes. If you always had Governors like Sir George Grey all difficulties would soon be removed. But see how we were treated by Sir Philip Wodehouse in 1868. We had completely beaten the Basutos in every engagement when he stepped in and deprived us of the full fruits of our victories. And now even Sir Henry Barkly, of whom I had expected better things, claims land on behalf of Waterboer which undoubtedly belongs to us and has been registered for years as Free State soil in our records. You suggest arbitration, but we are quite willing to have arbitration provided the arbitrator is perfectly independent of the British Government. Why should not a European Sovereign be appointed or else the President of the United States? You are quite right in supposing that so long as this cause of disagreement remains unsettled our burghers will have nothing to do with closer union. If it is satisfactorily settled our confidence in the British Government may revive and there is no reason why we should not in time enter into communications with the British Government and the Transvaal Government with a view to obtaining the object which you have at heart. But I cannot, consistently with my duty as head of the O.F.S., consent to give up a part of its most valuable land merely in the hope that with Confederation it will be attached to our Province. If justice is not done to us now we cannot expect fair treatment after Confederation. Allow me to take this opportunity of congratulating you on your marriage. From what my wife and I know of your wife we have no doubt that your married life will be in every respect a happy one.—Believe me, Sincerely yours,

J. H. BRAND.

On June 1, Moltano proposed immediate responsible government and faintly recommended a commission to report on the federation of three or more Provinces within the Colony. He could reckon on the support of the Governor, the Western "Liberals," the Midlanders and the Kaffrarians; against him were the serried ranks of the Executive Council, the Western "Conservatives" and the Easterners. Merriman replied to Moltano in his earlier slashing manner, damning responsible government and all its works, and to him de Villiers replied in what was perhaps his longest and most effective speech in the

Assembly, urging responsible government, first, as a means of better administration and, then, as an inducement to the Republics to federate with the Colony under the British Crown.

Molteno's motion was carried; Porter drafted the necessary Bill; and the Assembly passed it, only to see it thrown out by the Legislative Council. The Federation Commission was, however, duly appointed and of that Commission de Villiers was a member. Very little public interest was taken in its work and the Commission itself was not unanimous. The majority, including de Villiers, recommended the maintenance of unity and, failing that, the formation of a third, Midland, Province; but on such a report no action could be taken.

The Commission did not, however, entirely neglect the possibility of a wider Confederation. De Villiers pressed it both in the Commission and in his constituency. Natal's reply was chilly. Her officials desired to keep their native affairs separate from those of the Colony, a desire which the Colony heartily reciprocated. Some of the Free Staters were more hopeful; others declined to give an opinion; but all were agreed that the Diamond Fields dispute must be settled first. And, in reply to Lord Kimberley's suggestions of a South African Confederation, the High Commissioner had to admit that such was indeed the case.

De Villiers, throughout the early sittings of the commission, felt confident that a settlement, just to the Free State, would be made in Griqualand West. It was so obviously to the interest of the Colony to work with what was, after all, the Republican extension of itself that he could hardly imagine any other conclusion. Even Brand's despondent letter of June did not damp him:

President Brand to J. H. de Villiers.

Bloemfontein, June 13, 1871.

MY DEAR DE VILLIERS,

I must heartily congratulate you on your speech in Parliament in favour of Responsible Government. In regard to what you said about the Orange Free State offering to join you as one of the first fruits of Responsible Government I am afraid you were a little too sanguine. I do not withdraw anything I have said to you on the subject but the condition I have always made was that we should be fairly treated by the British Government. I still

hope the High Commissioner will accept our proposal to submit the dispute about Waterboer to the full and impartial investigation and decision of a foreign power, but the hope is a very faint one. . . .

Brand's fears were realized. The final decision on the disputed lands claimed by the Transvaal north of the Vaal was referred to Lieutenant-Governor Keate of Natal. He gave his decision against the Transvaalers, fairly enough on the evidence before him, above all recognizing the northern and western boundaries claimed by Arnot for Waterboer the Griqua. Barkly, strengthened by a decision which favoured Waterboer's claims and armed with the lukewarm annexation resolution of the Cape Assembly, annexed Griqualand West and proclaimed the Keate line. The results of this double action were disastrous. The Transvaalers refused to accept the Keate Award, forced several of their officials, including Pretorius, to resign and elected T. F. Burgers, the Liberal predikant of Hanover, as President in his stead. In the Free State, Brand restrained his burghers and withdrew from the Dry Diggings under protest; but he, the most patient and long sighted of men, talked in private of importing guns and longed for the Germans, the Americans or even the Russians in place of the impotent Portuguese at Delagoa Bay. He soon recovered his balance; but, in the course of the ensuing squabbles over the rifle trade with native labourers and the position of the boundary beacons which would decide whether or no the Dry Diggings after all became British along with the inestimable Waterboer, his health broke down. Meanwhile, the influential position of the High Commissioner in South Africa enjoyed by Grey and Wodehouse was destroyed, the Diamond Fields dispute hampered the prospects of Confederation till its settlement in 1876, and the bitterness remained.

Griqualand West also remained on the hands of the Imperial Government, which had not wanted it and was now only too anxious to be relieved of it by the Cape, in whose presumable interests it had been annexed. News of the annexation had been received quietly enough by the diggers, but trouble soon came. There had been signs of storm under the Free State administration, though times had then been good and the Landdrost Truter, an ex-policeman with experience of the goldfields of Bendigo and Ballarat, had understood the diggers and they him. Now times

were bad. Stones were too plentiful, prices fell, and so did the ground as the diggings deepened. Working expenses rose and the scum of the earth began to flow in, Jew and Gentile alike, to drive a roaring trade in liquor, guns and illicit diamond buying among the Europeans and still more among the Native labourers and claimholders. In December 1871, several canteens were burnt in a riot and, in April 1872, the Cape Parliament met to be greeted with the news of two large organized diamond robberies.

The Griqualand West Annexation Bill was again brought forward. It was furiously assailed, most furiously by Englishmen like Merriman and Robert Bowker, who sympathized with that Captain Lindley who had pulled down the Union Jack when it was first hoisted at the Diggings and had then torn up his commission and gone into the Free State. They demanded that the Bill should be thrown out; but Solomon, Molteno and de Villiers took the less drastic line of refusing to accept the measure till the boundaries were settled. In face of this opposition the Bill was withdrawn, to the great joy of most of the diggers who did not desire absorption by the Cape and who celebrated their escape by burning some more canteens.

The Cape Parliament, though it rejected the Diamond Fields, secured Responsible Government. Public opinion had turned more and more in its favour; with good times the Colonists felt more confident of paying their way and of providing more fully for their own defence than formerly. Pressure had been brought by their constituents on two doubtful members in the Legislative Council; the majority was already assured in the Assembly. Porter and de Villiers, therefore, drafted Act No. 1 of 1872. It was short and simple, providing for five ministers, eligible for either House, to be responsible for the discharge of their duties to Parliament. This time it was introduced as a Government measure with another Bill to equalize the representation of the Provinces in the Lower House. It passed both Houses, and was reserved for H.M. pleasure. Vain efforts were made by the Easterners to secure its rejection, to achieve separation or, at the very least, to obtain the capital for the East. De Villiers took little part in this last attempt to postpone self-government. In September, he travelled up to the Diamond Fields in the wake of the High Commissioner, who had gone North to promise the diggers Crown Colony Government. The record of de Villiers'

journey shows what rapid travel was like in pre-railway days. He started at 3 a.m. on September 14th, with eleven other passengers, in the Inland Company's Transport wagon No. 7, travelled day and night with hardly a break, and reached Du Toit's Pan at 2 p.m. on the 20th. Next day he went on in more leisurely fashion to New Rush (now the Kimberley Mine), once a kopje but already a huge pit, and reached Klipdrift on the 23rd. Barkly had just made his expected announcement. Soon Griqualand West was costing the British Government £30,000, besides anxiety, annually. It may be questioned whether the Free State, with a market at its door and no responsibility, had lost much materially by the annexation; but in South Africa it was the imponderables which really counted.

De Villiers returned to find Cape Town full of rumours. The first Cape Cabinet was in process of formation. The Governor first sent for Porter, the popular favourite; but Porter declined on the grounds of age and health, and recommended Solomon or, failing him, Molteno. Solomon disliked the idea of serving without Porter, but agreed to do so provided he might choose his own portfolio—plainly meaning Native Affairs—and have an equal voice with Molteno, the nominal Premier, in the choice of colleagues, one of whom must be Sprigg. Barkly, however, declined to be saddled with two Consuls and invited Molteno to form a Ministry.

Whichever of the two men became Prime Minister, de Villiers stood an excellent chance of becoming Attorney-General. Solomon, with Porter, had been his chosen leader in Parliament; Molteno knew him for an able man and a staunch supporter of responsible government. Molteno, however, naturally offered the post first to Porter, as an ex-Attorney-General and a man of great administrative ability. He declined and strongly urged Molteno to invite de Villiers; "for," he said, "you cannot get a better man." De Villiers hesitated at first; he knew that he was young; circuits and parliamentary duties, his growing practice and the increase of semi-public work were already trying his strength. Nevertheless, natural ambition overruled his fears and, on December 2nd, he assumed office with his fellow-Ministers.

CHAPTER IV

ATTORNEY-GENERAL AND CHIEF JUSTICE

THE Molteno Cabinet was in a double sense a coalition, of East and West, of Liberals and Conservatives. Three of its members were Western: Molteno himself, the Colonial Secretary, Dr. Henry White, the Treasurer, and de Villiers. The remaining members, as Kaffrarians, were not in the true 1820 apostolic succession; nevertheless, they did represent Eastern frontier interests. C. Abercrombie Smith, the Commissioner of Crown Lands and Public Works, had been a leading opponent of responsible government and his presence in the Cabinet was an outward and visible sign that that issue was finally settled. Charles Brownlee, hitherto an official of the Native Affairs Department at Kingwilliamstown, received the portfolio of Native Affairs and, though he lacked parliamentary experience, alone brought administrative knowledge to the Cabinet councils.

The Cabinet had many advantages. The financial sky was clear, the Governor was sympathetic, its members were capable, and in Molteno it had a good all-round leader with much of Lord Liverpool's capacity for holding a Ministry together. Molteno was not an inspiring leader; he was too much inclined to make any and every point on which opposition was offered a question of confidence, a not unnatural course for a strong-willed man faced with a House in which the rudimentary party system formed on the responsible government issue had been destroyed by the very solution of the problem. He could, however, promise the Colony two things: a jealous defence of its newly won parliamentary privileges and a straightforward, economical administration.

De Villiers agreed with his chief on most points of policy. His political opinions had steadily taken form and consistency since

the session of 1869. He had throughout supported Solomon's annual Voluntary Bill and had successfully opposed the registration tax on voters as a sure means of discouraging electors, especially in the country districts, from taking an active share in politics. On the other hand, in the teeth of many of his constituents, he had defended the house tax as a fair method of direct taxation which, as a disciple of Adam Smith, he vastly preferred to insidious forms of indirect taxation. On financial questions he showed all the prudence and even the parsimony of his French ancestry and of his frugal upbringing at the Paarl. He had, indeed, vainly endeavoured to raise the salary of the Attorney-General in 1869; even before good times were assured to the Colony he had served as chairman of a committee which had recommended railway extension; he had repeatedly urged extension since and insisted that, as Natal was already taking steps towards the Diamond Fields, the Cape ports must not be behind-hand. It was the first shot in the railway war which was to ravage South Africa for nearly forty years; for the railways he advocated were to be built by the State, which would thus secure a return on the money spent. Against unproductive expenditure he set his face like flint. He had opposed many of Molteno's retrenchment proposals because he did not believe the condition of the Colony was sufficiently bad to warrant them, still more because he disapproved of the use of the retrenchment weapon as a means of forcing the constitutional issue; now, in the session of 1871 and 1872, he opposed Molteno and his own constituents in their attempt to celebrate the arrival of good times by raising the salaries of civil servants. Rather, he held, should the Cape follow the Gladstonian example and remit taxes. On questions other than financial he spoke his mind. He tried in vain to save the Civil Service Reform Bill from "the limbo of a select committee," and with Solomon's help, brought in a bill of his own to permit marriage with the deceased wife's sister, the deceased brother's husband, and generally from within the third degree of consanguinity outwards. He did so, on the advice of many Dutch Reformed clergymen, because he knew of the hardships entailed by the existing law and of the many forbidden marriages which took place among members of the widely ramifying Cape families. Throughout his life he defended marriage with the deceased wife's sister; but later, influenced by the theory of

telegony, he abandoned the deceased husband's brother to his fate. The debates on his bill in 1872 were moderate in tone; but, on Porter's advice, he withdrew the measure to permit of fuller public discussion.

Generally speaking, during the sessions of 1871 and 1872 he established his reputation as a parliamentarian. He was known as a man who would not take a parochial view; he had tried to argue the railway question from the point of view of the Colony as a whole; he had warned the Assembly against the "bad practice of members trying to get money for their own districts. It is not the duty of this House," he said, "to do executive work." Finally, he had done his best to raise Colonial politics to a higher plane by linking the matter of self-government to the much larger question of South African Confederation.

On the other hand, he did not give proof of parliamentary ability of the first order. Honesty, a clear mind, willingness to take responsibility, courage to oppose his leaders and his constituents, and, even in those early days, a commanding presence, all were his. He spoke well and impressively, if he were given time, enriching his speeches with a wealth of legal, historical and political knowledge. Those speeches, delivered in slow, judicial tones, were closely reasoned, to the point and therefore effective. These virtues, however, are not enough for the making of a first-class parliamentary leader. He was apt to be worried by interruptions; he lacked Merriman's fire, Molteno's doggedness, Solomon's emotion, and Porter's persuasiveness. He would prove his opponents wrong, but not convince them of their error. Already his judicial mind saw too many sides of the question; and that admirable failing, combined with his sensitive and worrying nature, ill-fitted him to withstand the sudden shocks and partisan attacks of parliamentary life. Finally, his personality inspired respect rather than affection, and it is affection which wears best in politics. Nevertheless, he made his mark in the old Cape Assembly; he was the forerunner of Jan Hofmeyr as the representative in a special degree of Western rural opinion; he served his country well as Attorney-General during the first year of self-government; and when, at the end of it, he was translated to another and perhaps a better sphere, political life at the Cape was the poorer for it.

Two influences hastened the development of his character and

outlook. At first he had moved about from one lodging to another in Cape Town, Kalk Bay and Sea Point, but in July 1870, he settled down with his younger brother, Charles, in what is now the ground floor of the Queen's Hotel, Sea Point. Thereafter he saw much of Molteno, for whom he conceived a growing respect. The second, greater and more permanent influence was that of his wife, Aletta Johanna, daughter of Johannes Petrus Jordaan,¹ a wine farmer of Worcester. She, like de Villiers, was mainly of Huguenot descent. J. P. Jordaan, her paternal grandfather, like Jacob Nicholas de Villiers, had been a thoroughbred Frenchman. For the rest, her stock had the admixture of Netherland blood common to all the old Western families, which formed the natural aristocracy of the Colony. De Villiers had known her father ever since his parliamentary connection with Worcester had begun. He had often stayed with the family when on circuit, for Jordaan was one of the leading "Liberal" politicians of the district. At last, in June 1870, he proposed to Aletta, at first informally at Worcester whence he departed in such a whirl of excitement that he forgot the existence of Mr. Jordaan; and then formally in a stately letter in which he had to ask her to approach her parent. They were married at Worcester in March 1871, and spent their honeymoon on circuit. On the first night in camp de Villiers damaged his foot badly by tripping over a bridle in the dark, but, apart from that mishap and the inevitable interruptions due to the court sessions, all went well. One of the interruptions remains to be recorded. At the outspan between Riversdale and Heidelberg they were joined by a "lapje smous" who shared their coffee with them. Years later Sammy Marks, then a financial power in Kruger's Republic, who, whatever shortcomings he may have had, did not suffer from false pride, cheerfully told de Villiers that the pedlar was himself.

De Villiers and his wife returned to the house at Sea Point. There a son was born to them, and christened Charles Percy. A year later, just after de Villiers had been appointed Attorney-General, the little family moved to "Montrose," a low white, thatch-roofed house near the railway at Newlands where their second child, Alida Johanna, was born.

The influence of his wife on de Villiers cannot be over-estimated. She was a noted beauty and to the end she retained

¹ The family later revived the French spelling of the name, Jourdan.

the beauty of old age, but, more than that, she was a woman of great ability, strength of character and common sense. She was his ideal counterpart, encouraging him to the use of his powers and, with her equable temper and knowledge of human nature, supplying his weaknesses. Throughout their life together, he discussed everything with her, especially the human side of all his problems. Those many officials and others who found their way to Wynberg House to consult de Villiers, did not disdain to ask the advice of the Hoofd Regter's lady; though the advice some of them received must have been disconcerting. She, for her part, mothered him and, when his health began to break down from 1895 onwards, literally gave her strength to him. She paid for it by collapsing in bodily health in 1909 when her husband was away in London crowning his life's work by helping to pilot the Act of Union through the Parliament at Westminster.

De Villiers threw himself into the work of his department. It was heavy work, for his entire staff consisted of two clerks. To his large private practice was now added the duty of Public Prosecutor. His name appears in all the reported cases of 1873, save in two small motions. He had, in addition, to prepare the indictments for the Western Circuit twice annually, advise his ministerial colleagues on legal points, attend Cabinet meetings and, between December 1872 and the end of the following April, draft some thirty bills against the assembling of Parliament. During the session he was entrusted with the piloting of several first-class measures through the Assembly. It was perhaps well for him that the session lasted only sixty-three days, the shortest hitherto on record in the Colony.

Parliament met with a full treasury and in a good temper. The antagonism between East and West was markedly less bitter. The Eastern stalwarts did indeed demand their separatist scheme of federation, but de Villiers replied officially that "any scheme of federation, to be of service, ought to be attended by the federation of all the civilized States of South Africa." The Easterners also demanded that public moneys should be expended in each Province in proportion to the receipts from customs and land sales; but the West was in no mind to allow the East to reckon as righteousness the customs duties on Republican goods landed at Port Elizabeth, the natural port of entry for the interior, and none of the supporters of the Ministry were prepared to admit a

thoroughly vicious system of expenditure which had led to endless waste in the Two Canadas. Thereafter, the Easterners and the Western "Conservatives" settled down to play the part of a highly desirable opposition.

Eastern opinion on the whole was cheered by the promise of an increase in the number of Mounted Police and of the tentative extension of Cape authority to the independent Native territories between the Kaffrarian and Natal borders. Basutoland was already coming under Cape control; the territories to the south must be treated in the same way, for all formed one huge native territory. The cautious financial policy of the Ministry was after de Villiers' own heart. He helped to cut off the travelling allowance of the Bishop of Cape Town and to defeat the grant of temporary cost of living allowances to Civil Servants; resisted Merriman's proposal that clerks acting as magistrates should receive extra pay, on the ground that the appointment itself was an honour and an opportunity for a young man to show his capacity; and warmly supported the policy of using a large part of the surplus to wipe off debt and to finance some of the large public works which were at last undertaken. With the Diamond Fields as the goal, the Colony bought out the railway companies, reduced the gauge, surveyed the Cape Town line as far as Beaufort West and the Port Elizabeth line to Graaff Reinet, began to build the first sections of each, authorized a railway between the West Coast and the Namaqualand copper mines, provided for wide extensions of the telegraphs, which had recently become public property, and negotiated for an ocean cable to Great Britain. Bridge building over the Orange was put in hand; a new ocean mail contract was signed with the Castle Line, which had just begun to compete with the old-established Union steamers; and finally, mindful of its new dignities and of the inconveniences of its existing quarters, Parliament recommended the erection of new parliamentary buildings. Many years later, looking back at the history of the Cape Parliament, de Villiers wrote that it "compares favourably with any other Parliament in the world. Its weak point . . . has been its financial administration. Except the Ministry of Mr. Molteno no Government has been strong enough to resist the pressure exercised by Parliament during periods of prosperity in favour of waste and extravagance. . . ." De Villiers wrote thus just before the accession to

power of the last Cape Ministry, when Merriman—*o quae mutatio rerum*—in a successful effort to save the finances of the Colony on the eve of Union, was about to revive the Molteno tradition which, in the 'seventies, had enabled the Cape to weather the crisis which struck Australia so hard, with its securities second only to those of Great Britain herself.

In other directions many reforms were effected in the laws of masters and servants, inheritance, wills, trustees and executors, and copyright; but the two measures for which de Villiers was most directly responsible were the Seven Circles and the University bills. He drafted the bill and moved the second reading in each case. The former aimed at a reform of the Legislative Council. Hitherto each of the two Provinces had formed a huge constituency, the West returning a slightly greater number of members than the East. Times had changed since the system had been established in 1853 and, now, Cape Town in the West and Port Elizabeth and Grahamstown in the East controlled the election of so many members that the country electors took little interest. The bill cut up the Colony into seven constituencies, each returning three members for ten years, and provided for the dissolution of the Council separately from that of the Assembly. In the delimitation of the constituencies the thinly-peopled districts of the Midlands and North-West were somewhat favoured, as de Villiers frankly admitted, "to remove the predominance of the towns." In spite of the opposition of the Easterners *sang pur*, the Assembly carried the bill by a two to one majority. The Upper House—about-to-be-reformed rejected it; but in the following session it duly passed into law and went far to wipe out inter-provincial lines of cleavage.

The University bill readily passed both Houses. A Commission had recently reported in favour of an examining University on the London model to supersede the Board of Examiners at whose hands de Villiers had suffered as a youth. The evidence led by the Commission had been mixed. Some witnesses approved of the scheme, a few desired a teaching university, but none condemned. Popular opinion, as far as it found expression, demanded elementary before higher education. In the House, the Easterners pressed for a teaching university and their leader, Paterson, even declared that the Cape Peninsula was marked out by nature as its seat. De Villiers defended the Government

policy on both counts. "I quite agree," he said, "that we should look out for elementary education in the Colony, but that is no reason why the two should not go hand in hand. . . . I cannot imagine any state worse than that the proprietors of land and the employers of labour should be indifferently educated. I am afraid there is a chance of their being worse educated than those who are employed sometimes." His mind had travelled to the coloured school at his native Paarl and the mission schools he had passed on circuit side by side with the farms, where white children were sometimes growing up in blank ignorance of books. It was to fight this evil that the Ministry presently helped country schools and boarding houses. On the other hand, de Villiers insisted that "it is not of the essence of university that it should have a teaching college attached to it." He may have been thinking of Utrecht and the Inner Temple with their absence of lecture rooms, but he was forgetting that they at least had teachers. He hoped, however, that various colleges would become affiliated to the examining body, a hope which was soon fulfilled. "I think the time will arrive," he said, "when the possession of a degree of this university will prove a passport not only for admission into the learned professions but also into the ranks of the Civil Service, and I think even the mercantile community." Porter followed defending the scheme as a temporary measure. In the event, the examining University of the Cape of Good Hope endured for forty-five years. If it encouraged the worship of examinations, it also stimulated higher and therefore lower education in the Colony and indeed in all South Africa; for in 1875 candidates from the other Colonies and States were admitted to its privileges, in keeping with the ideas of Confederation which were stirring so vigorously in that year. Backed by Parliament, its degrees did become the passport to many of the roads pointed out by de Villiers. On the other hand, real educational life lay with the colleges subordinated to it; and it was only in 1918 that two of them succeeded in breaking away to become self-contained teaching universities, an example speedily followed by a third.

One measure on which de Villiers had set his heart, judicial reform, had to stand over for lack of time to draft the necessary bill. It was well, for before the question was actually raised, he had been removed to a position from which he could speak on

the subject with even greater authority than that of Attorney-General. Parliament adjourned towards the close of June. It was presently dissolved, and de Villiers turned his face once more towards Worcester. In August, however, Sir Sidney Bell, the Chief Justice, fell ill. His natural shrewdness escaped the paralysis which had smitten him, and he refused either to take leave or to resign till he had secured what he considered an adequate pension. The Supreme Court was thereby reduced to two judges. One of the two Eastern judges was summoned to Cape Town, but, in face of the uproar raised by the Easterners, he had to be turned back at Port Elizabeth. The expected deadlock soon occurred; the two Cape Town judges failed to agree; the Chief Justice secured his terms and resigned; and the Ministry was faced with the task of finding a successor.

"The Ministry," wrote Solomon in the *Argus*, "are put fairly on their mettle." They were indeed. Tongues had been wagging for some time past on the topic of the Chief Justiceship. The senior judge was Denijssen, but he had little but his seniority to recommend him; Fitzpatrick and Dwyer, next in seniority, were not judges of such an outstanding character as to warrant their being promoted above their colleagues; while Smith, the fourth puisne judge, was but a recent appointment. Outside the Colony there was Connor of Natal, an experienced and able man, but close upon sixty years of age and wedded to Pietermaritzburg. There remained the two chief non-judicial legal officers of the Colony, Simeon Jacobs, Solicitor-General of the E.D. Court, a barrister of twenty years' standing, and de Villiers, the Attorney-General.

De Villiers had been called to the bar only eight years previously. He had already made his name there. He was certainly not so eloquent as Porter nor so learned as Brand, but he had a clear head and a steady delivery; he was methodical—in 1888 in Court he read from a note-book of his own which he had quoted as counsel in 1870—above all, he knew the law he practised. The retainers which poured in upon him in 1873 proved that he was regarded as a sure defender and a dangerous opponent. He was also Attorney-General. By English analogy he had first claim on the Chief Justiceship, and his possible rival, Jacobs, impressed the fact upon him. Wodehouse in 1868 had only declined to appoint the then Attorney-General, Griffith,

to the vacant post on the ground that he had been too short a time in the Colony. De Villiers suffered from no such handicap; therefore Molteno offered him the Chief Justiceship.

It was a great prize for a young man of thirty-one, a prize unimaginable to the struggling law student of 1865 who had weighed up the pros and cons of a career in London or India against a modest existence in the Cape Colony. The Colony was no longer "wretchedly poor"; its importance, relative to the other States of South Africa, was growing; the influence of its Supreme Court must increase in proportion. Over that Court de Villiers was now invited to preside. Yet he hung back. He was as conscious as was Lord Randolph Churchill afterwards that "youth is no doubt a great calamity and it appears to excite all the worst passions of human nature among those who no longer possess it." He was junior to several of his fellow barristers; most of the judges had been on the Bench when he had been called. Time alone could expiate the sin of youth; meanwhile, there were other considerations. Solomon begged him to refuse the offer, and prove thereby that a politician could rise superior to "self and pelf." In the matter of pelf de Villiers reduced his income by becoming Chief Justice, even though Molteno offered him the post at the £2,000 enjoyed by Hodges and Bell instead of the £1,500 which the Assembly had resolved should be paid to the next Chief Justice. As touching self, he was inclined to agree with Solomon that he could render better service to his country if he were not "quietly shelved into dignified retirement on the Bench." What of his duty to his colleagues? Could the Ministry afford to lose thus early one who stood for so many of the rural electors of the West? Responsible government had not yet proved itself. One of the stock arguments against its adoption had been that it would lead to "the plunder of the Colony." Hitherto Chief Justices, and indeed many of the judges, had come from overseas. The Colonial Ministry might be expected to appoint a local man *ceteris paribus*; but would other things be allowed to be sufficiently equal to compurgate the Cabinet from the charge of jobbery at the first opportunity? Already the cry had been raised in both East and West; for the balance of parties in the Upper House was very even and the Chief Justice was *ex officio* President of the Chamber with a casting vote. To all of which obvious objections de Villiers

characteristically added another. Could he, as Chief Justice, continue the correspondence with Brand which he hoped would one day lead to Confederation?

At his suggestion, he and the Premier interviewed Porter. Porter declined for the same reasons as had led him to refuse to form a Ministry the year before, and also because he had scruples against imposing the death penalty. He had, indeed, attempted recently to carry a bill abolishing it. De Villiers then mentioned Connor as a possibility, but Porter's refusal had decided Moltano. He held a Cabinet meeting without de Villiers and, with the backing of Porter and his fellow-ministers, told his Attorney-General that he wanted him to be Chief Justice. Four other arguments Moltano used. He bluntly stated that de Villiers' health would not stand the strain of another year of office like the last; he promised to induce both Houses to rescind the resolution reducing the salary from £2,000 to £1,500; he pointed to Simeon Jacobs as his successor in the Cabinet; and he assured him that he could go on with his correspondence with Brand, as Confederation was not a party matter. Nor was it till 1875. De Villiers therefore accepted, and the vials of party wrath and professional jealousy were straightway emptied upon his head. The opponents of the Ministry attacked it through him. "He is," wrote the *Western Standard*, "one of the Cabinet which appointed himself. It would be more safe and perhaps it would be cheaper in the long run to the Colony if Mr. de Villiers would at once retire on full pay." If he remained on the Bench, he might have to be made a knight, "a ludicrous and beastly notion," as Cromwell would have said. Most of the Eastern papers gave him their blessing, but the able editor of the *Star* jeered at the "boy in ermine," indulged in many pious reflections on corruption and self-seeking and, finally, drew the moral that the Grahamstown Court must have its third judge with full concurrent jurisdiction and that "a good railway policy will purge a vast amount of the rottenest jobbery."

There was some lifting of eyebrows at the bar, but one of de Villiers' seniors checked it by publicly declaring that, had he been in the Attorney-General's place, he would have claimed the appointment as of right. Judge Connor, too, wrote congratulating him in stately fashion on his promotion. "The howl against it,"

he wrote, "on account of your age is most silly. The best judge ever sent to a Colony, Sir William Martin of New Zealand, was 27 when he was made Chief Justice."¹ Other judges did not take the matter so placidly. The two Cape Town judges naturally had ambitions and for some time past had enquired of Mr. Attorney-General when the Cabinet would be likely to have made up its mind. Even Bowdler, the messenger of the Supreme Court, had his fancy and his fancy was not de Villiers. One day he was horrified to find the Attorney-General's robes in the Chief Justice's room. Bundling them together, he hurried out into the corridor and bade a friend bear witness to de Villiers' sacrilege. "But," said the friend, "he *is* Chief," and Bowdler managed to replace the robes, now heavy with judicial sanctity, just in time. Fitzpatrick took his disappointment quietly enough; but Denijsen lent himself to the fury of his friends and talked of immediate resignation or, at least, removal to Grahamstown. There was even talk of a scene in Court.

The inauguration took place on December 9th. The Court was crowded in anticipation of the scene aforesaid. The bar was present in full force, from the venerable Speaker, Sir Christoffel Brand, downwards. Three of de Villiers' ministerial colleagues—Molteno, White and Smith—were present to give him countenance and, as far as the Premier was concerned, to promise him much more if need be. The two puisne judges entered first. At last the new Chief Justice entered in dead silence and took charge of the situation at once. He shook hands with his brother justices and handed the Registrar his commission drawn up by himself as Attorney-General, the sole substance of truth in the still current legend that he made himself Chief Justice. Bowdler, who was standing close by, always declared that de Villiers asked Denijsen to swear him in and that Denijsen muttered, "Swear yourself." In any case, de Villiers did administer the oath to himself and called his first case.²

He had thus taken his seat as Chief Justice, but the strain of the ceremony had been very great. A barrister friend, E. J. (now Sir John) Buchanan, found him afterwards in his room and asked if all was well. "Oh, yes," he replied, "but I have no

¹ J. G. Kotze became Chief Justice of the Transvaal in 1877 at the age of twenty-eight.

² *Stadler v. Stadler*, a divorce case.

idea who was in Court. It was all a blur." It remained to be seen whether he was to be master in his own Court and master of the law which that Court administered. The first issue was soon tested. The proposed temporary removal of Judge Dwyer to Cape Town during Sir Sidney Bell's illness had ruffled the temper of that irascible Irishman and outraged the dignity of the E. D. Court. In April 1874, Jacobs, whose appointment as Attorney-General had also roused considerable inter-provincial feeling, called Dwyer from Grahamstown to Cape Town as "temporary" Justice of Appeal, adding insult to injury by telling him that he might continue at Cape Town if he liked. Dwyer was furious and insisted on unburdening his soul to the Governor on this illegal blow to the independence of the judiciary.¹ It was in this frame of mind that he took his seat on de Villiers' left hand. During the argument of a case Fitzpatrick, on the right of the Chief Justice, asked counsel a question. Dwyer burst out with, "Any attorney's junior clerk knows that." Fitzpatrick's Irish soul blazed forth in a fierce retort to which Dwyer replied in kind. At this stage de Villiers leaned forward and blandly remarked: "This case must be argued from the bar not from the bench." It was.

The establishment of his reputation as a judge followed in due course. The number of cases with which the Supreme Court had to deal in those days was much smaller than in the later years of his life; nevertheless, they were of a quality and a variety to try the skill of an experienced man. The criminal law of the Colony was mainly English; but the civil law was, in many of its departments, a chaotic mixture of the Roman-Dutch and English systems. This law had to be applied to divorce, salvage, water-rights, banking, company cases, leases, wills and bankruptcies. The Supreme Court was also the court of appeal from the circuit courts and, in certain cases, from the Eastern District Court itself. Finally till 1891, on occasion, the Chief Justice sat alone behind the silver oar as judge in the Vice-Admiralty Court.

De Villiers had little opportunity of showing his quality during his first nine months on the bench. With the experience gained during that period he took the Western Circuit in September 1874. Everywhere the addresses of welcome dwelt on the fact that he was "a Colonial born judge," which, said his old

¹ E. Dwyer to de V., April 30, 1874.

constituents of Worcester, a canny folk, was surely the right sort of appointment to make "other things being equal." This triumphal progress was almost cut short by disaster. Near Clanwilliam he and his travelling companion, J. G. Kotzé, the future Chief Justice of the Transvaal, then a barrister on his first circuit, passed a field of stubble. De Villiers, always a keen shot, jumped out of the cart to see if he could put up some quail. It was a risky thing to do, as he was only wearing low shoes. Suddenly he started back and fired downwards between his feet. Kotzé ran forward calling out "What does that mean?" "It means," was the dry reply, "that you have lost a chance of promotion." Between his feet was a large cobra on which he had trodden and shot as he trod. It was not only on the bench that he had reason to bless his powers of quick decision.

On his return to Cape Town two cases were brought forward which called forth all his powers. One turned on water, the other on land, and de Villiers showed himself equally at home on either element. In a dry and thirsty land as much of the Cape Colony is at certain seasons, questions of water rights are of the first importance. Several judgments by earlier judges such as Henry Cloete and Watermeyer based on de Villiers' *vade mecum*, Voet, had laid it down that a man might do what he liked with a stream which rose upon his land. This view had been questioned by the Privy Council in 1869, but had none the less been acted upon by judges on circuit and upheld on appeal by the Supreme Court. De Villiers now upset it and gave the first of a long series of judgments which established the law of water rights in the Colony in conformity with the Roman, Roman-Dutch and modern English systems.¹ He held that all proprietors were entitled to make ordinary use of the water of a public stream for domestic and similar purposes, and that the upper owners might make extraordinary use for irrigation and so on, provided they did not deprive those lower down of water for ordinary use, used only a fair proportion of the water for irrigation consistent with the irrigation rights of others, and returned the unused water to the stream. Subsequent judgments decided that the owner of a source might do what he liked with water which had not poured down for many years in a well-defined

¹ *Hough v. van der Merwe*, Dec. 1874; also *Vermaak v. Palmer*, Feb. 1876, and *van Heerden v. Weise*, June 1880.

channel to other lands ; but *Hough v. van der Merwe* was the crucial decision. As far as permanent streams were concerned in the Colony, de Villiers insisted that a man was his brother's keeper.

De Villiers afterwards shone as a judge in testamentary cases, but the judgment which really established his position as a Roman-Dutch lawyer turned on the right of a local government body to dig gravel from Quit Rent land which had never been held on the old Loan Place tenure. Cradock's proclamation of 1813 had encouraged farmers to convert their Loan Places, held nominally on a yearly tenancy from the Government, into permanent Quit Rent farms on certain conditions. Other land had been granted on Quit Rent from the first. In giving judgment in the case of *de Villiers v. The Cape Divisional Council* (June 10, 1875), Denijssen and Fitzpatrick held that, unless special reservation had been made, land held on Quit Rent *ab initio* was not subject to the right of Government to dig thereon for road metal, as stated in the proclamation regulating the conversion of Loan Places. De Villiers, in a long judgment which included an excellent history of the complicated story of Cape land tenure, dissented. His opinion was upheld on appeal by the Privy Council.¹

One ardent enemy is said to have attended his Court day by day, notebook in hand, to make record of the mistakes committed by the new Chief Justice. After the above-mentioned judgments, his patience being exhausted and his notebook still unblemished, he abandoned the self-imposed task. De Villiers continued to dispense justice for forty years thereafter.

¹ April 27, 1876.

CHAPTER V

DE VILLIERS' WORK AS A JUDGE

"Forty and one years reigned he in Jerusalem."—*1. Kings*, xv. 10.

DE VILLIERS became Chief Justice of the oldest established and most influential court in South Africa at a critical time in the history of the country. The third stage in the European settlement of South Africa was beginning. The older population, Dutch, French and German, to which he himself belonged by birth, had long been deeply rooted in the soil; the sons and grandsons of the English settlers of 1820 knew no other home than South Africa, though they naturally retained a sentimental regard for England as Home. But the "1870 Settlers" were another matter. Taken as a body they were a cosmopolitan swarm, Jew and Gentile, many of them with no roots anywhere, least of all in the land in which they sought wealth and a happy issue out of all their troubles by a speedy return whence they came.

In 1873 South Africa was on the point of becoming one economically. Politically it was much divided. The Cape Colony, from which the two Boer Republics and, to a less extent, the Crown Colonies of Natal and Griqualand West were sprung and from which they were still receiving a steady stream of men, goods and ideas, was overwhelmingly the greatest of all the European territories in area, population, wealth, tradition, established civilization and political experience. The Supreme Court at Cape Town, by reason of its relative antiquity and undoubted prestige, could and did influence the development of the courts in the newer states and colonies; but it was inevitable that, in course of time, the law and practice of those courts, unchecked by any common court of appeal, should drift further and further apart. At the pace at which South Africa was beginning to move

economically and politically, such divergence must spell friction and might spell disaster. That the divergence was not greater, during the forty years which were to elapse before the Union of South Africa was achieved, was due partly to the fact that the Cape Colony supplied many of the judges and advocates to the other courts but largely also to the long tenure of office and unrivalled judicial capacity of de Villiers.

As far as concerns the actual structure of their judicial machinery the states and colonies of South Africa in 1873 had either conformed or were on the point of conforming in essentials to that of the Cape Colony. In 1828 the judicial system which had done duty for a century and a half at the Cape, the more or less amateur High Court, the local courts of the Landdrosts and Heemraden, the judicial powers of the Field Cornets, had all been swept away in favour of a new system established under the Charters of Justice of 1827 and 1832, as modified by accompanying or succeeding legislation. A few duties were entrusted to Justices of the Peace of whom de Villiers' grandfather, Jacob Nicolaas, had been one; but the real dispensers of local justice were the Resident Magistrates and the Judges who, twice yearly, took the Eastern and Western circuits. The Bench consisted of five professional Judges: a Chief Justice and two Puisne Judges sitting in the Supreme Court at Cape Town, and two Puisne Judges in the Eastern Districts Court at Grahamstown, assisted in criminal cases and, in the Supreme Court, in civil cases also, by a jury of nine. A complicated system of appeals converged on the Cape Town court on the way, in the last resort, to the Judicial Committee of the Privy Council.

A similar system with a three-judge court, circuits, jury and Resident Magistrates had been set up in Natal. In Griqualand West a Recorder had been recently appointed. Appeals from the courts of these colonies lay direct to London. In the South African Republic and the Orange Free State much of the pre-Charter system of Colonial courts had been revived. The Field Cornets exercised all the powers of which they had been deprived at the Cape, and more also; the Landdrosts and Heemraden re-appeared; but a circuit court of three Landdrosts and, in criminal cases, a jury of twelve had been provided, and in the Southern Republic, the President and Executive Council served as a court of appeal. In 1873 the higher courts in both states were nearing

their end. In the following year F. W. Reitz, de Villiers' fellow-student in London, went up from the Cape bar to become Chief Justice of the newly founded High Court at Bloemfontein, where he was joined two years thereafter by James Buchanan, de Villiers' companion on his first circuit, and Melius, de Villiers' youngest brother. It was only in 1877, however, as one of Burger's eleventh-hour attempts to reform his republic, that the foundation of a court on the Cape model was laid at Pretoria and J. G. Kotze summoned from the Colonial bar to take charge of it.

A crisis in the development of South African law was approaching in 1873. Apart from Bantu tribal law and the militarized version of that law administered in the Natal Native courts, two distinct legal systems, both ancient, tough and flexible, extended in varying proportions and considerable confusion over all Africa from Table Bay to the Zoutpansberg. Had the Roman-Dutch law been left untouched, had the English law been introduced *en bloc*, the difficulty would not have arisen. As it was, the former had been profoundly modified; the latter had been only partially adopted; both were threatened with deliquescence. It was de Villiers' supreme achievement, in his own Colony directly and then, in so far as the Colonial example could influence the other courts, in all South Africa, to fuse into a single system most of what was good in the Roman-Dutch law with much of what was good in the English. He lived to see that system spread northward into regions which in 1873 were the homes of barbarism. Long before his death he took the Bechuanaland circuit and heard appeals from Southern Rhodesia; and, in the last years of his life, he presided over a court which received appeals from all Africa south of the Zambesi outside the German and Portuguese possessions. *Si monumentum requiris, circumspice.*

During the heat of the South African war a legal correspondent of the *London Times* informed the world that the Roman-Dutch law of South Africa was "the law of a bygone age," and that, whereas the tendency had at first been to bring the law and practice into conformity with those of England, "since the anti-British feeling set in, this sensible course has been discontinued, and, led off by Sir Henry de Villiers, backed up by other Dutch Judges and weak-kneed English ones, every effort has been made to rake up antiquated Dutch authorities and upset

decisions of the earlier Courts." This, as a general statement of the history of South African law in the nineteenth century, is rather more inaccurate than most judgments which pass muster in times of excitement. As a description of de Villiers' work it is grotesque.

Since 1715 local proclamations had taken precedence in the Cape Courts. Failing them, since the Colony was subject to the Council at Batavia, the Judges were directed to have recourse to the statutes of India and, in the last resort, since the Dutch East India Company was ultimate overlord, to the Roman-Dutch law. That system had sprung from three main roots: the customary laws of Holland, the statute law of Holland and West Friesland and the *Corpus Juris* of Justinian. The great Dutch jurists of the sixteenth, seventeenth and eighteenth centuries had drawn freely from the accumulated wisdom of Rome and Byzantium, but they had not been ashamed to learn also from their fellow-workers, Italian, French and German. The best of them improved on their teachers' lessons. The seventeenth century had been the golden age of the Netherlands in law as in so many other directions. Grotius of Delft had been the master-builder but the same century saw the work of his fellow-townsmen Groenewegen, of Vinnius of the Hague, of van Leeuwen of Leyden and of Voet of Utrecht. The great Bijkershoek of Middelburg carried on the tradition well into the eighteenth century. After him was the day of the minor prophets and the close of the century saw the last of the line, van der Kessel of Deventer and van der Linden of Amsterdam. In 1809 the Roman-Dutch law was superseded by the Code Napoleon, which was in its turn, thirty years later, supplanted by a new Dutch code modelled upon it. With neither of these codes had the Roman-Dutch law of the Colony anything to do.

The Roman-Dutch law survived after 1809 only in the Cape, Ceylon and British Guiana. All three colonies had passed into British hands. To-day something of the old law remains in Ceylon; in Guiana the last shreds were swept away in 1917; in the Cape the bulk of it has lived on and spread far northwards to the Zambesi.

During the first British occupation of the Cape no serious changes were made nor was time vouchsafed to the mildly revolutionary representatives of the Batavian Republic to make more

than a beginning of reform. The early policy of the British, who reoccupied the Colony in 1806, was equally conservative. The Governor, with the Lieutenant-Governor or other assessors, was constituted the court of civil and criminal appeal; circuit courts were established to sit with open doors, a salutary innovation which was applied to all courts two years later; Cradock's proclamation of 1813 permitted the substitution of quit rent for the old loan place tenure; a modicum of English practice was also introduced into criminal procedure; and in 1822, to meet the needs of the newly arrived English settlers, though the Roman-Dutch laws governing marriage and wills remained as the general rule, British subjects married before their arrival at the Cape were permitted to make their wills in English fashion. Sweeping changes were not made until 1828. Even so, they went by no means so far as might have been expected. A commission of inquiry did indeed propose the wholesale substitution of English for Roman-Dutch law; but the Imperial Government, profiting by the lesson of its wise moderation in French Canada, stayed its hand. English became the legal language of the Courts; the legal age was reduced from twenty-five to twenty-one; the introduction of the grand and petty criminal juries was accompanied by the adoption of English criminal procedure and rules of evidence; all punishments repugnant to the spirit of English law were to be swept away, no mean advantage to the Colony in view of the drastic improvements effected in the English criminal code since 1825. On the other hand, the Roman-Dutch law was retained as the basis of the civil law subject to an instruction to the judges to frame ordinances for the amendment of Colonial laws as much as possible in the spirit of English law.

The Cape Law was extended to Natal in 1845. In the Free State "het Roomsche Hollandsch Wet" was taken as the fundamental law of the state, as modified by Volksraad legislation. In the Transvaal "de Hollandsche wet" as contained in van der Linden's Manual, the practical lawyer's vade mecum, and, failing that, the works of Grotius and van Leeuwen, was taken as the basis in so far as it did not conflict with the Grondwet and the laws and resolutions of the Volksraad. But the Transvaalers prudently added the proviso that the said law must be used in moderation and always applied according to South African usage.

South African usage meant that the law and practice of the two Republics from the first contained something that was English. Much more was presently added thereto. The insolvency law of the Cape, based on that of England, served as the model for all South Africa; the Cape laws governing the administration of estates, again largely English, were taken over by the Republics; the jury system inevitably brought with it a measure of the English law of evidence and criminal procedure.

It was thus easy to exaggerate the divergence of the laws of the different States of South Africa in the 'seventies. Early in 1877 de Villiers was able to write:

The divergence . . . is far less than in the provinces included in the Dominion of Canada. The decisions of the Supreme Court of this Colony are received with as much respect in the Courts of the Republics and, if I am not misinformed, in the Courts of Natal and Griqualand West, as the decisions of their own Courts. The greater part of our own Statute Law is incorporated with the Statute Law of the neighbouring Colonies and States. The Common Law of South Africa is the Roman-Dutch Law. . . . But the old Commercial Law of Holland . . . has been gradually superseded by the English Merchant Law throughout South Africa. In the English Colonies of South Africa the Criminal Law of England has entirely superseded the Criminal Law of Holland. This is the department of law in which the greatest difference arises between the Colonies on the one hand and the Dutch Republics on the other. . . .¹

The criminal law, perhaps fortunately, affects directly only a minority of the citizens of a state and that at more or less irregular intervals. It is the civil law which continuously and directly affects the lives of all. The question which lawyers had to face in 1873 was, what was to be the fate of the Roman-Dutch law in the Cape Colony and therefore, if all that de Villiers had written were true, in South Africa? The conditions with which that law must grapple were changing rapidly and in many respects it was unfitted for the struggle. Much that was obsolete was embedded in its body; its procedure was sometimes cumbersome; it was cut off from its roots in Holland; the authorities to whom its champions could appeal were steadily receding into the past. Over against it stood the English law differing from it markedly in many respects in that it separated law and equity,

¹ de V. to Barkly, Feb. 1877.

distinguished felony from misdemeanour, gave the husband much greater rights of divorce than the wife, and enjoyed the dubious blessing of a separate law of real property; but differing above all in this, that its sturdy trunk was still rooted deeply in its native soil.

The mixed system of Cape law—and how mixed it was men only realized fully when its statute law was published for the first time in 1862—had been administered since 1828 mainly by judges trained in the United Kingdom. There had been notable Colonial judges, Cloete and Watermeyer, in the 'fifties and 'sixties but, apart from theirs, the famous names on the early roll of Cape judges had been those of Englishmen, Scotsmen and Irishmen. The first Supreme Court bench had been staffed entirely from overseas¹ and many of the resident magistrates had been British born. These men had come to the Colony, for the most part, in middle life imbued with the ideas of their respective bars. They by no means neglected the Roman-Dutch law but they inevitably tended to interpret the tangled law of the Colony in accordance with English precedents, especially where they found an apparent resemblance between the Roman-Dutch and the English systems. English law books and, failing them, the works of the American Story, were more accessible and intelligible to them than the High Dutch and Latin tomes of the Roman-Dutch jurists; and the fact that appeals lay to the Privy Council tempted them to apply principles which they knew My Lords had upheld in Canadian and Australian appeals and would therefore be likely to uphold again in appeals from the Cape. Since *cursus curiae est lex curiae*, it was fortunate that the most influential of all the Cape judges before de Villiers' day had been Menzies, a Scot, trained to a law based on the Roman code, whose respect for the English courts was less profound than that of some of his colleagues. "Well, sir," he once said to counsel, "and if the Court of Queen's Bench chooses to lay down bad law, am I bound to follow it?"

The Roman-Dutch law had also been modified by statute law. This process had gone on freely under the East India Company; it had been the determining factor during the period of methodical change between 1827 and 1834; it had gone on piecemeal ever since. Some Imperial statutes had included the Cape within

¹ Sir J. Wylde, C.J., and Menzies, Burton and Kekewich, J.J.

their scope; other statutes had been taken over bodily from Great Britain or from other colonies. Sometimes the new laws had been hastily drafted and did not always fit into the closely knit and logical framework of the Roman-Dutch common law, where changes in the law of contract might well affect the law of marriage and that again the law of wills. But, since the Imperial authorities in 1827 and the Colonial legislature in 1858 had deliberately entrenched the Roman-Dutch civil law, these statutory changes were made less with any idea of superseding that law as with the desire to meet new conditions undreamed of by the Roman-Dutch Fathers. New commercial and industrial methods and forms of organization were being introduced to the Colony. The centre of their diffusion was Great Britain, manufacturer and common-carrier to the mid-nineteenth century world. The law to cope with these new forces was almost inevitably British.

De Villiers frankly faced the situation. Many statutory changes in the law of the Colony were made under his influence during the 'seventies. As Attorney-General in 1873 he drafted the bill, as Chief Justice in 1874 he supported the policy which abolished the Falcidian and Trebellian Fourths, the *Lex hac edictali* and the Legitimate Portion, and thereby brought the Cape law more into line with the English law of free testation; a step which Natal also took in 1885 but which the Republics declined to take to the end. The same general ideas underlay the changes recommended by the commission over which he presided in 1878 and whose report, drafted by him in the form of a bill, became, with very few changes, the General Law Amendment Act.¹ That statute abolished imprisonment of debtors who had not the wherewithal to pay their debts; refused all claim of leaseholders to relief from their liabilities because of injury done to their leasehold by tempest, flood or other unavoidable misfortune; and swept away the old principle of *Laesio Enormis* whereby a buyer or seller could demand the rescission of a sale in which he had been prejudiced to the extent of more than half the real value of the article sold.

The most far-reaching effect of the Amendment Act, however, was the wholesale introduction of English maritime and shipping law and law of insurance. The Merchant Shipping Act of 1855 had incorporated much of the Imperial statute of the preceding

¹ No. 8 of 1879.

year. De Villiers now carried the process to its logical conclusion by recommending "a highly necessary and important change in the laws of the Colony. The great bulk of these laws is derived from the laws of Holland as it existed at the beginning of the present century. . . . Considerable portions are, and always have been, unsuited to the requirements of the Colony. . . ." British laws had been used to fill the gaps in the old maritime law. It was on this that he now concentrated. Holland in the eighteenth century had been the great maritime power with a very full code but, as he was never tired of explaining to those who accused him of paying too much attention to English law, since England had secured the trade, she was best fitted to supply the code. "It has always been deemed an anomaly," he wrote, "that in an English colony, mainly frequented by British ships, the laws of Holland, as they existed more than half-a-century ago, should even to a limited extent regulate such matters as salvage or damage caused by collision." Moreover, the Supreme Court had concurrent jurisdiction in many of these matters with the Vice-Admiralty Court, which was obliged to conform to the law of the High Court of Admiralty in London. Wherefore, in the ensuing act, it was laid down that the Supreme Court must also conform provided no colonial statute stood in the way; in other words, that English mercantile law should be followed, a step which was only fully taken in the Republics after their annexation. Finally, the commission urged that such crimes as were still regulated by Roman-Dutch law should be clearly defined and maximum penalties fixed since "the latitude allowed by that law is so great, and the punishment in some cases is so excessive."

De Villiers also approved of the Act of 1892¹ which introduced English company law *en bloc*; but his influence on the development of the law of the Colony was exerted not so much through the reports of commissions and the resultant legislation as through his judgments delivered day by day in the Supreme Court. He became Chief Justice of the Cape Colony at thirty-one; he died, full of years and honours as Chief Justice of the Union of South Africa, in the seventy-third year of his age. The judgments of those forty long years are his monument—judgments, wrote Sir James Rose-Innes, his successor, "which are never likely to be

¹ No. 25 of 1892.

equalled in number by those of any other Judge and whose lucidity and exposition of the law will lighten the labours of the South African Courts and guide the footsteps of South African lawyers in future times. . . ." They form indeed a mass of precedents which by sheer weight of numbers must have profoundly affected the course of South African law had de Villiers been a much less able man than he actually was. Ability and length of service combined to make his influence overwhelming. He outlasted all the Chief Justices of his own generation in South Africa. Reitz left the Bench to become President of the Free State in 1888; Connor of Natal died in 1890; Kotze of the South African Republic was dismissed by his President in 1898; de Villiers held office till 1914. He saw the death or resignation of all the Cape Puisne Judges of his early days and of many who were appointed much later. As the new generation of judges arose, they found him in his court at Cape Town strong with the experience of years and the vigour of middle age and, after 1896, with his dignity enhanced by his summons to a seat on the Judicial Committee of the Privy Council. Long before the end of his life he had become to all South Africans what his Queen had become to all the world, a symbol and an institution. When, at the Canadian tercentenary celebrations of 1908, the four South African states decided to be represented by one man, he was the man who was sent to Quebec; a sense of fitness, apart from all other considerations, secured his election as President of the National Convention which made the Union; and, on the realization of that dream of his life, he became the first—and hitherto the only—South African peer and inevitably first Chief Justice of the Union.

Yet de Villiers was not so deeply read in the law as some of his brother judges or even as some who were not judges. He knew the Digest, Pothier and above all Voet through and through, but his legal library was smaller than that of many learned brethren who fell far short of him as judges. Good authorities say that he was not well read in modern Civilians other than Muhlenbruch, Savigny and Goudsmid; that there are no traces in his judgments of the works of Glück, Vangerow or Windscheid; and that, generally, he did not sufficiently allow for the fact that the law of Holland was only one special branch of the Roman Law which was still being developed all over Western Europe.

It may be observed, however, that these modern Civilians influenced very few of the South African judges in de Villiers' day; that the works of some of them were not then to be found in the library of the Supreme Court itself; and that, under the influence of Lord Davey, de Villiers latterly did pay much attention to the Scottish Law which has so much in common with the Roman and Roman-Dutch codes. Competent authorities further assert that he was not strong on questions of procedure; that he fell short in the handling of evidence on its purely technical side; and that, had he known more of the arcana of the law, he would have made an even greater name as a judge of appeal. It is not for a layman to sit in judgment on learned members of the bench and the bar. De Villiers might have replied that in the procedure of the Master's department or of the Registry of Deeds, for instance, he was prepared to be guided by the experts of the departments who existed primarily for that purpose; that on the technicalities of evidence he would rely on those who had specialized therein; and, as for appeals, he might, nay would, have answered that, while valuing the opinion of his critics, he retained his own. All these shortcomings may indeed have been his; nevertheless, he was a Judge.

As a judge of first instance he stood alone; and it was a judge of first instance that South Africa needed in 1873 to lay down the law on each case as it arose, justly, systematically, rapidly. Under the circumstances of his early life as Chief Justice, it was an advantage to all that he was a born judge rather than an erudite scholar. Even late in life he held that a judge might well be swamped in an inky sea of jurisprudence. "You and Judge ——," he once said to a colleague whose library he had been inspecting, "read too many books. What you want is to get hold of a good conception of justice and apply it." That, at least, is what he himself did. He knew the law as practised at the Cape; he could see the connections and parallels between the two great and often discordant elements of which it was composed. He was quick to throw aside archaisms; the *Noxae deditio* and *Lex Anastasiana*,¹ hoary with the eld of Delft, Byzantium and Rome herself, had short shrift at his hands; the black letters of the old Dutch *Consultaties* profited them nothing if they were not to the point.

¹ *Seaville v. Colley*, ix. S.C. p. 39.

His outstanding characteristics as a judge were his extraordinary intuitive perception of the side on which equity lay and his determination to find a way out, if the letter of the law seemed likely to do injustice. "Coke," said he in that early judgment on Quit Rent tenure which made his name, "held that every statute ought to be expounded not according to the letter but according to the meaning." With him substantial justice and equity came first, the letter of the law second. In that same judgment of 1875, he quoted Lord Hobart in the Earl of Clanrikard's Case,—“ I do exceedingly commend the Judges that are curious and almost subtle . . . to invent reasons and means to make acts according to the just intents of the parties, and to avoid wrong and injury which by rigid rules might be wrought out of the act.” There was danger in the application of this “natural justice and equity,” but he did not shrink from taking a high line to achieve it. A Jew once applied to him for an order to eject an old lady of eighty from a piece of land which he had bought along with her life interest in it. De Villiers asked counsel why the old lady could not be left to die in peace; but counsel had to reply that his instructions were to ask for the order of ejectment. De Villiers was cornered for a moment and his brow grew black as thunder. Then the way out occurred to him. “This matter,” he said, “will be adjourned *sine die*. Call the next case.” And adjourned it was, till Death removed it to a higher Court than his.

In any rational system of law the fundamental principles are not numerous, the possible application infinite. That is true of the English law; it is still more true of the Civil and the Roman-Dutch codes. Within limits, the judge must declare the law as it is; but there is always a margin within which he must exercise his art to bring the law and social reality together. It was within this margin, a wide one in the South Africa of his day, that de Villiers was most on his own ground. “He was pre-eminent,” wrote Judge Wessels, “in that liberal mind which could appreciate the altered circumstances and the necessity for adapting the Roman-Dutch law to these. In his hands the Civil Law was . . . a living system . . . still capable of adapting itself to modern conditions without sacrificing any of its essential principles.” De Villiers never forgot that he was living in the latter half of the nineteenth century and not of the seventeenth.

"But, Mr. X., there were no railways in those days," was his famous reminder to a too-learned counsel, who sought to apply precedents drawn from a ten-mile-an-hour "horse" society to a Colony which was beginning to move by train at thirty.

De Villiers was fortunate in having to administer justice under a law which recognized no distinction between the courts of justice and equity. "This Court," he announced in 1876, "is a Court of Equity as well as of Common Law." The Law of the praetor, the fusing of the *Jus Naturae* with the *Jus Gentium*, had profoundly affected the Civil Code. It underlay the work of the Dutch jurists of the golden age. After the Fall, wrote Voet, "there remained in the hearts of men . . . some rules of justice and equity, divinely ingraven and inborn, dictating unto each one of us what was lawful and what unlawful, what to do and what to avoid."¹ This conception of the Natural Law had been sadly blown upon by the study of law on historical lines, and de Villiers, the Darwinian, would have differed from Voet as to the date of the Fall; but in spirit he was at one with him. Nevertheless, he added the warning that his Court could "administer Equity only so far as it is consistent with the principles of the Roman-Dutch law." That law was always his datum. "In deciding this question," he said in 1883, "our Courts would not be bound by the strict rule of the Civil law, but would take for their guidance the more liberal principles which guided the Dutch Courts." On the other hand, he did not hesitate to apply principles of English equity where both the Roman and Roman-Dutch codes were silent; he respected English decisions, especially those of the Privy Council and of the House of Lords; in cases where a reconciliation could be made with the Roman-Dutch law, he borrowed freely from English text-books; and he extended the *Lex Aquilia* to cover practically the same ground as the English law of torts.

The most weighty body of legal opinion in South Africa holds that on at least one point he borrowed too freely from English law. During his first year of office, he, with the concurrence of Fitzpatrick and the dissent of Denijssen, upheld the English doctrine of consideration, a doctrine, in its full sense, absent from those legal systems which derive from the Civil Code. The principle of consideration is that something "must be done,

¹ Wessels, *History of the Roman-Dutch Law*, p. 322.

forborne or suffered or promised to be done, forborne or suffered by the promisee in respect of the promise," before the promise can be binding. In giving judgment, de Villiers held that an agreement in writing was not binding in the absence of such consideration.¹ Counsel argued on English lines, quoting English authorities supported by a passage from van der Keessel in an English translation, which rendered "justa causa debendi," the "redelijke oorzaak" of the Dutch jurists, as consideration or the quid pro quo. De Villiers' judgment was characteristic. He upheld the English conception on Roman-Dutch principles and authorities: thesis 484 of van der Keessel, Thompson's *Law of Ceylon*, and a passage from van der Linden in Henry's English translation. He did, indeed, note that Voet held that no consideration was necessary but, for once, he rejected him because he held the balance of authority was against him. It was an open secret that he first made up his mind that consideration ought to form a vital part of all contracts. He then found enough authority to support his decision; he did not find enough to warrant him revising it; therefore, in the interests of substantial justice as he saw it, he gave his decision.

This judgment and others based upon it—for de Villiers was unrepentant to the end of his days—formed one of the standard topics of discussion wherever South African lawyers foregathered during the next forty years. His fellow Chief Justice, Kotze, dedicated his translation of van Leeuwen's "Commentaries" to him; nevertheless, he therein animadverted strongly on his lapse from grace. Rose-Innes later, as Chief Justice of the Transvaal, followed Kotze in repudiating his decision and gained the support of Sir William Solomon. It is commonly said that, as Chief Justice of South Africa after 1910, de Villiers manœuvred skilfully to avoid any decision on this question of consideration, since he knew that the majority of the Appellate Division was against him. If it were so, he was successful; but he had a narrow escape. In the middle of 1914 he was obliged to postpone judgment to give the parties in a case an opportunity to argue the point.² Before the court resumed its sittings, he was dead and the case had to be reopened *ab initio*. It was not until 1919, however, that the Appellate Division definitely set aside his

¹ *Alexander v. Perry* [Buch. 4, p. 59].

² *Green v. Fitzgerald*, 1914, A.D. p. 652.

interpretation of *causa*.¹ His opponents held that van der Linden really spoke only of *justa causa debendi* as the "why and wherefore" of the debt. Obligation has for that *justa causa* the deliberate promise which, when accepted, constitutes a binding contract. They also noted that de Villiers had made no mention of judgments given in the Supreme Court in 1830 and 1841 which told against the English idea of consideration. On the other hand de Villiers' brother, Melius, an ex-Chief Justice and a man more learned in the law than de Villiers, not only held that the two cases, one of which is imperfectly reported, were inconclusive but that consideration of the old Germanic kind which still figures in the English law is not so much an alien as an overlooked element in the Roman-Dutch code.² However that may be, while de Villiers yet lived the legal world as a whole was against him. But Gallio cared for none of these things.

It has been said that the law which he administered was sometimes neither Roman nor Roman-Dutch nor English but "de Villiers' law." It is not for a layman to express an opinion on so nice a point beyond admitting that this probably was so on occasion and suggesting that no other course of action was open, if substantial justice was to be done in face of the law of the day and the rapidly changing circumstances of the country. Nor is there any reason to believe that de Villiers would have denied the accusation; still less to imagine that he would have revised his judgment. There was a strain of obstinacy in his character which forbade him to go back on a judicial decision once taken, in spite of hostile authorities, living or dead—especially living. He rarely had cause even to consider such a retreat. Short of the Judicial Committee of the Privy Council there was no appeal from his judgments until 1904,³ when, after the institution of single-judge divisional courts, it became possible for three of the puisne judges to sit on appeal from his judgment. He was only subjected to that risk for six years, for, at Union, he became permanent head of the Appellate division, and only once did he

¹ *Conradie v. Rossouw*, 1919, A.D. p. 279.

² *S.A. Law Journal*, Aug. 1921. Authorities still differ among themselves as to the precise meaning and content of the words *justa causa*. They are only agreed that the Villiers' interpretation of them was wrong.

³ No. 35 of 1904.

suffer at the hands of his colleagues,¹ who, being human, did not conceal a certain mild enjoyment in doing for him what he had often done for some of them.

The Privy Council, on the other hand, usually deferred to his knowledge of the Roman-Dutch law. Appeals from his Court were never frequent and they became rarer as the years went by. Twice during his first two years of office his verdicts were referred to that Court, once with the concurrence and once against the findings of his colleagues, and on both occasions his judgments were upheld.² Once, the Privy Council differed from him on the point whether a principle of English law which he had invoked really formed part of the Roman-Dutch law, but upheld his decision on other grounds.³ In four cases only did My Lords reverse his judgments.⁴ He bore these unaccustomed reversals hardly. He was a strong-minded man: he had had to assert himself at the start to maintain his position at all; he had long been left to develop the law single-handed, for in the early days especially his colleagues had been markedly inferior to him. He naturally developed a somewhat pontifical frame of mind and the stages in the growth of that mentality are traceable in his reactions against the adverse decisions of the Privy Council. In 1887 two of his judgments on cases arising out of the administration of the Hiddingh estate were reversed. He promptly defended himself in his own Court. Then in 1894 he openly showed his annoyance. The High Court of Griqualand West had held that there had been no fraud in a certain case; de Villiers held that there had. To his dismay, the Privy Council upheld the court of first instance. On the morrow he took his seat in court and curtly announced, *à propos* of nothing, that "this Court will never be able to find fraud in any case if there was none in the Orange River Asbestos Company case." His last passage of arms with the Judicial Committee occurred early in 1904. During the South African War, resident magistrates

¹ Soeker v. Colonial Government (1907, S.C. p. 662 and 3 A.C. p. 207).

² de Villiers v. Cape Divisional Council (June 1875) and Union Steamship Co. v. Table Bay Dock Commission (Aug. 1875).

³ Eastern Telegraph Co. v. Cape Town Tramways (1902, A.C. p. 381).

⁴ Hiddingh v. Executors of H. (II. Juta, p. 298); Hiddingh v. Denijssen and others (III. Juta, p. 424; V. Juta, p. 304); Trustees of Asbestos Co. v. Hirsche (X. Juta, p. 71; 1894, A.C. p. 654); Rex v. van Reenen and Smit (20 S.C. p. 667).

had been appointed deputy-administrators of martial law (D.A.M.L.). As such, their functions were quite distinct from those which they usually exercised. Nevertheless, two men, van Reenen and Smit, were sentenced for a breach of martial law regulations by a magistrate acting apparently in his dual capacity. De Villiers, on appeal, held that, as the record of the trials showed that they were the work of the "Resident Magistrate and Deputy Administrator," the appellants stood convicted, not only under martial law but also under the ordinary law of the Colony. He therefore set aside the convictions in so far as they were the work of the resident magistrate. The Privy Council, however, held that he had been in error, in that he had treated a mere memorandum of the charges as the record of the trial. De Villiers was furious. He delivered himself of his opinion on the judgment in open court :

... It is right that I should take an early opportunity of removing some misapprehensions regarding the action of this Court in the matter. Unfortunately the respondent was not represented by Counsel in the appeal and consequently their Lordships seem not to have been informed of the actual nature of the proceedings with which this Court had to deal. . . . The papers laid before this Court were the usual documents sent to the reviewing judge. . . . It must have escaped their Lordships' notice that the application which was granted was to set aside the proceedings of the Magistrate's Court and not of a Martial Law Court. . . . The Privy Council . . . regarding the documents, so far as they represent the trial to have taken place before the Magistrate, as waste paper and practically non-existent, deemed it unnecessary to interfere with the proceedings at all. Fortunately, as far as the respondent is concerned, the practical effect of the two points of view is exactly the same for, after the remarks of the learned Lord Chancellor, it will be impossible hereafter to charge the respondent with having been convicted by a Court of this Colony.

Having thus reversed the decision of the Privy Council to his own satisfaction, he proceeded to the business of the day ; but competent legal authorities in South Africa held and still hold that their Lordships were right and he wrong after all.

These unfortunate episodes did nothing to shake his prestige in the eyes of the Lords of the Privy Council, a prestige which was later on enhanced by personal acquaintance. He took his

seat among them for the first time in 1897. War, ill-health and his parliamentary duties prevented his regular attendance; but he delivered famous judgments on appeals arising not only from South African and Cingalese Courts but also from the Courts of Malta and Mauritius.¹ Though he sometimes asked to be excused from attendance at cases other than Roman-Dutch, his colleagues, from the Lord Chancellor downwards, would not hear of it. "I remember," wrote Mr. Merriman to de Villiers' elder son, "Lord Loreburn, then Robert Reid, saying to me that your father's talents were the only thing that redeemed the experiment of placing colonial judges on the Privy Council from being a complete failure."²

The reputation, which de Villiers thus achieved in later life in London, he enjoyed much earlier in South Africa. As far back as 1886, one of the stock arguments of those who opposed the creation of a court of appeal in the Colony other than the Supreme Court or the extension of full concurrent jurisdiction to the Eastern Districts Court was, that the Cape Town Court was de Villiers and that therefore appeals need go no further; the standing complaint of those who differed from them in the matter of policy was, that the description of the Cape Town Court was only too true. Certainly the Government and the leading bank in the Colony were willing to take that view when, in 1887, they withdrew an appeal to the Privy Council and submitted their dispute to his arbitration.

The almost autocratic powers which he wielded in his court brought the inevitable penalties upon the heads of his successors. The General Law Amendment Act of 1879 was based upon his report; its drafting was practically his. That Act made a revolutionary change in the law of the Colony. It did so in simple language but, since his death, that very simplicity and generality have given rise to many difficulties. He knew what he meant to convey in the wording of the act; he could interpret the words "such like unavoidable misfortune" as including war³—even though, off the bench, he considered the war of

¹ From Ceylon, *Gauder v. Dassenaike* (July 1897); from Natal, *Galliers v. Rycroft* (July 1900); from Mauritius, *Ibrahim Esmael and others v. Abdool Carrim Permamode and others* (July 1908); from Malta, *Strickland v. Strickland* (July 1908).

² J. X. Merriman to P. de Villiers, Sept. 9, 1914.

³ *United Mines of Bultfontein v. de Beers* (17 S.C. p. 419).

1899 by no means unavoidable. Others do not find that meaning in the words, and are hard put to it to read between the lines elsewhere. On the other hand, his very tendency to be dictatorial led to speedy justice. In his letters, reports and judgments he went to the point at once. He hated delay and, at times, showed impatience to get to the main issue. "No, no, Mr. X.," he would say, "I want evidence led on this point." In later life he was apt to become restive if cross-examination were unduly prolonged, especially as the clock neared the hour of 12.30, which marked the time of his departure to catch the lunch train home. Nor did he bear easily with verbosity. Once the most lovable, learned and long-winded barrister of the day was reading a declaration, which relentlessly followed each side-issue to its tortuous end. As the reading went on, page after page, de Villiers leaned back in his chair with closed eyes. At last counsel broke off to remark that, at this point, several letters should have been read but that, to avoid prolixity, they had been omitted. De Villiers leant forward and asked gently: "Did I understand you to say pro-lix-ity?" He practised what he preached. His judgments were sometimes long but never diffuse. He never overstated them; rather the reverse, for critics noted that he usually gave his reference to authorities in general terms and seldom declared within what limits or on what lines it was legitimate to apply the principles he invoked. Perhaps he did so because the less he said the less he might one day be called upon to unsay. He rarely strained his points of law; nevertheless, he had a pretty taste in such matters provided they were relevant to the main issue. In later years, he seemed to show comparatively little interest in cases which turned purely upon questions of fact but he could always be roused by the mention of a point of law. Sometimes counsel found his newly awakened interest embarrassing. As one South African judge put it, looking back at the days when he practised in de Villiers' court, "the only difficulty was that sometimes he seemed not to realize that Counsel had to argue a point which he knew to be a bad one, but which he had to take as it was the only point in the case. De Villiers seemed to think:—'It is a pity that this man, who knows some law, should go astray on this point,' and he would proceed, very nicely, to try to convince counsel that he was wrong. Counsel knew he was wrong, but he was paid not

to be convinced, and only wished that the Chief would leave him to put his rotten point briefly and sit down."

However interested de Villiers might show himself in argument, he never paralyzed counsel with questions. On the other hand, nothing pleased him better than to be able to base his judgment on a point of law which counsel had overlooked, still more on one which counsel, in spite of an *ex cathedra* hint, had declined to follow. But, on whatever his judgments were based, they were usually delivered promptly. During his first year of office he gave judgment on a complicated case within forty-eight hours of argument, quoting Voet, Groenewegen, Grotius, van Leeuwen, van der Keessel, Gaius, the *Institutes*, the *Digest* and the *Code*.¹ Again in 1874, he gave judgment within twenty-four hours, quoting Voet—for Voet was rarely absent from the great cloud of witnesses to the soundness of his law—the *Digest*, Maude and Pollock, Story on agency, Addison on Torts, and various English decisions.² The only occasions on which he delayed giving judgment were when he was not satisfied that equity was on the side of the litigant who, he felt, must be successful.

His speed made his court popular with advocates, attorneys, jurymen, witnesses and litigants alike. They soon learnt that, however much redundancy he would check and however quickly he pronounced judgment once he had made up his mind, he would never hurry the hearing nor shut his ears to fresh evidence. No case in his court was ever lost till it was won. Usually at the beginning of his judgments he would look straight before him; but soon he would turn towards one or other of the advocates and then all knew what was coming; especially the advocate thus addressed. For he always faced the losing side and gave his verdict as if he were concerned to convince him of his errors.

In spite of his cold and sometimes brusque demeanour, he became the most popular of all South African judges—popular in the sense that all were glad that it was he that was to hear the case and not another. Witnesses valued his presence on the Bench, for he particularly disliked advocates who thought that cross-examination meant examining crossly. Nor did he conceal this dislike and frequently hinted strongly that a witness should

¹ *Bellingham v. Blommetje* (1874, Buch. p. 36).

² *Gifford v. Table Bay Dock Commissioners* (1874, Buch. p. 96).

be left alone. Counsel, on the other hand, felt safe in his hands, for he never held himself bound by their admissions, if he thought they went too far against their clients. The farmers and the country-folk loved him because he explained everything as it arose; not like "one of those concur-judges," said one old jurymen, who went too fast and left the jury in doubt as to the actual point they had to decide. Usually, even the defeated party in a case felt somewhat ruefully that, if Sir Henry gave the verdict, it must be all right. No higher tribute could be paid to any judge.

Three things especially moved him to wrath in Court—lying, sharp practice, and culpable ignorance. He knew what evidence was worth on its human side. The lying witness and the shifty counsel—if such there ever were at the Cape bar—fared ill before "the boy in ermine" with the eyes of an eagle set in the lean, grave face above the close-shut mouth and the square jaw. With increasing age and dignity, the effect of those deep-sunk eyes was still more paralyzing. Yet he rarely lost his temper and, on two of the few occasions on which this is recorded of him, the outburst was called forth not by the ape or the tiger in his fellow-man but by the donkey. Once, an advocate applied for the enrolment of another advocate at Grahamstown. The papers were all in order but the applicant gave the name of his client wrongly and was duly corrected. He then asked that his client be enrolled in the non-existent Court at Kingwilliamstown. "Try," cried de Villiers, "to read your papers before you come into Court," and jerked the papers down the long table with such force that they spilled off the far end. On the second occasion, he asked a young and somewhat bumptious advocate whether he had any authority on a given point. "No, my Lord," was the reply, "that never occurred to me." "Very well," said de Villiers, "the Court will adjourn till 2 o'clock, and perhaps by that time you will have something to tell it." In the afternoon he repeated his question. "No, my Lord," said the advocate, "I have nothing to add; but I expect your Lordship's judgment will prove both interesting and illuminating!" The judgment may have been all that counsel expected but the preliminary remarks were infused with such heat that he thereafter transferred his talents to a more equable atmosphere.

De Villiers never resented resistance to his views on the part

of counsel provided it was made with courtesy and good temper ; but few dared to take liberties with him. Few even ventured to laugh in his presence. Dignity clothed him as with a garment and spread its train over all the precincts of his Court. There were times when those present were hard put to it to contain themselves ; and once it is recorded that he smiled, for the joke was against himself. An architect and a client were in dispute. The architect insisted that he had not advised the client to have an addition made to her house though he had suggested it. " Oh ! " said de Villiers, " and what is the difference between suggestion and advice ? " " Well," replied the unabashed Daedalus, " on a point of law I might suggest to your Lordship but I would never presume to advise." Usually de Villiers never relaxed a muscle. At a time when gramophones were less efficient than they have since become, a case came forward which included a question of audibility. De Villiers demanded that the court hear the instrument. Whether by chance or design it was set going to the strains of " We won't go home till morning." Tune and words were only too plain. " That will do," said the Chief ; but all efforts to stop the machine proved fruitless. " Take it away," he commanded ; and taken away it was triumphantly proclaiming its outrageous intentions *diminuendo* while de Villiers imperturbably gave his decision.

It was not for nothing that de Villiers had studied science. His determination to take nothing for granted which could be tested by experiment appeared in his handling of the notorious Radziwill case. Bills bearing Rhodes' signature were in circulation and it was alleged that these signatures had been copied from a signed photograph. During the hearing of the case, the Chief was observed to be fiddling with a bundle of papers. Afterwards it was found that he had been carefully comparing a tracing of the signature on the photograph with those on the bills. He noted that in all respects they were exactly similar, far too similar indeed to be the genuine signature of any man ; hence he satisfied himself, quite apart from any other evidence, that they were forgeries. Again, the chief evidence against a man charged with murder was that of two boys who claimed to have seen him at Middelburg in the twilight. De Villiers knew his Midlands and was dubious as to the existence of twilight there at the time of the year. " What is twilight ? " he asked

the Astronomer Royal, and Sir David Gill replied that, whatever it was, there could have been none to speak of at the time of the murder.

De Villiers was always ready to give the accused the benefit of the doubt. He would never yield on a point of law, but more than once, autocrat though he was in his own Court, he deferred to the opinion of his colleagues on questions of fact. Once he and another judge were hearing a very grave charge against a woman. De Villiers said that had he been sitting alone he would have found the charge proved; but that his colleague differed from him, thereby giving rise to a doubt whether a jury could have found the accused guilty. Wherefore he concurred in acquitting the accused. His conduct in this case was closely allied to one side of his work as a judge which was known to very few. His children may have wondered, friends may have guessed why Lady de Villiers at times kept them away from the part of the house where the study was. During vacation it was different; then, the Chief Justice was always ready to talk or to potter about in his beloved farms and vineyards as became a good Huguenot; but in term time his sons complained that he never took a holiday except to write judgments. Whether those judgments were grave or comparatively unimportant, de Villiers was wrapped up in them; but only he and his wife knew of the worry by day and the sleeplessness by night which his most serious cases cost him. Above all did the capital cases torture him. There were days when he would not be spoken to. "Do not speak to me now," he would say, "I have a man's life on my hands and I am not quite sure."

In the delivery of his judgments he was fearless. "Lions be they," wrote Bacon of Judges; and in his own Court de Villiers was a lion of justice. On two famous occasions, once in the troubled year 1879, when all South Africa was plagued with native wars and unrest to say nothing of trouble among the Europeans, and again in 1895, when trouble was apparently feared in Pondoland, he did justice regardless of political consequences. In both cases much less than justice had been done to natives, who appealed to him for redress. In giving judgment in the second case, that of Sigcau, he said:

The Court has been warned that the release of the petitioner might possibly endanger the peace of the country. A similar warn-

ing was addressed to the Court in 1879. . . . In giving judgment I ventured to make the following remarks: "It is said the country is in such an unsettled state, and the applicants are reported to be of such a dangerous character, that the Court ought not to exercise a power which, under ordinary circumstances, might be usefully and properly exercised. The disturbed state of the country ought not in my opinion to influence the Court. . . . The Civil Courts have but one duty to perform, and that is to administer the laws of the country without fear, favour, or prejudice, independently of the consequences which may ensue."

Videant consules.

It has been written of Voet: "He was no narrow, hidebound lawyer seeking refuge in forms and technicalities so dear to timid men of weak intellect. He recognized law as a science and an art, and not merely a bundle of unconnected rules. . . . We may not always agree with his views, we may not always accord to him the highest place as a methodical expounder of the law, but we cannot deny to him an inimitable power of interpreting the law on any particular point."¹

It might well have been written of de Villiers who, more than any other notable judge, relied on Voet and brought out the best that was in him. But, if de Villiers' conception of jurisprudence was that of one great Roman-Dutch jurist, his conception of the administration of justice was that of another, who was also a judge. Bijckershoek died a hundred years before de Villiers was born; but spiritually the two were one, deep calling unto deep. In many respects their very careers were similar. A storm, partaking of something of an inter-provincial character, had raged over the appointment of Bijckershoek as Chief Justice: yet all had been pleased once he was fairly seated. He had held office for many years and death did not destroy his influence. It had been his aim to set out the law as it was actually practised and practicable; he had thrown aside archaisms, gone to the root of the matter and, when necessary, refused to follow precedents however great the weight of antiquity behind them. Sometimes he had gone too far in trying to overturn established practice. He had never hesitated to appeal to judgments of his own court as precedents; he had bluntly differed from the majority of his colleagues on occasion. Withal he had abominated pettifogging lawyers and had not concealed his opinion of

¹ Wessels, *History of the Roman-Dutch Law*, p. 325.

inferior colleagues. Neither had he suffered fools gladly. He had constantly been appealed to as arbiter by the bickering cities of the Netherlands ; as an international lawyer and an authority on shipping and commercial law he had enjoyed a European reputation ; and he had left behind him an impression of having been much more modern than some of his successors. It was not without a certain fitness that the only portrait of a judge in de Villiers' study was that of Bijnkershoek ; for the sword of Roman-Dutch justice which Bijnkershoek had let fall in far-distant Holland was never wielded again so strongly or so skilfully till de Villiers took it up in South Africa.

CHAPTER VI

THE COURTS

As Attorney-General, de Villiers had advocated a thorough reform of certain departments of the law and the reorganization of the courts of the Colony. The first part of his policy had largely been carried into effect by 1879; the latter proved to be a much harder and longer undertaking, for in it were involved local, personal and political interests some of which to the end outweighed purely judicial considerations. Nevertheless, the general lines along which he hoped to see his reforms carried out were laid down clearly at the beginning of 1875.

In the preceding July he had been appointed chairman of a strong commission to overhaul the working of the law courts of the Colony and of the departments connected therewith. He conducted most of the examination of witnesses himself, and drew up the draft which provided the substance of the final report. The spirit of that report was certainly his. "Your Commission," he wrote, "... have proposed to modify and reform existing institutions rather than sweep them away for the purpose of making doubtful experiments..." On most points the Commissioners reported unanimously. They recommended that the duties of the President of the Legislative Council be placed in other hands than those of the Chief Justice; that the Attorney-General make way in the Cabinet for a Minister of Justice; that circuits be undertaken as usual twice yearly, and that prosecutions be left in the hands of advocates and the local court officials; that the civil jurisdiction of Resident Magistrates be somewhat extended, but that no further criminal powers be entrusted to them and no further powers of any kind to the Justices of the Peace; that all limitations on the right of criminal appeal to the Supreme

Court be removed; and that the two-judge Eastern Districts Court be regarded as unsatisfactory.

It was on the method of remedying the defects of the Grahamstown Court that unanimity ended. Unsatisfactory that court most certainly was. The system of circuits presented few difficulties. The three Cape Town judges were primarily responsible for the Western Circuit, the two Grahamstown judges for the Eastern, though any judge could be called upon to take either. On the other hand, the system of appeals was complicated. Appeals from magistrates' courts lay direct to the Supreme Court but they could be taken to a circuit court, provided the magisterial area lay entirely within the jurisdiction of that circuit court. In the Eastern Districts appeals could also be taken to Grahamstown, whither cases pending in a circuit court could also be removed for hearing by order of the presiding judge or consent of both parties. Appeals from all circuit courts and from the Eastern Districts Court itself lay to the Supreme Court at Cape Town, which could also hear any cases on which the two Eastern judges had agreed to differ. Fitzpatrick and two Eastern members of the commission demanded a Supreme Court of a Chief Justice and five Puisne Judges sitting in two divisions; the Court at Cape Town exercising jurisdiction over the whole Colony but responsible for circuit work in the West alone; the other, with three judges, to sit at Port Elizabeth exercising jurisdiction in the East. To avoid the conflict of precedents which must arise, they proposed a meeting of the full Supreme Court to effect a reconciliation. Appeals from both divisions were to lie directly to the Privy Council, though some Eastern witnesses pressed for an intermediate Cape Appeal Court of five of the judges. The minority report was the old story of separation in a judicial form; for the Cape Town Court would cease to hear Eastern appeals as soon as the Grahamstown Court secured concurrent jurisdiction. A third alternative was put forward by the Kaffrarian and some of the Midland witnesses, that of a strong Court at Cape Town to hear appeals from five or more single-judge courts as in Griqualand West; in other words, the judicial application of the Seven Circle Bill which had just been passed regulating the election of Legislative Councillors.

De Villiers and the majority would have none of it. They took their stand on the words of Earl Grey's despatch of December 4,

1846, that the supremacy of the Court at the capital must be "among the stable (if not immutable) principles of the judicial system." They therefore recommended a strong Court of six members sitting at Cape Town whose puisne judges should sit one at a time in rotation at Port Elizabeth, thereafter take the Eastern Circuit and then return to headquarters. This was de Villiers' scheme throughout his life. He fought hard for it in the session of 1875, even descending from his presidential chair to make one of his rare speeches. The sole immediate outcome of the report was an Act giving a single judge power, during vacation, to do the civil work for which two had hitherto been required, and another in the succeeding year abolishing all limitations to the right of appeal to the Supreme Court in criminal cases. The major reforms were not carried out at the time; opposition to most of them was serious; four months after de Villiers' commission had reported, Lord Carnarvon's confederation despatch arrived and, for the remainder of its life, the Molteno Ministry was involved in the grave political issues raised by the attempt of the Colonial Secretary to urge confederation forward in an unready South Africa.

De Villiers, however, never ceased to press for a reform of the courts and all that appertained thereto. His desire to see the Chief Justice and the Attorney-General, the Chief Justice presumptive, removed from the sphere of party politics was a result of his own experience. During the uproar which had accompanied his elevation to the bench, the opposition had taunted the Ministry with trying to make sure of the President's casting vote in the Upper House. The suspicion was groundless; de Villiers again and again saved the life of Cabinets of which he disapproved, notably of Jameson's Ministry of 1904; but, reserved and silent as he was, he was less than fair to himself, for he never made clear to the public his distaste for combining his incongruous tasks. In official correspondence, however, he returned to the point repeatedly. He did not complain that the work was heavy, nor did he deny that the Chief Justice formed a useful link between the legislature and the bench but, as in 1875, so in 1877 and again in 1879, he wrote¹ "the Chief Justice should take no part in legislation or political discussions. Besides being hindered in the discharge of his judicial duties during the sitting

¹ de V. to Barkly, Feb. '77.

of Parliament, he may not always be able to escape the suspicion of being a political partisan." Nor, he added, was it always pleasant "sharing in the labours of the council without taking an active part in its more important deliberations." *Et ego in Arcadia!* De Villiers the President at times put an almost intolerable strain on de Villiers the Chief Justice. Only once did he break silence on this subject in public, and that was during the carefully engineered attack upon him after his settlement of the dispute between President Kruger and his judges in 1897.

In their cooler moments all men admitted that he handled the double work skilfully and impartially; so much so that, when the responsible government constitution for the Transvaal was being framed in 1906, it was proposed that the Chief Justice should preside over the Upper House. Rose-Innes, the Chief Justice, strenuously and successfully resisted the proposal for, he wrote, such a course must lead to disaster unless a succession of de Villiers could be guaranteed. De Villiers himself never lost hope that he would one day be relieved of his presidential duties, duties which he would lay down "with regret but not unwillingly"; all the more willingly when, later in life, he found his parliamentary work stand in the way of his regular attendance at the sittings of the Judicial Committee of the Privy Council. But Union alone relieved him.

During his year of office as Attorney-General he had also discovered to his cost the difficulties of discharging the legal work of that office alongside its political duties. Apart from sheer physical strain, there was the spiritual strain set up by the party connection. In 1875 he therefore proposed that the political duties should be handed over to a Minister of Justice. Four years later he suggested the appointment of a Minister of Justice and Education, for in his eyes the bearing of education on crime, at all events, was sufficiently obvious. Again, he had to wait for the Union which was to realize some at least of his dreams; but when Union was achieved, the long-looked-for Minister took justice only, while education was relegated to the Minister of Mines and Industries, a curious concession to utility at the expense of ethics.

De Villiers' proposed reforms of the administration of justice extended from the foundations upwards. He, the grandson of Jacob "Vrede Regter," had in 1875 refused to confer minor

criminal jurisdiction "in outlying and thinly populated places, which are wholly destitute of public opinion, on an unpaid and virtually irresponsible magistracy" as the Justices of the Peace were. Similarly he had declined to hear of any extension of the criminal jurisdiction of the resident magistrates, whose ranks his elder brother, Jacob, had just joined. Rather the contrary; for he held that the powers of these officials, isolated as they were, subjected to all the pressure of their neighbours and unchecked by a jury, had already exceeded the limits of safety. Nevertheless, in 1876 the civil and criminal powers of the inferior courts were extended, and provision made for giving criminal jurisdiction to J.P.'s in areas far removed from magisterial courts.

In 1884 he returned to the charge. He was much exercised in his mind as to the fitness of some of the magistrates for their posts and had already urged that, in populous centres at least, they should be appointed from the bar and side-bar and not, as hitherto, exclusively from the ranks of the civil service.¹ Complaints reached him from brother judges of the masses of magistrates' decisions which had to be reviewed; yet it was these men, far more than the judges, who were charged with the daily settlement of the disputes of the people. Most of the complaints arose from the Eastern districts. Times were hard, stock thieving was rampant, and the more and more vigorous use of the lash by magistrates had failed to check it. De Villiers took the Eastern circuit. He found the frontiersmen clamorously supporting a bill introduced by one of their members making flogging the automatic punishment for stock-theft, and the magistrates, under the inspiration of the debates in Parliament and popular outcry, flogging more indefatigably than ever. At Port Elizabeth he spoke his mind about the bill and the lash, condemning the one as an interference with the freedom of judge and magistrate alike and the other as a failure. In words reminiscent of Sir Bartle Frere's remedy for frontier troubles, he held that the proper cure for stock-theft was the regulation of canteens, an adequate police force and, to those in authority he added, a more careful selection of magistrates. The information which he gathered from the Judge-President of the E.D. Court and from his own observations on this circuit confirmed him in his determination to resist any further dispersion of criminal jurisdiction.

¹ Speech to S.A.C. students, Sept. '82.

The keynotes of de Villiers' policy were indeed concentration of power in the hands of one strong and efficient court and a jealous maintenance of the independence of the bench. More than once he had to fight hard to defend the status and the salaries of the judges on which that status, largely depended. In 1883 a commission reported on the condition of the civil service. Salaries, pensions and the age of retirement were all considered, and some of the members, notably Abercrombie Smith, tried to bring the judges within the purview of the commission. De Villiers probably agreed with a fiery brother judge who described Smith's action as "downright impudence," but he couched his protest on behalf of the bench in more parliamentary language. Throughout his life he maintained that judges were not civil servants, but referees between the Government and the people. If they were to be regarded as civil servants, how far were they to be subordinated to a higher authority?

In the event, Smith and the commission left the judges severely alone. A little later, however, during the acute financial depression of 1886, Parliament once more essayed to reduce salaries from those of the judges downwards. In the previous year de Villiers had had a passage of arms with the Attorney-General, who had claimed that civil servants were subordinate to him. Now, the Legislature was in effect claiming that the judges were civil servants. True, Ministers reduced their own salaries, and one of the Kimberley judges offered to give up his special cost of living allowance if necessary; but de Villiers refused to have the judges' salaries touched. He protested on the grounds that the largest percentage reductions fell on the judges and, then much more strongly, that to tamper with their salaries was to make them the sport of politicians. With his permission, his letter was read in the Assembly.¹ Sprigg, the Treasurer, attacked him, alleging that judges were responsible to Parliament since the Ministry which appointed them must have the confidence of the two Houses, which alone could secure their removal.² Merriman took up the cudgels on behalf of judicial independence and, a day or two later, de Villiers closed the matter by characteristically declaring that, though he did not deny the legal competence of Parliament to deal with judges' salaries, "what is strictly legal is not always constitutional." "Lions, be they," but lions

¹ *Proceedings*, May, 21, 1886.

² *Cape Times*, May 22 and June 5, 1886.

under the throne, not under the Cabinet round-table or the benches of Parliament.

Hard things were said at the time and afterwards of the meanness of the judges and of de Villiers in particular for refusing to submit to a reduction of their salaries during a time of financial stress. There are those who have accused de Villiers of caring only for his own interests and disregarding those of other people. He was indeed tenacious of his rights and prudent to the verge of parsimony with his own money, though he was equally careful of other peoples', especially when it was drawn from the public chest. In this case of the judges' salaries, as Upington, the Prime Minister, insisted, he was fighting the judges' battle rather than his own since most of his salary was out of the reach of Parliament. The Charter of Justice had given the Chief Justice £2,500 and puisne judges £2,000. These sums had been reduced later to £2,000 and £1,200. In 1874 and 1875 the salaries of the puisne judges had been raised to £1,500 and the scale of legal fees increased side by side with the pay of civil servants. On the other hand, the purchasing power of money had declined since 1834 and the work of the Chief Justice grown enormously. Nor had de Villiers any means of increasing his income. True, as Judge of Vice-Admiralty he was, by an apparent oversight in the Royal Warrant, entitled to draw fees; but this he declined to do, partly because he could not reconcile the practice with the Charter of Justice and partly because he had "the utmost repugnance to receiving payment for judicial work by fees." At his orders the fees were made over to charity and, in 1879, he proposed that they should be paid into the Treasury. From time to time in the 'seventies members suggested that, as President of the Legislative Council, he should receive the same salary as Mr. Speaker; but at first he held that his duties as President were *ex officio*, and that any increase of salary should come to him as Chief Justice. He did, however, later on, accept an allowance which raised his income to the old scale laid down in the Charter of Justice, an allowance which Solomon insisted should be personal to him and not to the office. When all is said and done, if he lacked appreciation of the finer points of the gracious art of giving, he understood and practised the less popular art of not taking.

The same instinct for economy appeared in his continual attempts to avoid the expenses of the law, for was it not written

“to none will we sell or deny or delay right or justice?” Speed in criminal cases is of the essence of justice; undue expense and delay may amount in all cases to an effective denial. Throughout his life he sought to simplify the machinery and procedure of the courts, to avoid multiplicity of appeals and to secure the efficiency of the judges themselves. To that end he urged the abolition of the distinction between advocates and attorneys:

“We lawyers,” he wrote, “are instinctively conservative and are apt to think that ‘whatever is’ in our profession ‘ought to be.’ . . . It has often struck me that the separation of the duties causes a great waste of time and energy, and consequently an unnecessary expenditure of money. . . . The chances are that in the end the judge has to discover for himself as best he can the facts of the case and the law relating to those facts, and that if the Attorney had been allowed to appear before the Court the facts at all events would have been lucidly stated and the evidence fully extracted. . . . The illustration I have given does not of course represent the normal state of things. As a rule the advocate has been better trained and educated than the attorney and therefore, *ceteris paribus*, would do the work in Court better. But why should not the same qualifications be required for both? . . . On principle there seems to be no objection to an attorney and an advocate entering into partnership together. But in no case do I think ought costs to be allowed upon the footing of a separation of the functions. . . .”¹

For the same reason, at the opening of the 1885 criminal sessions at Cape Town, he pronounced the Grand Jury unnecessary and anomalous; unnecessary, in that each case must already have passed through the hands of the magistrate and Attorney-General; anomalous, in that the Grand Jury was unknown to the Eastern Districts and circuit courts. The Grand Jury was abolished shortly afterwards.

He always took the keenest interest in the circuit courts. As an advocate he had learnt much at their sessions: as Chief Justice he hoped that the visit of my Lord the Queen's Justice was a benefit to the various parts of the Colony, and he was certain that it was pure gain to the judge himself. He repeatedly took the Western circuit and several times, from 1877 onwards, the Eastern also. “The system of interchanging Judges is working well,” wrote a Judge President of the Grahamstown

¹ de V. to J. G. Kotze, March 23, 1885.

court. "No wonder when it brings you. I doubt if it would be so popular if it brought someone else."¹

The main virtue of circuit courts, in de Villiers' eyes, was that they were the peripatetic variant of the single-judge courts which he strove to make the rule in all the Colony outside Cape Town. He held that there should be one powerful and efficient court for the whole Colony supported by the strongest possible bar at the capital. From this central court, clothed with its authority and fortified by personal contact with the full bench, judges should go forth to the single-judge courts in rotation, there to sit for six months and, after taking the local circuit, return for rest and further inspiration to headquarters. A two or three judge court outside the capital he regarded as an expensive encumbrance: on such courts he waged unceasing warfare, and thereby earned the respectful hostility of two generations of Grahamstown lawyers and townfolk.

Commenting on Carnarvon's Permissive Federation bill, a bill largely inspired by Natal and Eastern Province sentiments, he wrote:

The more legislation in regard to the administration of justice is localised, the greater is the tendency to increase the number of judges. . . . In some of the Colonies the number of the judges is quite out of proportion to that of the population. In this Colony the disproportion is not so great, but even here we have five judges to do the work which four could conveniently perform. In the Orange Free State there are three judges for a population not much exceeding 60,000. In Natal there are, I believe, three judges, but I have been informed by one of them (Mr. Justice Phillips) that there is not more business than one could conveniently attend to. . . . If . . . this Colony be divided into two or more provinces, I fear the number of judges will soon be increased to such an extent as seriously to lower the standard of efficiency.²

De Villiers was master in his own court and, from the first, he was determined that that court should be really supreme. It was bad enough that the systems of law and practice in the scattered States and Colonies of South Africa should diverge. Till confederation should bring with it a South African Court of Appeal, that danger must be borne; but he set his face against anything like full concurrent jurisdiction for the Eastern Districts court or any other, a jurisdiction which must lead to "the silent growth

¹ E. J. Buchanan to de V., Oct. 23, 1884.

² de V. to Barkly, Feb. '77.

of conflicting systems" within the Colony itself. Still more, then, was he opposed to seeing single judges permanently stationed in different parts of the country. The Recorder system might work well enough in so small and densely populated a country as England; in the immense, thinly populated Colony the isolation of judges from their fellows would be dangerous; pressure, conscious and unconscious, by neighbours and local interests would be fatal. If the magistrates must be exposed to these difficulties, all the more reason that those who had to review their decisions should be freed from them.

In 1879, while the confederation of South Africa under Carnarvon's scheme was still regarded as a possibility, an appeal court for the Colony alone was established. There was much to be said for it. An intermediate court of appeal below the Privy Council was desirable. It was, indeed, partly to supply that lack that de Villiers worked for his South African Appeal Court. The new Cape court now established was framed on lines capable of easy expansion into such a court by the inclusion of judges from the courts of other States and Colonies. The Act was the work of Sprigg's Ministry, a body drawn entirely from the Eastern province; wherefore the Grahamstown court at last secured its third judge. It did so with de Villiers' qualified blessing, for he faced the drawbacks for the sake of the advantages conferred by the Act. The appeal court consisted of himself, the new Judge President of the Eastern Districts Court and two puisne judges appointed by the Governor to rank above the other judges. In practice these two judges were de Villiers' Cape Town colleagues. To this court came criminal appeals from all other courts in the Colony, and civil appeals from the Grahamstown and circuit courts.¹ Full concurrent jurisdiction for the Eastern District Court was still unrealized. Three years later, after the annexation of Griqualand West to the Colony, the appeal court was increased by the addition of the Judge-President of the new three-judge High Court which now took the place of the overworked Recorder. The main reason which induced de Villiers to acquiesce willingly in the erection of another such court was that the climate and conditions of life at Kimberley, at that

¹ Five judges were required to hear civil appeals from the E.D. Court, when all three Grahamstown judges had been unanimous. In all other cases three were sufficient.

time, were so trying that one judge was bound to be away recuperating while another would be called upon to conduct the Special Court which dealt with breaches of the diamond laws—breaches which did much abound in 1882.

The Cape Appeal Court on the whole answered its purpose. Its decisions were listened to with a great and growing respect such as was accorded to those of no other court; but it had its weaknesses. It was cumbrous and expensive; its work could be done as effectively by the Supreme Court; indeed, its work was largely done by that court in practice. Once at least de Villiers and his Cape Town colleagues had outvoted the two Judge-Presidents: the precedence given to the Cape Town puisne-judges galled their brother justices in other courts; the fact that appeals from the Western Circuit came up from the Supreme Court to an appeal court which might contain the judge whose verdict was being called in question was an anomaly; the frequent absence of the Judge-Presidents tended to delay business. Above all, in de Villiers' eyes, its *raison d'être* had disappeared with all immediate hope of confederation and only its objectionable element remained—the partial recognition of the equality of the other two Colonial courts with his own. Wherefore, on April 16, 1886, in the Legislative Council, he spoke out in favour of its abolition and of the reduction of the number of judges in the Grahamstown and Kimberley courts, partly in the interests of economy, but mainly in those of a system of single-judge courts as defined by him in 1875. One exception only would be made. Kimberley must have two judges to staff its two courts.¹ Incidentally he repudiated all suggestion of the removal of the Supreme Court from Cape Town as a breach of the Charter of Justice. The Premier, Upington, inflamed the wrath of the Easterners by accusing the Grahamstown judges of "want of loyalty" in that they "had tried to set up . . . separate systems of criminal procedure," declaring that if they had "entered into the spirit of this Appeal Court Act" abolition would never have been heard of. De Villiers, though approving of the bill, tried to smooth the ruffled feelings on both sides, only to receive the somewhat tart rejoinder from Upington that he had accused the Eastern judges not of active but of passive resistance. The storm gradually subsided. On the one hand, the Prime

¹ de V. to Barry, May 9, 1886.

Minister declared that large appeal courts had been proved in England to be a mistake and that he had as much confidence in de Villiers' court as in any panel of twelve judges; on the other, the Easterners admitted that, though their court had not been explicitly bound since 1879 to recognize the rulings of the Supreme Court, it had always done so and that, "save for one volume of one term when the Chief Justice was absent," the reports of the Court of Appeal and of the Supreme Court had held first place as authorities at Grahamstown.¹ Well might de Villiers exclaim "What need have we of further witness" or of the special Court of Appeal? The abolition bill was hurriedly passed at the close of the session and the Cape Town court became once more, in practice, the court of appeal for both Grahamstown and Kimberley with this limitation, that unanimous verdicts of either court could only be reversed by three or more judges.² But de Villiers could not complain if men talked more than ever of a "one-man court."

The Grahamstown and Kimberley courts retained their three judges and de Villiers saw no immediate prospect of reducing the number. During the 'nineties, however, some important simplifications in the administration of justice were effected, and the jurisdiction of his court extended far beyond the old limits of the Colony in the wake of Rhodes's annexations. The Vice-Admiralty Court was swallowed up by the Supreme Court, and the silver oar became a treasured heirloom at Wynberg House. Then, the Supreme Court shared with the E.D. Court the power of hearing European or semi-European appeals from the Native territories to the east of Kei;³ on the annexation of British Bechuanaland, appeals therefrom were made to lie to it by way of the Kimberley court⁴ and, in 1895, the Act of 1890 constituting it the court of appeal for cases from the new single-judge court of Matabeleland at length came into force.⁵ Next year its position was consolidated. Provision was made for the transference of cases pending before any court, including circuit courts, to any other as a matter of convenience; but the main point of the Act was to emphasize the superiority of de Villiers' court as the court of appeal for the enlarged Colony and Matabeleland.⁶ During the debates, the revival of the old Cape court of appeal

¹ Barry to de V., June 26, 1886.

² No. 17, of 1886.

³ Act 26 of 1894.

⁴ Act 41 of 1895.

⁵ Act 3 of 1890.

⁶ Act 35 of 1896.

was discussed; but some opponents urged that that must wait till federation were achieved, others that there was no need for any special appeal court for all South Africa so long as de Villiers was at Cape Town.

The jurisdiction of the Supreme Court continued to grow. Early in 1899 it became the court of appeal for all Southern Rhodesia.¹ Then came the war, a war essentially fought to clear the way for federation. Long before its end, the judicial reconstruction of the conquered provinces was undertaken. In the latter part of 1901 a three-judge court² was set up at Bloemfontein, staffed partly from the Eastern Colony, and a four-judge court at Pretoria almost entirely staffed from Cape Town. In keeping with Lord Milner's policy of federation, appeals from Bloemfontein lay to the Pretoria court which also heard appeals from the single-judge court of the Witwatersrand over which its members presided in rotation.

Much of all this was the very system which de Villiers had advocated so persistently in the old Colony. Under the Jameson Ministry, he made a renewed effort to carry his point. He drafted his proposals in the form of a bill empowering single judges in divisional courts at Cape Town, Grahamstown and Kimberley to exercise the full powers of the Supreme Court except in the matter of hearing appeals; for the reduction of the Eastern Districts and Griqualand West courts to the dimensions of single-judge courts; and for the hearing of all appeals by at least three judges in the court at Cape Town. This was strong medicine, but he hoped that it would be taken; for it was universally admitted that the work at Kimberley no longer warranted an elaborate court; and his old friend, J. G. Kotze, after long experience of a three-judge court in the Transvaal and a single-judge court in Rhodesia, had just written from Grahamstown, to whose bench he had been appointed, that, thanks to railway facilities, there was hardly enough work for one judge, let alone for three; therefore, why not centralize all the work at Cape Town and thus avoid appeals?³ But though Kotze was willing to out-Herod Herod, Eastern opposition proved too strong. The quorum necessary to constitute a court was indeed reduced from two judges to one;⁴ subsequent acts of 1905 and 1906 limited

¹ Act 22 of 1898.

² The third judge was appointed somewhat later.

³ J. G. Kotze to de V., March 14, 1904.

⁴ No. 35 of 1904.

the number of these divisional courts to three at any one time at either Cape Town, Grahamstown or Kimberley, empowered them to hear appeals from magistrates' courts, and finally reduced the Kimberley court to one judge.¹ But the court at Grahamstown triumphantly retained its three judges to the end.

No satisfactory remedy for the weaknesses of the South African judicial system could be found apart from closer political or, at the very least, judicial union of the South African States and Colonies by the creation of an appeal court for the whole country. Carnarvon's federation policy, with all its faults, raised de Villiers' hopes; hence the vigour with which he attacked the clauses in the Permissive Bill of 1877 which would have left legislation on the jurisdiction of the higher courts to the provinces. The South African Parliament, he insisted, must exercise that power in spite of the probable difficulty of inducing the Republics to relinquish their control over criminal legislation, wherein they differed more from the British Colonies than in civil laws. Parliamentary control would mean uniformity of practice and procedure; appointment of judges by the Governor-General would conduce to far greater efficiency than appointment by the provincial executives. After noting discrepancies in the sections establishing a court of appeal, he added :

Before writing this I had drawn up a scheme for the organization of a Supreme Court of Judicature and a General Court of Appeal, the main features of which are that the Supreme Court of Judicature shall consist of all the judges of the Supreme Courts of the different Provinces and that for the purpose of a General Court of Appeal the judicial strength of the different Provinces shall be utilized as far as possible, but I will not trouble your Excellency with the details. . . .²

De Villiers was a generation in advance of his time. In essence, his scheme of 1877 for the reorganization of the courts was that which he moved successfully in the National Convention of 1908. Now, the failure of Carnarvon's policy ruined his hopes and, in 1886, he helped to abolish the court which was to have been the nucleus of the South African Court of Appeal. But he never lost sight of the ideal. Whenever political federation came within

¹ No. 9 of 1905; No. 29 of 1906. Any number may now be formed.

² de V. to Barkly, Feb. '77.

the sphere of practical politics, he helped it forward with all his might ; when it receded once more, he took up his schemes for an appeal court, for reciprocity between the various State bars, for anything, in short, which would tend to bring the scattered members of South Africa closer together in peace. In February 1886, while the Cape appeal court still stood, he had propounded a scheme for a general court of appeal to judges and barristers from all parts of South Africa assembled round his dinner-table at Wynberg House. The Chief Justice of the Transvaal had objected that this was impracticable so long as the Republics retained their independence : but de Villiers was not so sure :

De Villiers to A. G. McGregor.

December 27, 1889.

. . . I have no objection whatever to its being understood that I favour the idea of a Court of Appeal for all the Colonies and States of South Africa. . . . Uniformity of laws, although not essential for the purposes of a political union would be an important step in the direction of such a Union, and the best instrument of establishing such a uniformity of laws would be a Common Court of Appeal for the different Colonies and States. As a matter of practical convenience such a Court would be extremely useful. The delay and expense of an appeal from the Colonies to the Privy Council are so great and the judges of that Court are so little conversant with South African law that the Colonies at all events would not object to the establishment of an intermediate Court of Appeal. The difficulty would be with the two Free States, but if it were understood that there will be no appeal to the Privy Council against judgments in the first instance pronounced in the Courts of those States the objections might perhaps be removed.

Legislation would of course be required for the purpose of enforcing the judgments of the Court of Appeal in the different States and Colonies. . . .

The recognition of his court as court of appeal for all Zambesia in 1890 was a step in the right direction, even though the act did not come into force until 1895. But it was only a step. Meanwhile the need for uniformity of law and procedure was brought home by the failure of the Cape of Good Hope Bank, a widespread corporation with branches in all the States and its headquarters in the Colony. In the Transvaal, there was no winding-up law; the judges there had had no formal notice of what had happened in the Colony; there was much difficulty in effecting

liquidation. "I will," wrote Judge de Korte from Pretoria, "avoid conflicts of our courts if possible."¹

With the rapid development of Rhodes's federation schemes, the prospects of the appeal court brightened.² James Rose-Innes, Attorney-General in Rhodes's first Cabinet, wrote hopefully of it in London in 1891, and de Villiers proposed it to M. H. Gallwey, Chief Justice in Connor's room in Natal. The Republicans were not the only obstacles. The Eastern Province lawyers suspected it as a threat to their three-judge court; Gallwey's reply showed clearly the Natal view of South Africa as a whole and of the Cape in particular. "The Federation of South Africa," he wrote, "would ensure the creation of an appellate court. That Union is far distant even between Natal and the Cape unless poverty compels Natal."³

The obstacles proved insuperable. Meanwhile, de Villiers tried to make a beginning by breaking down the barriers which confined advocates and attorneys to their own States and, at the same time, raising the level of their qualifications to that of the State with the highest standard. He set the necessary qualifications of a lawyer high. "The field of preparation for the successful study of the law," he told a student audience in 1882, "is as vast as for the study of medicine. In no other profession is the knowledge of history, ancient as well as modern of more importance; in no other profession is it more necessary to possess a thorough knowledge of philosophy. In addition to his special qualifications the lawyer, more than any other class of professional man, needs a general knowledge of things outside his own profession, for there is not a science, art or trade of which some knowledge may not be necessary at some period of his career." Already, in 1885, he had argued with Kotze the desirability of demanding similar qualifications for attorneys and advocates and allowing one man to perform both kinds of work, a policy to which the Transvaal judges were opposed. At the close of 1890, he raised the same questions by proposing reciprocity not only between the South African bars but between them and the bars of the United Kingdom, Germany and Holland. The difficulties were serious. In the Cape, the qualifications were fairly high and the functions separate; in the Transvaal,

¹ de Korte to de V., Oct. 1890.

² *Pall Mall Gazette*, 1891.

³ M. H. Gallwey to de V., April 15, 1891.

the qualifications of the older practitioners were low and their functions dual; in the case of the newer men the standard was better and the functions distinct. In the Free State, the standard had recently been raised; advocates could exercise both functions; attorneys only one. In Natal the standard was low, and the functions dual. De Villiers found President Reitz of the Free State, an ex-Chief Justice, sympathetic to "a step in the direction of that united action . . . by which we may hope to attain to—if not a United South Africa at least a *more* united South Africa."¹ Melius de Villiers, Judge Gregorowski and McGregor, the Attorney-General, were enthusiastic; though Melius feared that the Natal qualification was "far too low." As for their own people, he wrote, the authorities "intended encouraging aspirants to legal fame rather to prosecute their studies elsewhere than in the Free State, where a knowledge of the world is not likely to be so easily acquired." On the other hand, he added, the Free State declined to recognize men who had merely taken their LL.D. at a Continental university without also passing the State examination admitting them to practice; for they held the European doctor's degree in law and medicine to be a farce, the fruit of time and a thesis written by the candidate "or someone else."² Chief Justice Gallwey of Natal was reassuring, for his Colony already offered reciprocity to advocates from any of the British Dominions;³ and Ewald Esselen showed that one section at least of Transvaal legal opinion was favourable. At the same time, he indicated to Melius de Villiers the nature of the opposition to be expected from the North. "If it is to be retrospective, I despair of seeing our wishes fulfilled. . . . The majority on the bench, the Attorney-General—why did we take him away from you?—the Hollanders and the majority in the Government are against us—if not openly, then secretly."⁴

The discussion dragged on. As late as June 1892, Reitz wrote hopefully of the prospect of securing the "half-loaf" of admission to the Cape bar of all those who took their LL.B. degree in any State in South Africa, and thanking de Villiers for his efforts to secure this privilege for "young Hertzog and possibly D.V. for

¹ F. W. Reitz to de V., Nov. 11, 1890.

² Melius de V. to de V., April 3, 1891, and Feb. 2, 1891.

³ M. H. Gallwey to de V., April 15, 1891.

⁴ Esselen to Melius de V., March 20, 1891.

my own son." ¹ The negotiations, however, came to nothing. Union itself failed to level the barriers between one State bar and another.

Nor were de Villiers' efforts to secure reciprocity between the English and the Cape bars more successful. The Council of Legal Education at Lincoln's Inn Hall replied that reciprocity had been discussed in 1884 and 1891 without result, that it was not in their province and that, as for de Villiers' proposal that a paper in Roman-Dutch, Hindu or Mohammedan law be offered as an alternative to some other paper in the law examination, lectures had been given in Roman-Dutch law but had been discontinued, as students, finding that they did not count towards the examination, refused to attend them. ²

Towards the close of 1892 de Villiers ceased to press the claims of his appeal court. Rhodes' federation policy promised to achieve it and more also. After the Raid, it was useless to discuss anything of the kind for a season, and the outbreak of the war apparently postponed the issue *sine die*. But the war brought the Republics under the British flag and, before it was over, the prospects of a federal appeal court were eagerly canvassed. But not by de Villiers. He would have nothing to do with any scheme of federation, judicial, economic or political, which might be brought forward while all or part of South Africa was under official rule. With the revival of self-government, however, he took up the threads which had been torn from his hands ten years before. In connection with plans for simplifying the procedure of appeals from the Colonial Supreme Courts to the Privy Council, he revived his proposals for a South African Court of Appeal. He found the Jameson Ministry sympathetic but not sanguine; for, as in the past, everything depended on the attitude of the Transvaal. To his great joy the Transvaal itself proposed a Court of Appeal. At the Colonial Conference of April 1907, Botha, with the assent of his Cape and Natal colleagues, carried a resolution permitting any contiguous group of Colonies, whether federated or not, to set up a court to which appeals from the Colonial Supreme Courts should lie and from which appeal should only lie to the Privy Council by special leave. De Villiers jumped at the opening and began to draft schemes for the federal

¹ Reitz to de V., June 5 and 22, 1892.

² N. Lindley to de V., Dec. 5 and 7, 1893.

court in consultation with the Cape Ministers and with Botha and Smuts at Pretoria, urging them to press on with the scheme, if possible as part of a general federation; if not, by itself. At the outset a grave obstacle presented itself. The Cape politicians proposed that appellants be given the choice of appealing either to the new court or to the Privy Council.¹ De Villiers, however, agreed with the Transvaalers that the expense of an appeal court was not warranted unless all appeals lay to it. The expense was likely to be considerable. The two draft schemes which he helped to frame—the second a document of 35 sections—illustrate perfectly the difficulty of inducing one isolated organ of government to function on behalf of four or five different States.

Fortunately neither of these rigid and cumbersome systems were ever brought into being. Events moved rapidly and, as de Villiers had hoped, the question of the Court of Appeal was soon merged in the larger issue of Union. In October 1908 the National Convention met and, a month later, he introduced a tentative scheme of judicial reorganization. It was essentially the old Cape Court of Appeal of 1879-86 in a wider form; a Chief Justice, two Judges appointed by the Governor-General, the Chief Justices of the Colonial Courts and the Judge-President of the E.D. Court. In so far as each Colony was given at least one representative, it was a step back from the ideal; but in November 1908 it was by no means certain that Union was to be anything more than a name for federation, and local feeling had to be placated. The draft was referred to a committee under his chairmanship. He soon found that Union sentiment was hardening and, with the support of some of the Transvaal judges, notably Rose-Innes and Solomon, he revived the scheme he had drafted in 1877. In December he proposed the abolition of existing Colonial Supreme Courts and their revival as provincial divisions of one Supreme Court consisting of all the judges, with appeals lying to an Appellate Division manned by a Chief Justice, two permanent Judges of Appeal and two additional Judges summoned from the courts in which they usually dispensed justice on the grounds of merit and not because they happened to preside over those courts. For the rest he repeated his old proposals that there should be a minister of justice and freedom for all South African advocates and attorneys to practise before

¹ L. Botha to de V., June 5, 1907.

the Appellate Division. By mentioning no special place for the sessions of the court he hoped to ensure that it would sit in Cape Town, in which case the majority of the court would probably be himself and his two Cape Town colleagues, as in the past. He also left the way open for a reduction of the total number of Supreme Court judges by empowering the Executive to delay the filling of vacancies until Parliament had been consulted. Most of his hopes were ultimately disappointed; nevertheless his scheme was carried in the Convention with a few verbal alterations in a single sitting; and, though subsequently a few changes were made in detail, the scheme is that which is embodied in the South African Act of 1909. He himself became first Chief Justice of the Court which he had striven so long and so hard to establish.

De Villiers, however, had not been content to work merely for a federal court in South Africa. He, first of all judges in the Empire, urged on a species of Imperial federation by the inclusion of Colonial judges in the Privy Council. He raised the point in connection with a question of the precedence due to Colonial judges temporarily residing in England. He had always jealously defended the claim of judges to a high place in the body politic. Under the Charter of Justice of 1834, he himself ranked next to the Governor, the Lieutenant-Governor and such other persons as in England took precedence over the Chief Justice of Queen's Bench. The puisne judges came immediately after him. In 1879, however, soon after the Colony had received responsible government, a new order of precedence was issued giving Cabinet Ministers precedence over puisne judges, on the English analogy of Privy Councillors. De Villiers himself was safe enough for, apart from the Charter, he insisted that he corresponded to the Lord Chancellor; but he also maintained that the judges were entitled to their old precedence, especially as the Responsible Government Act of 1872, which he and Porter had drafted, designedly made no change. It was in vain. The Ministry stepped in before the Puisne Judges and, a little later, all de Villiers' efforts to help learned brethren in distress were equally unavailing to prevent the intrusion of members of the Executive and Legislative Councils between the Chief Justice and the puisne judges of Mauritius.¹ Once he had to fight for his own position. Sir Henry Torrens, General Officer Commanding the

¹ F. C. Williams to de V., April 1884.

Imperial troops in South Africa, claimed precedence over him. The gallant officer gained the ear of the Secretary of State, but the Cape Law Officers supported their Chief Justice, and the Governor, Sir Hercules Robinson, characteristically wrote: "I do not myself agree with the Secretary of State."¹ On the point of law de Villiers won; but, as a matter of practice and courtesy, he always took precedence after the General—Torrens having departed—because that officer held the dormant commission from the Queen appointing him Acting-Governor in the absence of the Governor.

The opportunity for raising the larger issue of admission to the Privy Council arose in July 1886. Chief Justice Burford-Hancock of Gibraltar asked him to join with other Colonial judges in a memorial to H.M. Government protesting against a recent award of precedence, which placed British County Court Judges in front of Colonial Judges.² As Chief Justice of a court of nine judges, head of the court of appeal, judge of Vice-Admiralty and President of the Legislative Council, de Villiers had no notion of accepting a status, when in England, equal to that of a stipendiary magistrate at the Cape. He eagerly promised his support, and at once raised the question to the plane of high Imperial politics.

The Home Rule controversy had given rise to a discussion of federation, devolution and the rest. In June, Earl Granville had discoursed to the Colonial Agents-General on the virtues of the Judicial Committee of the Privy Council as a link of Empire. De Villiers took the hint:

De Villiers to Hancock.

Cape Town, *August 1, 1886.*

... There can be little sincerity in the desire generally avowed in England to draw closer the ties which join the Mother Country and the Colonies as long as an anomaly of this nature is allowed to exist. . . . A practical step in that direction would be taken if some of the disabilities under which Colonial judges labour . . . were removed. For example, Chief Justices of the different Supreme Courts of India are, if I am not mistaken, eligible for appointments as members of the Judicial Committee of the Privy Council, whereas no such privilege extends to Colonial Chief Justices whose judicial duties are in many instances equally important and laborious. . . .

¹ H. Robinson to de V., Nov. 27, 1887.

² B. Hancock to de V., June 26, 1886.

Hancock embodied de Villiers' proposal in his memorial, though he frankly said that he had small hopes of seeing it adopted, and, during the next two years, beat up support from the other Colonial courts. In the end the memorial was never presented lest it might trench upon the Royal prerogative, that sanctuary of lawyers and politicians in distress. Nevertheless, Lord Carnarvon spoke in the House of Lords in favour of the right of entry to the Judicial Committee and de Villiers urged him to further endeavours :

De Villiers to Carnarvon.

Cape Town, December 24, 1888.

... I do not know of anything which would so much tend to strengthen the bond of union between the Mother Country and the Colonies. . . . Moreover, the laws of many of the Colonies differ entirely from those of England, and the confidence of the inhabitants of such Colonies in the Privy Council would be vastly strengthened. . . .

Nothing came of Carnarvon's efforts at the time. During the early 'nineties, however, the tide of Imperialism rose rapidly ; the gold of the Transvaal and Rhodesia and the personality of Rhodes drew the eyes of all men to South Africa. In 1895, during the last months of its life, Rosebery's Liberal Ministry introduced the long-looked-for bill and Sir Henry Loch, recalled to London from his Governorship at the Cape, wrote hopefully to de Villiers : " Will this bring you here ? " De Villiers had doubts. He thought that Canada or one of the Australian Colonies would have first claim ; nevertheless, he wrote : " The advantage of appointing a South African Judge would be great as a means of reconciling the Republics to the establishment of a South African Court of Appeal and even to an ultimate political union. They would certainly never consent to any proposal for carrying appeals to a tribunal which does not contain a single member who is conversant with the laws of the country. . . . " ¹ Loch talked with the Lord Chancellor, Lord Herschell, and reported that " the general feeling is in favour of the Judge coming from the Cape. " ²

The Rosebery Ministry passed the bill, the Jameson Raiders destroyed most of the good which de Villiers hoped would flow

¹ de V. to Loch, May 26, 1895.

² Loch to de V., June 21, 1895.

from it, and the Salisbury Government made the appointment. "This gentleman," wrote Chamberlain, "is the first person appointed under the scheme ;" ¹ wherefore on July 7, 1897, immediately after the Diamond Jubilee celebrations, de Villiers took the oath of a Privy Councillor at the hands of his Queen.

De Villiers had often criticised the Judicial Committee both on the score of its ignorance of Roman-Dutch law and of its leisurely procedure. His own presence on the board, in a measure, removed the first reproach and, perhaps, close contact with the Scottish members qualified his opinions on the score of ignorance. Fuller personal knowledge also led him to be more patient of the law's delays—delays which he found were often due to the faults of lawyers connected with the cases. An appeal arising from his own court in 1895 was still pending in 1899 simply because the papers were not in order. On the other hand, he had never underrated the Imperial significance of the Court and, as in Canada in 1894, so at the Cape five years later, he set his face against proposals that appeals thereto should be abolished. Quite apart from other considerations, he told the Legislative Council, it was a good thing to have an appeal to an impartial body of men of great attainments even though they might not be familiar with all the local circumstances of the case. At the same time he was anxious to remove anomalies, curtail the expense and minimise the delays involved in appeals to the Privy Council. Even so, he was conservative. The Imperial enthusiasm stirred by the South African war and the passing of the Australian Commonwealth Act gave rise to proposals for the creation of a final court of appeal for the whole Empire by the amalgamation of the Judicial Committee and the House of Lords, in its judicial capacity, and the inclusion of Colonial judges as life peers in constant attendance. The Grahamstown lawyers concluded hopefully that their dragon would now be removed to London ; but de Villiers had no intention of leaving his beloved Peninsula or of exchanging the simplicity of the Judicial Committee for even the modified pomps and ceremonies of the Gilded Chamber. He strenuously opposed the scheme ; urged Rose-Innes, the Cape delegate to the Imperial conference of lawyers which discussed the plan, to resist it ; and had the satisfaction of seeing the conference break up without result.

¹ J. Chamberlain to H. Robinson, May 6, 1896.

Next year, at the Premiers' conference of 1902, the Australians attempted to revive the plan, but met with no support.¹ Nevertheless, de Villiers saw that the demand for reform was growing. As part of the reorganization of the Cape courts, he persuaded Jameson to propose at the Colonial conference of 1907 the codification of the procedure of the Judicial Committee and the extension to Colonial courts of the power to grant leave of appeal. The Australians once more showed their dislike of appeals to the Privy Council; but Jameson won the support of Sir Wilfrid Laurier, who admitted that, while many Canadians looked askance at extra-territorial appeals, all were well satisfied with the actual judgments. De Villiers' proposals were therefore carried with one exception—the Crown kept the exclusive right of granting leave to appeal. That right was therefore retained in the judicial sections of the South Africa Act, save that, subject to H.M. pleasure, the Union Parliament might limit the cases in which such leave might be asked.²

Just before de Villiers' death in 1914 the Judicial Committee was reformed. The Imperial conference of 1911 resolved that there should be a court of appeal in two divisions; one for the United Kingdom, consisting of those entitled to sit in the House of Lords; the other for the rest of the Empire, consisting of those entitled to sit in the Judicial Committee, with the addition of two English judges of appeal and, if desired, a New Zealand judge to sit beside those who already represented South Africa, Australia and Canada. The procedure of the second division was to be assimilated to that of the first, notably in the delivery of separate and possibly dissenting judgments. De Villiers would have been eligible to sit in either division, for in 1910 he had been created Baron; but in the event he never took part in the work of the reformed final court of appeal. He had proposed to attend its sittings in 1914, but he was called upon to act as Governor-General in July and, early in September, he died. *Finis coronat opus.*

¹ Cd. 1299, p. 34.

² Cd. 3404, pp. 27 *et seq.*

CHAPTER VII

CONFEDERATION

THERE is no reason to doubt that de Villiers meant what he said when, on becoming Chief Justice, he told his constituents at Worcester that he was leaving politics. The fact remains, however, that he never did leave politics and that for four excellent reasons. He was *ex officio* President of the Legislative Council and as such in daily contact with the work of Parliament. His reputation for excellence in counsel brought him into touch at all times and to an increasing degree of intimacy with the politicians and officials, Imperial, Colonial and Republican, who were making (or unmaking) South Africa. He had given early proof of his capacity as a chairman of commission and, now that his natural sense of justice was reinforced by the prestige of high judicial office, his services were more and more frequently requisitioned by the Cape and even by the Imperial Government. Lastly, he made no secret of the fact that he liked political life.

Some of his learned brethren held that he would have been a still greater lawyer than he was had he spent his time studying the law instead of discussing affairs of State. Perhaps they are right; but de Villiers gained thereby a knowledge of human nature which stood him in good stead as a judge; and, on the credit side, there should also be entered the good the practical politicians gained from their intercourse with him. There were times when his knowledge of the backstairs and his known sympathy with one or other of the political parties in the Colony endangered his reputation as an impartial judge. His position and his own peace of mind would have been more secure during the cases which arose out of the fierce elections of 1898 had it not been known that he desired a Bond victory and that Sauer, one of the members whose seats were in danger, was his familiar

friend and political confidant. The Jingo outburst against him in 1897 after his temporarily successful mediation in the disputes between Kruger and the Transvaal judges, the charges that he had been conspiring with the President to lead a moderate party in the Colony against Rhodes and, conversely, that he had gone to Pretoria to spy out the path which led to the presidential chair, would have been impossible had it not been known that he had thrice been invited to stand for the Free State presidency, in 1888, in 1893 and again in 1895; that, at the close of 1892, he had gone up to Pretoria to take soundings for the Transvaal Presidency; that Rhodes himself, in 1893, had asked him to become Prime Minister of the Colony; that in 1895 a powerful body of Eastern Province politicians had approached him on a similar errand; and that, immediately after the Jameson Raid in 1896, he had himself volunteered his services. His offer to Chamberlain in 1902 to return to political life rather than see the Cape constitution suspended was still in the future. That was the last occasion on which he meditated a descent from the Bench; nevertheless, his work as President of the National Convention was purely political; after Union he became acting-Governor-General for a few months in 1912, and it was as acting-Governor-General that he died in 1914. That he was able to take this active part in politics and yet to see his judgments accepted as a matter of course speaks volumes for his probity and innate sense of justice.

During the three years which followed his elevation to the Bench, he took little part in politics. He had his hands full otherwise, making himself master in his own court, establishing his reputation as a judge in the eyes of the public, and attempting to make his court truly supreme within the Colony. It was perhaps well that, with his prestige as a judge still to be won, he was able to remain somewhat outside the stormy politics of those years. One of the arguments which Molteno had used to persuade him to accept the Chief Justiceship was that, since Confederation was not a party question, he would not be debarred from taking his share in helping it forward; but in 1875 Confederation became a bitter party issue in the Colony and a source of acute friction between the States and Colonies of South Africa.

The immediate result of the gold and diamond boom in the

early 'seventies was to restore the finances and quicken the political pulse of South Africa. Agriculture felt the stimulus of newly-opened markets, exports increased in value, the volume of imports swelled out of all knowledge. The Cape and the Free State began to pay off debt, overhaul their judicial and educational equipment, and undertake public works. In the Colony telegraphs, roads and bridges supplemented the railways which were being pushed forward from the Cape ports towards the Diamond Fields. Better steamship facilities, harbour improvements and the creation of new banks drew the Colony closer to Great Britain and Europe. In Natal, though for some years more people left the Colony for Tom Tiddler's Ground than came into it, the balance was redressed by the wholesale importation of Indians for the coast plantations; roads, bridges, telegraphs were built, attempts made to improve the harbour at Durban and, above all, in 1875 a State railway undertaken which was to tap the trade of Griqualand West and the two Republics, where Natal merchants, speculators and storekeepers were already active. The little Colony thus promised to become more dependent than ever on the through-traffic to the interior. The South African Republic was less affected by the revival than the rest, but it was full of hope. The gold of Tati lay to the north-west, minerals of all kinds had been found within the borders of the State and, once better means of communication were assured either with Durban or Delagoa Bay, the mines could be worked at a profit. Its new President, the sanguine Burgers, had even been able to induce the one and only bank in the Republic to advance a loan, albeit at high interest, wherewith to buy up the debased paper currency.

In January 1874, Disraeli took office with Lord Carnarvon, the whilom wrecker of Grey's federation policy, as his Colonial Secretary. Times had changed and Carnarvon, with the laurels of a federated Canada still fresh upon his brows, was anxious to repeat his triumphs. "A vigorous colonial administration" was promised, and this could only mean a federal solution of Great Britain's South African problem. Prestige, the safe withdrawal of the Imperial garrison, the general trend of European and American States, the social and economic advantages to the peoples of South Africa itself, Disraeli's taste for size and magnificence, the first faint fears of European intervention in South

Africa, all pointed to that policy. The German victories of 1870-71 had revolutionized the balance of power in Europe, and now German "Colonials" were taking a lively interest in the Diamond Fields, in what is now Southern Rhodesia and in Delagoa Bay, the question of whose ownership had recently been referred to French arbitration. Already in May 1873, the rumour had travelled south that captured French mitrailleuses and the German pickelhaube had appeared in Pretoria. If so, the pickelhaube soon disappeared, but one of the guns is still in the Pretoria Museum.

From the South African point of view, new arguments in favour of Confederation reinforced the old. Finance on a big scale was threatening to enter the country for the first time; a speculative element, hitherto confined to the wool market of Port Elizabeth and the sugar market of Durban, was already at work; the advance of European nineteenth-century civilization in mass formation towards the interior promised to work up existing boundary, port, road and railway disputes to a dangerous pitch. If the country could be united, even loosely, under one government and one law, all these perils might be averted. The 18,000 Europeans of Natal, in spite of their 300,000 Bantu, Indian and coloured neighbours, might have self-government; the Eastern Province might realize its heart's desire of separation; a way might be found for the Imperial Government out of the pits dugged for it by its overzealous supporters in Griqualand West and the Keate Award area; above all, a solution might be found for the eternal native question.

It was the native question which forced confederation to the front. All over South Africa European influences were spreading and, with them, the responsibilities of the European Governments. The Cape, which had recently taken over Basutoland, was beginning to extend its official control tentatively over the native territories between the Kei and the Natal frontier and was even considering a similar extension northward beyond the Orange over Namaqualand and Damaraland. There the Hereros had been frightened into some sort of union by the arrival of trekboers who had fled from the Transvaal and its heretical President. In the Keate Award area, Burgers was supporting the chiefs who claimed to be paramount against the Cape authorities who favoured those who were actually the strongest; while, all around,

swarmed land-sharks and concessionnaires of every nationality. In the Zoutpansberg, the authority of the Republic was still nominal; to the south, Secocoeni was in a fair way to form a new Basutoland in the Lydenburg district; the Swazi were still independent; while, further south again, Cetewayo, now King of the Zulus, was busy playing off Natal and the Transvaal against one another in the hope of recovering a strip of territory along the Blood River ceded to the Transvaalers by his late lamented father, Panda.

The real danger points were Griqualand West and Natal. In spite of the death of many on the road and in spite of the Transvaal tolls, native labourers poured in to the Diamond Fields, there to be debauched by hitherto unknown vices, to talk with each other for the first time and to buy guns. Friction arose between the Griqualand and Free State Governments over the gun traffic; once, the quarrel became within measurable distance of war with the Imperial authorities; once, the Dutoitspan mob was hardly restrained from invading the Republic in defence of the trade. Meanwhile, in native eyes, it became the mark of a man to possess a gun. The young men, with new ideas in their heads, money in their pockets and too often with guns in their hands, returned to their kraals to plague the chiefs or the magistrates. From the Limpopo to Kaffraria the tribal system began to crumble.

In Natal the swarming Bantu population, most of them ex-subjects of the Zulu King beyond the Tugela, increased daily. The Europeans were few; there were no police; the power of the magistrates in the reserves was a farce; native policy, these "sacred mysteries" as Frere afterwards called them, remained in the hands of the able but secretive Shepstone family. At the end of 1873 the weakness of the whole system was revealed in a flash to the startled eyes of South Africa and the British Government. Trouble arose with Langelibalele, a Hlubi chief, over the non-registration of guns. The chief fled into the powder-magazine, Basutoland. A scuffle ensued; a panic swept Natal; troops and levies were hastily rushed to the scene, not only from Natal but from Cape Town and the Eastern frontier; Griqualand West and both Republics stood by in case of need; and the Natal levies, being in a panic, behaved as might have been expected in the moment of victory. Langelibalele

surrendered and, after a most inadequate trial, was banished to the Cape since Natal was too small to hold him.

This object lesson and the report of Froude, on his return from his first visit to South Africa at the close of 1874, that a wrong had been done to the Free State in the matter of the Diamond Fields determined Carnarvon to bring forward plans for a general South African native policy and confederation. The auguries were good on the whole. The Cape native policy was liberal; the question of confederation had been hopefully discussed a year or two previously by many influential men in the Colony; Brand in the Free State had always favoured it; Burgers of the Transvaal had declared himself "an ardent federalist," and was preaching "equal rights for all civilized men south of the Zambesi," to the most unsympathetic audience in the world outside the late Confederate States of North America. There were, however, lions in the path. Confederation meant different things to different people. To Carnarvon and some of the Cape Colonists and Natalians, it meant a loose union on the Canadian model under the Union Jack; to Brand, it meant the same provided each State kept control of local affairs and retained its identity. To many in both Republics, it stood for little more than an offensive and defensive alliance. To Molteno and his followers, it really meant unification by the gradual annexation of the outlying territories to the Mother Colony. With this essentially unitary idea de Villiers sympathised a full generation before he helped to translate it into fact in the National Convention. On the other hand, even in the Cape, there was little popular demand for it and less understanding; inter-State jealousies were great and ignorance still greater; population was scanty, communications poor, and the prospective provinces were on vastly different constitutional planes: two Republics, two Crown Colonies and, in between the extremes, the self-governing Cape. Therein lay the best hope for confederation. The Cape was the type to which Carnarvon hoped the rest would conform and the Cape was overwhelmingly the most important and influential of all, the seat of the High Commissioner, controller of three of the four effective ports, the source from which the Republics had drawn population, their best officials, their Chief Justices and their Presidents. The Cape was likely to watch over its newly won political privileges jealously; but, if the

Molteno Ministry favoured the Imperial policy, all would probably be well.

Hence, at the close of 1874, the Colonial Secretary bade the High Commissioner press his claims in the Keate Award area no further and recalled the Lieutenant-Governor of Natal for his bad handling of the Langalibalele affair. He then sent Wolseley as Administrator to Natal and followed him up with his famous despatch proposing a conference of all the States to frame a uniform Native policy and, by the way, to discuss confederation. Wolseley arrived in Natal in April 1875, induced the Legislative Council to strengthen its official element for five years to come, carried many necessary reforms in native administration and made way for Sir H. E. Bulwer. Carnarvon's despatch arrived in June to be greeted with ill-deserved laughter in the Cape House of Assembly. There Molteno was supported by the Westerners and Midlanders who feared separation, the upsetting of the balance of parties, the burden of military defence which the withdrawal of the British troops must let fall mainly on the Colony, and the increase of taxation at a time when large loans had already been contracted for public works. They had no desire to have anything to do with the turbulent and expensive Diamond Province, at least till the Free State's grievance had been assuaged; still less to be connected with the superabundant native population of Natal. Worst of all, the Ministry scented dictation by Downing Street. Already, during the session, Molteno had had to meet the wishes of the Colonial Secretary by carrying a bill, in the face of much opposition, permitting the removal of Langalibalele from Robben Island to the mainland; Wolseley was in process of reforming the Natal constitution on the lines advocated by Wodehouse for the Cape, and actually followed in Jamaica; Carnarvon had made the false move of suggesting the members of the proposed conference, including Froude for Great Britain, Molteno, the Prime Minister, for the West, and Paterson, the champion of separation, for the East. Against Molteno stood Sprigg at the head of the Easterners, supported by a few long-headed Western members who saw that the Colonial Secretary aimed at a fair settlement with the Republics. This small party could rely on the open support of Hofmeyr in the press and the private assistance of de Villiers; for both men held that, if the problem of South

Africa was not handled at once as the single thing it was, war would probably ensue in the not far distant future. The Legislative Council carried a resolution thanking the Colonial Secretary, but, in the Assembly, the ministerial policy of not considering confederation for the present was carried mainly on provincial lines. In the Cape, confederation had thus become a party issue.

Elsewhere Carnarvon's despatch was received less coldly. Southey, now Lieutenant-Governor of Griqualand West, accepted the invitation to sit at the conference; Brand announced that he could doubtless induce his burghers to agree, always provided the Diamond Fields question was settled fairly; the reformed Legislative Council of Natal expressed the pious hope that the old Colony would see the error of its ways; the acting-President of the S.A. Republic promised to recommend the proposal to his Executive Council, and in London, Burgers gave Carnarvon to understand that his Republic would take part. In the Colony, however, the Separatists and most of the press attacked the Ministry; Froude, who had arrived as Carnarvon's emissary just after the despatch had been voted down in the Assembly and who had gone to Natal, there to hear of Carnarvon's second despatch suggesting a conference in Natal and hinting that, if necessary, it be held without the participation of the Cape, now worked his way back through the Colony practically appealing to the electors against the Cabinet. At a mayoral luncheon at Uitenhage, Merriman, Minister of Public Works, managed to get to his feet first and, at the cost of something very like a riot, stigmatized Froude's conduct as foreign interference.¹ Here was the new "Colonial" point of view with a vengeance! Meanwhile, MacMahon's award was published giving Delagoa Bay to the Portuguese and therefore a non-British port to the Transvaal, as soon as a railway could be built. Burgers went to Europe, dilated on the "golden joys" of South Africa, raised a railway loan at ruinous rates from Dutch and Jew financiers, and asked for alliances with Belgium, Portugal and Germany. The European state system and all that it meant showed signs of migrating to South Africa. Then the crash came in Griqualand West. Southey had done his best to control the land-grabbers, the Port Elizabeth diamond syndicates, the diggers' committees which quarrelled with the officials, and the

¹ The actual words used were "an agitation from abroad."

mass of the diggers discontented by the fall of earth and prices of stones and the rise of working costs and water in the diggings. But, now, the diggers formed armed companies, one of them of Germans under the gallant von Schlickmann. Aylward, an Fenian and a much less courageous character, hoisted the black flag by proxy and fled to the Transvaal, where he "died." The rebellion flickered out on the advance of the Imperial troops; the ring-leaders, including Aylward, happily restored to life, were tried and acquitted; Colonel Lanyon and a new Legislative Council superseded the old officials, and many of the diggers and agitators transferred their activities to the Lydenburg goldfields.

At the end of the year, during a special session of the Cape Parliament, another despatch from Carnarvon arrived suggesting a conference in London. The conference duly took place, after a fashion, in the middle of 1876, with Carnarvon in the chair, Froude representing Griqualand West, and Theophilus Shepstone and two unofficial delegates Natal. Molteno promised to help H.M. Government effect a settlement of the Diamond Field question but declined to have anything to do with confederation. Brand, under instructions from his Volksraad, took up the same attitude. The proceedings of Carnarvon and his nominees were therefore marked by a "singular unanimity"; but the important decisions were taken outside the conference chamber. Brand had come to London cheered by the news that Judge Stockenstrom in the Griqualand West Land Court, at the end of an inquiry forced by the High Commissioner on the unwilling ex-officials and others, had upset Waterboer's claims to issue land titles in most of the territory. With Waterboer's claims disappeared the foundation of the British right to the Diamond Fields. Brand and the Colonial Secretary therefore concluded a settlement at last. Molteno returned to the Cape pledged to annex Griqualand West and Brand returned to Bloemfontein to resume his correspondence with de Villiers on the subject of confederation. That correspondence was conducted with such success that early in 1877 the two men, after consultation with others, drew up a scheme to be submitted to the new High Commissioner, Sir Bartle Frere, on his arrival.

Carnarvon's second achievement was not so hopeful. The Eastern Province had sent a deputation to London, whose

members privately suggested that a Permissive Federation Act should be passed by the Imperial Parliament empowering any two or more of the Colonies or States to federate. Carnarvon replied that he already contemplated such a plan and took steps to have the bill drafted. Then, having instructed the newly-dubbed knight, Sir Theophilus Shepstone, to annex the Transvaal in the interests of confederation, he invited Sir Bartle Frere to go to the Cape as High Commissioner for a couple of years to further "my scheme." Frere, to his cost, consented to undertake the task which his chief had rendered hopeless. For Frere must work from the south, which had refused to move; the Colonial Secretary was intent now on pressing confederation from the north.

A settlement was, in Carnarvon's eyes, urgent. The life of the Disraeli Ministry was passing rapidly; German "Colonials" were becoming more clamorous; the Brussels Conference foreshadowed the coming scramble for Africa. The political stability of South-East Africa, especially of the Transvaal, was apparently precarious. In the Republic, the President had lost his hold on most of his burghers. He had returned from Europe to find many of his reforms cancelled; his treasury so empty that the railway material had to be left to rot on the quays for lack of money to pay the freight up-country; his native and frontier policies overturned by the proclamation of a new boundary in the Keate Award area, the formal annexation of the land in dispute with Cetewayo, and the conclusion of a treaty with the Swazi King, who, whether he understood it or no, thereby became a vassal of the Republic and a stepping stone on the road to Delagoa Bay. Finally, Burgers found an unholy alliance for his overthrow at the approaching elections concluded between the conservative Boers and the "foreign fortune seekers." A clamour for the annexation of the State arose from the bondholders, land speculators and merchant-creditors of Durban, Port Elizabeth and Kimberley. The country was known to contain minerals of all kinds; Durban and Port Elizabeth, the main ports of entry hitherto for heavy goods to the interior, had a special interest in desiring the success of their railways rather than of Burger's line through Portuguese territory. Within the Republic, the annexation chorus was swelled by small, compact and, owing to bad times, temporarily discontented bodies of

shopkeepers and miners, British, Colonial and German, in the dorps and on the Lydenburg goldfields.

Thanks to civil strife and poverty the effective power of the Transvaal Government had increased but little since 1858, especially in the ill-defined borderlands. It had very little control over the miners and, now, Secocoeni, nominally a vassal of the Republic, gathered his clans. Burgers led the commandoes against him in person, with much the same results that would have followed had Archbishop Laud essayed to lead Cromwell's Ironsides, especially had the Ironsides been undisciplined. The campaign was a failure and Burgers had to return to Pretoria leaving von Schlickmann and the dubious Aylward to hold the enemy in check with a small body of volunteers. He induced his Volksraad to levy a special war tax; but there was little chance of an unpopular President collecting the money, as the ordinary taxes were in arrears; and, to make matters worse, the hard-pressed bank demanded repayment of its loan. Presidential elections in the Transvaal were apt to be associated with armed gatherings. Now came the retreat in face of fever, discontent and Secocoeni; and it was Secocoeni who inevitably attracted the attention of Cape Town and Downing Street. The Langalibalele affair, slight though it proved to be, had called half South Africa to arms; the Basuto were still among their mountains; all was not well in Kaffraria; the Zulu overshadowed Natal. Possible developments of the Secocoeni imbroglio were not to be taken lightly.

Carnarvon took them seriously enough. The draft permissive bill was duly forwarded to South Africa with the assurance that the Imperial Government was anxious "to leave no reasonable expedient untried to meet the serious, and I might even say threatening condition of native affairs." Barkly handed the bill to de Villiers for his comments. It was a long document of eighty-two sections providing for the division of the Union into such provinces as the Queen should direct, with a Governor-General and Privy Council seated at the capital "in such place as Her Majesty shall from time to time . . . direct"; a Parliament of two Houses with members allotted to the provinces on a basis of population, the Upper House nominated, the Lower elected. Each province was to have a President and a Legislative Council; but, in fixing qualifications of members and electors for both the

central and local Legislatures, provision was to be made "for the due representation of the natives. . . ." Then followed an elaborate division of powers between the central and local authorities, with the provisos that the Union Parliament might legislate on subjects reserved for the provinces and thus override repugnant local laws and that all legislation touching natives must be reserved for H.M. pleasure.

The objections to the scheme were obvious; but, as in the case of Wodehouse's proposed reforms of 1869, de Villiers was prepared to ascertain how much of the fish there might be in the Downing Street serpent. "I still think," he wrote to the Governor, "as I always did, that it would be of incalculable advantage to this Colony as well as to the neighbouring Colonies and independent Republics, if they could all be joined together in a Union under the British Crown."¹ He confessed himself in favour of Union rather than federation and hopeful that the Republics would have no greater objection to incorporation with the Cape Colony on fair terms than they would have to "the more cumbrous, expensive and complicated system embodied in the Bill." As usual, he went to the root of the matter, the division of powers. In 1877, as in the National Convention in 1908, he stood for the fullest possible centralization of authority. He urged that the Union Parliament alone should determine the laws of property, civil rights and above all the administration of justice. He was already fighting hard to assert the supremacy of his own court in the Colony; in his eyes the dispersal of judicial power throughout South Africa was an unmixed evil; he had no mind to see confederation marred by a perpetuation of this enormity. He welcomed the separation of the duties of Chief Justice and President of the Legislative Council; but there his approval of the proposed Upper House ended. He would not hear of a nominated Chamber (thirty years later a visit to Canada confirmed him in his resolve), but suggested the election of Legislative Councillors for a term of ten years by the Provincial Councils, a course "which will possess the double advantage of preventing too close an assimilation in the character of the two Houses and of providing a link of union between the General and the Provincial Legislatures." Further, since the Colonial Secretary suggested that natives might vote for the local Legis-

¹ de V. to Barkly, Feb. 1877.

latures only, this plan would give them an indirect voice in the affairs of the Union. Again, de Villiers' proposal was that which was embodied in the South Africa Act of 1909. As touching the judicial clauses of the bill, he intimated that he had his own scheme for the reorganization of the courts much on the lines which were adopted a generation later. His views on the seat of the capital and the indivisibility of the Cape Colony were what they remained. The capital ought to be at Cape Town "as the place in which the ancient records of the Colony are kept, where the best library of the Colony is maintained, accommodation is plentiful, its advantages are greater than those of any other place." At the same time, provision might be made for the subsequent removal of the capital if circumstances altered; but, in any case, the Colony must remain one. "The feeling against separation is stronger in some of the Eastern Districts than in the West. It is this feeling which has stood in the way of confederation more than any other," and he even suggested that, on the Canadian analogy, the Union should be called the Cape of Good Hope. "We can never forget," he wrote, "that . . . in importance as well as extent . . . this Colony would excel any of the others." He was right; for, with the best will in the world to reduce the overwhelming influence of the old Colony, Natal could only suggest that the Cape should receive sixty-five members in the Assembly as against thirty-five for the other four provinces combined. In 1908 de Villiers helped to defeat the proposed partition of the Cape, to save part of the capital for Cape Town, and to secure a lightening of the weights thrown into the scales against the fair representation of the Colony.

He also recorded his opinion on the native and coloured franchise. He opposed the colour bar and advocated instead a raising of the franchise to exclude all save the really industrious non-Europeans, even at the cost of excluding some whose only claim to the vote was heredity and the colour of their skins. Of the proposal that the Governor-General should appoint men to Parliament for their special knowledge of the natives, he had small expectations. "In most cases," he observed, "the Governor-General would have to assume the knowledge . . . from long residence near or among the natives. But it is just the residence among and near natives which in most cases has led to unjust treatment of natives. It cannot be expected that any Governor-

General will be better able to know who are entitled to the confidence of the natives than the natives themselves." It was the policy which he vainly recommended thirty years later. He added one characteristic touch. The bill granted the Governor-General £10,000 per annum; this, he suggested, should be reduced to £6,000, for he apparently shared the fears of the Port Elizabeth *Telegraph* which envisaged "a presumptuous nominee Council, an obsequious Privy Council, and a magnificent Governor-General."

De Villiers' comments undoubtedly affected the report which the Governor-General sent to London covering a minute, which conveyed the objections of the Molteno Ministry to the bill as being far too elaborate for a mere enabling act and too vague for a precise constitution. Ministers recommended rather the policy which de Villiers had touched upon, the gradual annexation of the outlying territories by the Colony, beginning with Griqualand West; in other words, leisurely unification rather than confederation *per saltum*.

The federation scheme which de Villiers had drafted with Brand was never presented to Sir Bartle Frere. High politics were afoot and, as his custom was, he went on his travels to see and hear for himself. Towards the close of February, for the first time, he took the Eastern circuit. Everywhere he was well received; everywhere he heard complaints against the two-judge Eastern Districts Court; in many centres outside the immediate neighbourhood of Grahamstown and Port Elizabeth, he found hostility to the very idea of separation. It was that which he had come hoping to hear; but presently he heard that which he had neither hoped nor expected to hear, the news that Shepstone, without consulting the Volksraad or the High Commissioner, had annexed the Transvaal. "My God," he cried, "what a catastrophe." It was; and Sir Bartle Frere, newly arrived at Cape Town, might well ask "What will they say in England?" Brand's comment was almost equally brief. He wrote to de Villiers that confederation was now out of the question.

To-day it is generally agreed that the annexation of the Transvaal was excellent in execution, ill-judged in point of time, wrong in principle and disastrous in its consequences. Shepstone had arrived in Pretoria in January 1877. His presence had paralyzed the feeble Boer Government. News came that Seco-

coeni had made peace, but difficulties arose over the interpretation of the terms. The Volksraad met, refused to touch Carnarvon's Permissive Bill and threw out the reforms proposed by their President. Shepstone then declared that he must annex and, notwithstanding the eleventh-hour adoption by the Volksraad of some of Burgers' reforms, including a High Court on the Cape model, on April 12th he ran up the Queen's flag.

Carnarvon had expected that the annexation would further his scheme. If Griqualand West with its diamonds and the Transvaal with its potential mineral wealth could be federated with Natal, the possessor of the necessary harbour, the Free State and the Cape would find their hinterland gone and must come to terms. It was the Downing Street version of the pressure which the Transvaal and Natal were destined to bring on the South in the National Convention of 1908-9. In 1877, however, the annexation killed the prospects of confederation, first outside and then inside the Transvaal. A hostile agitation was at once begun in the Colony; the Molteno Ministry secured the passage of the bill annexing Griqualand West but declined more resolutely than ever to consider confederation; the Free State Volksraad washed its hands of the scheme; Natal, having really annexed the hinterland, alone approved of the Permissive Bill. That bill passed through both Houses at Westminster in the face of philanthropic criticism and Irish obstruction; knotty points were left to be disposed of later "as the Queen may direct" (just as many in 1908 desired to leave controversial points to be settled by the future Union Parliament), and, in August, it was launched upon the now sorely troubled waters of South African politics.

In April, the annexation had been received quietly enough in the Transvaal. Burgers had protested publicly, acquiesced privately and retired on a small pension, having spent his own money largely on the service of his State; with the exception of Joubert, the executive councillors, including Kruger and Jorissen, retained their posts; the bulk of the burghers took no immediate notice or else experienced a feeling of relief at the end of an intolerable excitement. Shepstone talked of summoning the Volksraad, and had he done so there can be little doubt that the Raad would have ratified what had been done. That, indeed, was the one fear of Kruger and Jorissen who went,

almost *pro forma*, to lodge their protests in London. Frere made his first mistake in discountenancing the idea. On the other hand, had Shepstone taken Frere's advice and consulted leading Boers and others on the promised liberal constitution, had he gathered round him a competent staff of officials, had he himself displayed administrative ability, all might have gone well with him. Nothing of the sort happened and, within six months, the bulk of the Transvaalers were crying out against the new administration and the act which had brought it into being.

Frere decided to go north. He set out in August 1877. He did not reach Pretoria till April 1879. At Grahamstown he heard the first noise of the Kaffir war, which occupied his attention and strained the resources of the Colony till June 1878. In the middle of the war a constitutional crisis arose between the Governor and his Ministry over the control of the Colonial forces. Molteno threatened to resign; Frere called his bluff and dismissed him. His place as Prime Minister was taken by Gordon Sprigg. Sprigg could be relied on to push forward confederation, but the fact that his Cabinet was purely Eastern turned the West more definitely than ever against the Imperial policy. That opposition was redoubled when Sprigg levied an excise to help pay for the comprehensive defence measures which he introduced.

While the Kaffir war, with its attendant outbursts among the natives and half-breeds in Griqualand East and West and the Northern Border, dragged to its weary and bloody close, de Villiers was in Europe. At the end of 1877 the worst fears of those who had opposed his promotion to the bench had been realized and it was as Sir Henry that he sailed with his wife early in March 1878. From Madeira they sailed to Lisbon and thence travelled in leisurely fashion through Spain and the Riviera to Rome and Naples, then over the Alps to Geneva and Paris. There de Villiers saw his second Paris exhibition and, a few days later, trod English ground for the first time for thirteen years. He had left London a depressed and impecunious young barrister; he returned now to find himself welcomed at the Colonial Office by Sir Michael Hicks-Beach, heir to Carnarvon's peck of troubles, and by Lord Selborne, the father of that Judicature Act of 1873 which had at last consolidated the English Courts of Equity and Common Law and created a Supreme Court of Appeal. After a short visit to Edinburgh, he sailed for the

Cape and arrived home in time for the August term and, thereafter, the Western Circuit in September and October. A month later he was appointed chairman of the commission which recommended the sweeping changes in the law of the Colony to which effect was given in the 1879 session of Parliament.

He returned to find matters going from bad to worse in South Africa. Relations with Cetewayo were becoming strained; Secocoeni was up in arms again; the clamour against the annexation was rising in the Transvaal and a second deputation had gone to London to demand its cancellation; while the miners and townsfolk loudly protested against the Shepstone administration. In September Frere set off once more for Pretoria, with his hands strengthened by the fact that now for the first time the officials in Natal and the Transvaal were placed under his ultimate control. He went by way of Natal determined, first, to settle the land dispute with Cetewayo and then to set up a temporary Legislature in the Transvaal to pave the way for a real Volksraad, whose powers and composition were to be settled at a conference after he had taken the advice of the new Cape Ministry, Brand and de Villiers. The Delagoa Bay Railway was to be carried through to link up with the line from the Cape at Kimberley, thus to provide a spinal cord to the coming federal South Africa.

Again Frere was fatally delayed. Points of friction between the Zulus and Natal and the Transvaal were multiplying, but the main and underlying cause was the land dispute on the Blood River. For many years past the Zulu King had played off the Natal officials against the Boers. In 1875 Joubert, acting-President, had declared the disputed land Transvaal territory, parcelled it out in farms, forty-two of which were now occupied, and attempted to collect taxes from Zulus living thereon. Now that Shepstone ruled the Transvaal, Cetewayo expected that the land would be given to him. To his wrathful amazement, "Somtseu, his father," defended the Boer claims. On the other hand, the Natal officials still supported him and he agreed to submit his claims to a commission appointed by the Lieutenant-Governor, Bulwer. Frere took it for granted that the award would be adverse to the Zulus, that nothing but a show of force would induce Cetewayo to accept it, and made his preparations accordingly. To his surprise, in June 1878, the commission

reported mainly in Cetewayo's favour. Frere was in a quandary, There was widespread unrest in Kaffraria, Basutoland and the middle Orange; Secocoeni and the chiefs on the Swazi border were defiant; if he enforced the award, he might drive the Transvaalers into rebellion, a rebellion which might spread far among the Europeans elsewhere and in which Cetewayo would almost certainly take part. On the other hand, he regarded the Zulu military power as a threat to Natal and the Transvaal, the *fons et origo* of all native troubles south of the Zambesi. He therefore determined to accompany the publication of the award by an ultimatum which would, if accepted, destroy the Zulu military system and secure some protection for the Boers who might elect to remain in the abandoned territory. For those who chose to depart, he demanded compensation.

Frere's ruling on the question of ownership of the land and compensation was hotly contested by Bulwer and Bishop Colenso. Frere consulted de Villiers who replied that, though he took the equitable view, Cetewayo's champions were right on the point of law; for, "the Zulu King is treated by his people as vested with the sovereign as well as private rights of land. . . . He would not be bound in the absence of any special convention to that effect to recognise the claims of the Transvaal burghers to the private ownership of the land." Frere had, however, gone too far to withdraw. Indeed, before de Villiers gave his opinion, the troops had entered Zululand and sustained the resounding defeat of Isandhlwana. All hope of a speedy settlement of the Zulu problem was destroyed and Frere was unable to leave Natal till the tide turned at the close of March.

He then set off to the Transvaal. There he found the Boer leaders encamped with great numbers of their followers near Pretoria. The famous interviews followed in which he insisted to the leaders, many of whom were favourably impressed with that "reg Dopper," Her Majesty's High Commissioner, that his intentions were good and that in any case resistance would be futile. The laager broke up and Frere hoped all would yet be well. The hope was vain. On that very day came the news that the British Government had censured him for his Zulu policy. He returned to Cape Town, avoiding the Free State under orders from Downing Street, feeling that he had been deserted by the Imperial authorities. He found that his diagnosis coincided with

that of his opponents. The Free State Volksraad voted its sympathy with the Transvaalers; in the Colony, Hofmeyr organized another petition against the annexation; du Toit of the Paarl proposed the organization of the Afrikaner Bond on anti-British lines; the English speaking "Colonials" took up the cry against Frere and all his works. North of the Vaal, the agitation blazed up once more. Then, on June 14th, came the news that Wolseley was to be High Commissioner for South East Africa.

Wolseley was jealous of Frere and impervious to new ideas. He made a settlement of Zululand in thirteen sections which led to chaos within two years, and, in spite of the pleadings of Frere, he set up rigid Crown Colony rule in the Transvaal. "His Excellency," wrote Frere's secretary to de Villiers, "has desired me to send for your confidential information the enclosed Draft Constitution. . . . You will probably agree with him in wishing the Legislative Council could have been made more elective, but the whole thing must be considered preparatory for better things."¹ To which de Villiers replied:

De Villiers to W. Littleton.

Wynberg, Dec. 12, 1879.

I fear that the proposed Constitution will not give satisfaction either to the English or to the Dutch party and that considerable modifications will be required before long. It would, I am inclined to think, have been better to confer legislative powers on the Executive Council and to dispense with a Legislative Assembly altogether than to create an Assembly which will be looked upon as a body called together merely for the purpose of registering the foregone conclusions of the Government. . . . As matters stand in the Transvaal less depends upon the measures introduced than upon the men who have to carry them out. If the proper men are selected I am thoroughly convinced that the Transvaal will in course of time become one of the most loyal Colonies of the British Empire. If however obnoxious agents are employed I greatly fear that although the inhabitants may never rise in open rebellion the country will always remain the Ireland of South Africa.

In face of Wolseley's "settlement," even the Sprigg Ministry hesitated to proceed further with the confederation scheme. Acts for the annexation of Griqualand East and Fingoland to

¹ Littleton to de V., Dec. 6, 1879.

the Colony were indeed passed, but the Imperial Government withheld its consent to the annexation of Griqualand West. In view of the confederation conference which might yet meet, that Colony was too valuable a card to be surrendered.

There was one step which would have cleared the way for confederation in 1879, as in 1902, and that was suspension of the Cape constitution. In certain non-official but influential circles in London such a possibility was being discussed. The belief that Colonials, English and Dutch speaking alike, abused their power over the natives was held almost as an article of faith by most people in England who took any interest in South African affairs. The reversal of d'Urban's frontier policy in 1836 and the annexation of Natal, of Basutoland and of the Transvaal had all been due in a greater or less degree to that honourable solicitude. The gross miscarriage of justice in the Langalibalele case had led to the recall of a Lieutenant-Governor and to reactionary changes in the Natal constitution. In the Colony, self-government was only seven years old; Frere had established a new precedent for the Empire by dismissing his Ministry; the Colonial Secretary had indeed declared responsible government inviolable, but had observed that it was of a more limited character than elsewhere owing to the peculiar circumstances of the Cape. During the debates in the House of Commons in August 1879, on the conduct of one of the many native skirmishes which afflicted the Colony, Chamberlain, then in his Radical phase, had demanded an Imperial inquiry as in the case of Jamaica, a sinister parallel; and, from other quarters of the House, had arisen the cry that, since Imperial troops could not be withdrawn, the powers of the High Commissioner must be increased and those of the legislature diminished. An anonymous article had just appeared in the *Quarterly Review* advocating suspension as the "clearest and completest expedient" for protecting native interests. It was an open secret that Froude was the author.¹

De Villiers had already given proof that, on the bench, he was not to be swayed by political sympathies. Powrie, the editor of the *Mossel Bay Advertiser*, had accused Walter, an M.L.A., of having been influenced unduly by the salary Molteno had given him in Parliament. De Villiers found Powrie guilty of libel but, since public men must expect to be criticised more

¹ *Quarterly Review*, No. 294, of 1879.

bluntly than private persons, he only awarded Walter £5 with costs. At the end of 1879 his probity was subjected to a much more severe strain. The case arose out of the expensive little campaigns which had smouldered on the northern border from the middle of 1878 to the middle of the following year. In desultory warfare of this kind, waged by irregular forces against savages in a dry and dreary country, cases of cruelty are bound to occur. It was reported that Bushman prisoners had been shot and, near Koegas, women and children massacred. Solomon, champion of the natives and owner of the *Argus* demanded an inquiry, a demand which the Colonial Secretary supported. The Cape authorities took depositions and sent Upington, the Attorney-General, to see the depositions and hasten the conclusion of the war. On his return Upington was questioned in the Assembly and was said by Solomon to have answered in a flippant manner suggesting "contempt for the punishment of Bushmen."

The two burghers accused of shooting prisoners were tried at the Circuit Court at Victoria West, where such feeling was aroused that a fair trial before a jury was out of the question. The accused were acquitted amid loud cheers. During the trial and after it, the court officials¹ suggested that the Koegas case should be removed to the more equable atmosphere of the Supreme Court. The Attorney-General ordered the trial to proceed at Victoria West. The evidence was indifferently drawn and the trial broke down. Judge Dwyer could only relieve his feelings by asking Solomon to take the matter up. Solomon did so and, in two fiery articles in the *Argus*, demanded the removal of Upington from office. Upington therefore sued him and the editor, Dormer, each for £10,000.

The criminal sessions opened at Cape Town on November 7th, in the midst of great excitement. De Villiers seized the opportunity of his address to the Grand Jury to deliver a judicial-political manifesto :

You, at all events, are well aware that in the eye of the law all persons . . . stand on exactly the same footing. . . . I was deeply pained a few days ago on reading an account of the mode in which justice is administered in this Colony, written by the English historian who has made the affairs of South Africa his special study.

¹ Including J. N. P. de Villiers, brother of the Chief-Justice, and Magistrate of Victoria West.

"Trial by Jury," he says, "is the palladium of English liberty. Trial by jury in South Africa acts sometimes as an arrangement by which a white man who has forgotten himself in dealing with a black man may be relieved from the consequences." If he had stopped here we should have been forced to admit that there is but too much truth in the assertion. . . . But the writer proceeds : "In the Cape Colony . . . an offence of a white man against a black is not regarded as of the same quality as the offence of a black against a white." If that were a perfectly correct description . . . I should indeed despair of our Colony. . . . Again one is forced to admit that cases do occasionally occur in which the description is too true. . . . (But) I state deliberately, after the most ample experience, that, as a general rule, juries in this Colony . . . perform their duties faithfully and honestly. . . . The improvement during the last fifteen years has been most marked. . . . I remember the intense excitement which was caused in one or two outlying districts by the report that some coloured men were to sit upon the jury. I have since that time presided at trials in remote country districts, where white farmers have, without a word of remonstrance, been called out with coloured men. . . . But if there has been improvement in the past, there is still ample room for improvement in the future. . . . Our statesmen also and our public writers may accomplish a great deal by the studious moderation of their language, and by refusing to pander to the worst prejudices of the more ignorant portion of the white population. . . .

The tone of the address augured ill for the Attorney-General's libel suits. In the event, de Villiers, with the concurrence of Stockenstrom, held that the first newspaper article had been fair comment but that the second had gone too far. He gave judgment against Solomon for 1s. without costs, and against Dormer for £5 with costs, costs whose justice, he said, had caused him a greater mental struggle than any other point raised. The judgment caused an uproar in the Colony. Already during the sessions de Villiers had done what he considered justice in the teeth of the Executive.¹ He had been warned that the release of certain native prisoners would lead to serious unrest ; nevertheless, holding that it was the duty of his court to administer justice "and not to preserve the peace of the country," he had discharged them. Now, he had practically censured a leading member of the Ministry and was duly attacked in the press for so doing. But his action was received with favour elsewhere. Frere had written from his sick-room congratulating him on his

¹ *W. Kok v. Queen*, Buch. 1879, p. 45.

charge to the jury, "which meets so effectually and judiciously the very serious imputations lately cast by those who ought to know better, on the fitness of the people of this Colony for exercising some of the first privileges and discharging the cardinal duties of a free and self-governed community";¹ and the *London Times* bestowed a blessing in its most pontifical manner, repudiating all talk of Imperial interference because withdrawal of self-government was not only impossible but unnecessary. "We see," concluded the Thunderer, "that there are Judges at Cape Town. . . . We may thus be content to see the Cape Colony work out its own destiny."

¹ Frere to de V., Nov. 10, 1879.

CHAPTER VIII

THE PRETORIA CONVENTION

DE VILLIERS had made his name in the New Year of 1880 not only in his own country, but also in Great Britain. The Privy Council knew him as a judge; Lord Selborne, the Lord Chancellor designate, knew him as a politician who would not willingly throw away any fair means of federating South Africa; Radical supporters of Gladstone, and notably Chamberlain, esteemed him as one who dealt out even handed justice as between white and black.¹ The time was rapidly drawing near when, as a member of a Royal Commission, he would need all the help that his reputation could give him.

The Cabinet censure and the division of Frere's authority killed confederation; but the Imperial Government, shaken though it was by the assault of Gladstone in Midlothian, did not despair. Instead of providing the corpse with decent sepulture, it strove to galvanize it into action. At the same time it failed to defend Frere adequately from the attacks of the Liberal opposition. In Great Britain, the High Commissioner was made the scapegoat: in South Africa, Wolseley and other stars in their courses fought against him. Many official changes were made in the Transvaal, some good, some otherwise; the new administration had to its credit the final defeat of Secocoeni; but, on the whole, it was incompetent and unsympathetic to the burghers. The agitation for the reversal of the annexation waxed stronger and stronger. In the Colony, the Sprigg Ministry itself had lost hope of confederation, the anti-Frere opposition grew in strength daily, and one section of the opposition became frankly anti-British.

Twenty years before, one of the masters of the Paarl Gym-

¹ Hansard, Aug. 1, 1879, and J. Chamberlain to de V., Jan. 27, 1880.

nasium had boasted, with an enthusiasm which blinded him to the facts, that the school gave the finest teaching in English of any school in the Colony.¹ Since then a Paarl clergyman had sought to turn the boast into a reproach. There were many reasons for this change of front. The grant of responsible government in 1872 had awakened the country folk of the West, most of them Afrikaans speaking, to that interest in politics which de Villiers had always urged them to take. The Seven Circles Act for the reform of the Legislative Council, which he had drafted, and the more general spread of education had had the same effect. The country felt that it was too much dominated politically by the English speaking towns. Group consciousness was, however, really awakened by the policy of certain representatives of the Imperial power and of their flamboyant supporters. The treatment of the Republics in the matter of Basutoland, the Keate Award area and the Diamond Fields; the flooding of the country with newcomers, many of them English, many more British subjects who, the less right they had to call themselves English, the more blatantly did they claim that privilege, drove many English-speaking citizens to take up the "Colonial" attitude; that is, the Colony first and Great Britain a poor second. The same forces drove the Afrikaans-speaking burghers in upon themselves and, in 1873, the Rev. S. J. du Toit of the Paarl started a campaign to encourage the development of the "taal" into a literary language. Two years later, in the first stage of the confederation struggle, he published his Afrikaans newspaper, *Di Patriot*, as the organ of a cultural association, "to stand up for our Language, our Nation and our People." It was one root of the Afrikaner Bond. The other was planted in 1878. Under pressure of Sprigg's Eastern Ministry with its taxes and excise, J. H. Hofmeyr formed the Farmers' Defence Association, with branches mainly in the East. His success was limited at first; but his organization was political and du Toit's might easily become so. In July 1879, in the midst of the uproar caused by the censure on Frere, du Toit proposed the formation of an Afrikaner Bond to combat British influences. Before the end of 1880 the Bond had fourteen branches in the Colony, and had begun to spread to the Free State.

With the purely linguistic side of du Toit's movement, de

¹ Jacob de Villiers to de V., Sept. 20, 1861.

Villiers had no sympathy. He declared his opinion at the outset, and to that declaration he clung to the end of his days. In May 1876, he addressed a meeting of members of the South African Public Library at Cape Town. His thesis was that, since French had perished from the land, the Cape Colonists had a choice of three alternative languages—the Dutch of Holland, Cape Dutch and English. Though the mass of the Afrikanders could understand the High Dutch of the Dort version of the Scriptures, the language of the pulpit and of their newspapers, in exactly the same way as the English understood the Elizabethan English of the Authorized version, he held that High Dutch was out of court as the popular spoken language of the future. On the other hand, though Cape Dutch was an excellent medium "for humorous and racy poetry," there, in his eyes, its literary value ended and ought to end. Immense efforts would be necessary to make it suitable for general literary purposes, and "the force and energy which would be wasted . . . would be more usefully employed in appropriating the rich and glorious language which is ready to our hands."

For the racial and possible political developments of the Taal Beweging, he had nothing but condemnation :

. . . It appeals to the patriotism of the colonists for support, as if patriotism consisted solely in a retention of the customs of our forefathers whether such customs are worthy of retention or not. . . . But in truth it is a misuse of terms to speak of patriotism in connection with this subject. . . . The Americans before the War of Independence spoke English, but they nevertheless manfully asserted their rights against the Government and Parliament of Great Britain. . . . A vague yearning for a closer union of the disjointed fragments of the European population has come over the land. . . . What the future will bring forth none of us can tell. . . . Sudden catastrophes, too, will sometimes upset the most careful calculations. . . . I have only to add that . . . the time is still far distant when the inhabitants of this Colony will speak and acknowledge one common mother-tongue, that it will, however, come at last, and that when it does come, the language of Great Britain will also be the language of South Africa.

De Villiers was naturally attacked by *Di Patriot* and less energetically by Hofmeyr in the *Zuid Afrikaan*. Hofmeyr was no champion of du Toit's Afrikaans, for he wrote that du Toit was "fighting a hopeless battle"; but he held that de Villiers

was wrong to teach that Afrikaans, as a poor language, must lose the race, since it could fall back on High Dutch and foreign sources for new words. The Chief Justice, however, continued unrepentant. In 1882 in Cape Town during the bitterness which the Transvaal war had brought to a head; again in 1896 at the Paarl after the Raid had poured oil on the flames of racialism which had been fast dying down; and later on again in protest against the strife of tongues engendered by the South African war; in spite, that is, of those "sudden catastrophes" which "will sometimes upset the most careful calculations," he calmly reaffirmed his faith in the ultimate destiny of the English language and his hatred of politics based on the curse of Babel.

On the other hand, he was no enemy of Dutch. "It is certainly surprising to find," he wrote, shortly before the time of Union, "how little faith many Englishmen have in the destiny of their own language or in the principle that the fittest language must in the end prevail in South Africa. Past experience should have taught them that the surest way of promoting the use of English is to give Dutch the freest possible scope." He was drawing on his own experience when he stated that paradox, a paradox which guided the report of the Parliamentary Education Commission which he presented in June 1880. The report covered the whole educational fabric of the Colony, from the examining university, of whose council he was a member, downwards, with especial reference to the needs of the rural population. The report itself was his work; with its recommendations he was certainly in cordial sympathy; and most of those recommendations were ultimately carried into effect though, as late as September 1882, he complained that his commission would seem to have been appointed to silence popular clamour rather than to pave the way for reforms. However, his commission reported that there should be a ministry of education combined, if necessary, with that of justice, and that the Superintendent-General must confine himself to administration and leave inspection, "the keystone of a system of state-aided schools," to an increased staff of inspectors. The old inchoate school committees were to make way for local elective school boards in each district empowered to levy rates. The general policy was to be the concentration of all schools, other than the colleges at the top and the Aborigines mission schools at the bottom, under the school boards;

voluntary effort was to be encouraged by State aid ; but in no case was the Government grant to exceed the amount raised by voluntary effort, for de Villiers was true to the old Cape tradition that an earthly Providence must help only those who help themselves. He would have liked to see compulsory elementary education. More than that, he believed, the State had no right to demand, less it could not accept of its future citizens ; and to that end he recommended the provision of free elementary education for the children of all who could not afford to pay fees. One other compromise he was obliged to accept. The five colleges existed ostensibly to train students for degrees ; actually, they were in most cases competing with the first class schools. To make the possession of a matriculation certificate the passport to the colleges would, he admitted, be death to the colleges in the Eastern Province ; wherefore he recommended a compromise. No new college was to draw a grant-in-aid without the consent of the university council and all were to be carefully inspected. A real teaching university, he and his fellow-commissioners noted regretfully, was out of the question owing to " paucity of population."

It was only when his commission dealt with subjects of instruction that de Villiers touched on the language question. More attention was to be paid to science even at the expense of the classics and Euclid ; the then revolutionary idea was approved that text-books should be written to suit local conditions ; far more attention than hitherto must be paid to agricultural and industrial training in the rural areas. De Villiers, keen farmer that he was, even dared to hope for an agricultural college, " bearing in mind the haphazard and unscientific way in which farming is usually carried out in this country, and the fact that the Colony is entirely dependent for its material progress on the produce of the land." As with the Europeans, so with the Bantu pastoralists and agriculturists. " The primary duty," he wrote, " which the State owes to the aborigines of the Colony is to teach them the value of labour and industrial pursuits." Lastly, as touching language, he recommended English as the medium of instruction in the Aborigines Schools with more liberal provision for the teaching of the Kaffir tongues. He prescribed much the same for Dutch in the European schools. Dutch was already taught as a subject in the first-class schools ; it was the medium

of instruction for the first twelve months in the second-class schools ; but now he wrote :

Additional facilities for the teaching of the Dutch language ought, if possible, to be provided. . . . For children of Dutch-speaking parents, the ability to read Dutch is as good a test of their having received an elementary education as their ability to read in English in the case of the children of English-speaking parents. . . . The English language has so many obvious advantages in its competition with Dutch that it needs no artificial encouragement. . . . The evidence given before us leaves no room to doubt that there is a growing desire on the part of the farming population to have their children instructed in the English language. It is, however, equally clear that there are many who object to having the English language forced upon them ; and that others again . . . do not possess the means of having them (their children) taught. . . . All restrictions as to the language which is to be the medium of instruction should be removed. . . .

De Villiers' report was the first official intimation of the change which was made in 1882, when the choice of the medium of instruction in first and second-class schools was left to the governing bodies ; that is, indirectly, to the parents who elected them. His report was signed by five members, three of whom bore English names, and by a chairman whose education had been almost entirely on English lines, who rarely wrote in anything but English, and whose opinion on the merits and prospects of the language were not such as to endear him to the more ardent advocates of High Dutch or of Afrikaans. Yet within a short year of signing the report de Villiers was under suspicion, in the eyes of the Transvaal leaders, as an " Engelsgezinde " Cape Colonist and, in the eyes of the Jingoese, as the man who had thoroughly enjoyed himself by pulling down the Queen's flag so rashly hoisted by Shepstone.

The hopes of the Transvaalers and their supporters had risen when Gladstone took office in April 1880. Naturally they expected that the eloquence of Midlothian would be translated into political action ; but for many good reasons, which he who runs may read in Lord Morley's *Life* of his leader, Gladstone disappointed them. Instead he directed that one more effort be made to carry South African federation and with it the long-delayed self-government for the Transvaal. Sprigg dutifully led the forlorn hope in the Cape Assembly and failed, thanks

partly to the personal influence of Kruger and Joubert on legislators in Cape Town, but mainly to the impossibility of inducing a corpse to "march." In September, the unhappy Frere was recalled. Wolseley's Natal constitution of 1875 would expire automatically at the end of the year; confederation was obviously damned as well as dead. So Frere departed. Within the week, the Colony found itself involved in the long and humiliating Basuto War of Disarmament and in the middle of December the Transvaalers hoisted the Vierkleur.

The Transvaalers rose suddenly. Pomeroy Colley, Wolseley's successor in S.E. Africa, had anticipated no trouble; the leisurely acting-Governor at Cape Town had sent on Brand's warning telegram of December 6th by post to London. After all, in terms of the policy of *divide et impera*, the Transvaal was none of his business. Before the telegram reached London, hostilities had begun. They had been well-timed by the Boers. The pacific Liberal cabinet, legatees to the late Ministry's Afghan war, was faced by a difficult situation in the Mediterranean and by the Land League in Ireland. Ministry and public alike were sick of expensive South African adventures; the Cape was involved with the Basuto; the Imperial troops in all South Africa were reduced to five battalions, ill-disciplined and decimated by desertion. The war resolved itself into the siege of garrison towns in the Transvaal and spasmodic attempts by Colley to dislodge Joubert from Laing's Nek. Neither side was anxious to press matters too far and telegrams soon began to fly as thickly as the bullets. The Cape Assembly, at the outset, had urged the despatch of a special commissioner; then, early in January, Brand begged the Secretary of State to send up de Villiers with definite proposals for a settlement.

A few days later the new High Commissioner, Sir Hercules Robinson, arrived in Cape Town in time to receive a reply from Lord Kimberley that a settlement would be made if the Boers would lay down their arms. The message reached Colley and Joubert just after the British had failed to storm the Nek. Already Merriman and Hofmeyr were urging Brand to redouble his efforts lest the war spread, a fear which the President shared. Some Free Staters had joined their fellow Boers on the Nek, but it must always remain doubtful whether a general movement would have taken place even in the Free State, let alone in the

more distant Colony. De Villiers' brother, Melius, wrote from Bloemfontein early in February that it was unlikely that many would go, for "the people here know only too well what the inevitable results will be of interference on our part in a struggle with which we have almost nothing to do except as a matter of sentiment."¹ Brand, though he blamed the Transvaalers for having forced a war, took the fear of its extension seriously and repeatedly warned the Secretary of State.

At the close of January de Villiers got into touch with Brand :

Telegram. *J. H. de Villiers to President Brand.*

(30) January, 1881.

Could not your Honour, acting as mediator, inquire from the High Commissioner here by telegraph whether, in the event of the Transvaal Boers making complete submission, the Home Government would allow the question of independence to be submitted to a vote of the male adult population of European extraction, such vote to be taken under British supervision and such guarantees as may be necessary to secure a *bona fide* expression of opinion. If the answer should be in the affirmative, could you not induce the Transvaal authorities to make the proposal forthwith. Every hour becomes of importance.

To which Brand replied :

Telegram. *President Brand to J. H. de Villiers.*

January 31, 1881.

... How can I be mediator unless asked to act as such by both parties. I still think that the best course is to send you at once to speak to the Transvaal people and to come without the least delay to an agreement as to the terms upon which there shall be a cessation of hostilities upon both sides with a view to bring about a settlement. Your Honor is near the High Commissioner and can do much to prevent further bloodshed and to [promote] much better feeling, but the great thing is to stop fighting at once, and this will I am afraid not be done if the troops march against them. The situation of the garrisons at Potchefstroom and Pretoria would also be relieved if an agreement could be at once made to cease fighting.

Telegram. *J. H. de Villiers to President Brand.*

February 1, 1881.

The question suggested by me would, I submit, come with greater propriety from Your Honour, as the friendly head of an independent

¹ Melius de Villiers to de V., Feb. 3, '81.

State, than from myself, and, if answered in the affirmative, might still lead to a peaceable settlement. The proposal suggested by me seems to offer the only basis for a satisfactory arrangement. I am persuaded that the British Government would not, after recent events, consent to begin negotiations for peace or to appoint a Commissioner or even to stay military operations, but I firmly believe they would candidly answer any inquiries made by yourself as a friendly mediator and would fairly consider any proposals that may come from the Transvaal side. For purposes of mediation it does not seem necessary that you should be asked to act by both parties. . . .

Telegram. *President Brand to J. H. de Villiers.*

February 1, 1881.

I do not see how I can do more than I have already done without seeming officious and doing more harm than good. I cannot communicate with the Transvaal people but I believe they are acquainted with all the telegrams. General Colley is close to Transvaal. If the High Commissioner sends a telegram to him to inform the Transvaal people of the past telegram a way may be perhaps found to arrive at a cessation of hostilities and to hear what the Transvaal proposes. If I can be of any service to communicate anything which the High Commr. wishes to prevent further bloodshed I shall be most happy to do so. How can the Transvaal people be induced to stay further armed resistance unless some guarantee is given to them and some understanding come to ?

At this stage de Villiers sent the correspondence to the High Commissioner, and asked for an interview. Sir Hercules's reply showed, *inter alia*, the beauties of divided control. If de Villiers in the late 'eighties staunchly resisted the proposed division of the powers of the High Commissioner from those of the Governor of Cape Colony, it was because he had learnt a bitter lesson in 1881.

High Commissioner to J. H. de Villiers.

Government House, Cape Town, February 2, 1881.

DEAR SIR HENRY DE VILLIERS,

I am very much obliged to you for allowing me to peruse the telegrams from President Brand, which I return. I am sorry he does not see his way to move further in the direction of his first message to Lord Kimberley, as I quite agree with you that after recent events public opinion at home would not support the Govern-

ment in *initiating* negotiations for peace. I shall always be pleased to talk matters over with you whenever you like to call.—Yours very truly,
HERCULES ROBINSON.

PS.—General Colley is in direct telegraphic communication with the Home Government and it would not therefore be right or proper for me to shove in my oar between them in the manner suggested by the President.—H. R.

De Villiers promptly sent Brand a full account of his conversation with Sir Hercules. The letter has not been preserved, but its sense can be gathered from Brand's reply :

President Brand to J. H. de Villiers.

Bloemfontein, 10 Februari, 1881.

MY DEAR CHIEF JUSTICE,

I read your letter of the 3rd inst. with very great interest. I was very glad to receive your telegram. Every opportunity was used by me to try what I could to prevent further bloodshed. Last night I was rejoiced by the receipt of a telegram from H.E. Sir G. Colley conveying a message from Lord Kimberley that if armed resistance ceases H.M.'s Government will be ready to give all reasonable guarantees as to their treatment after submission and that (a) scheme will be formed with a view to permanent friendly settlement of difficulties and that Her Majesty's Government will be glad if I communicated this and former messages. I sent off an express last night to Paul Kruger with a letter from me enclosing the telegram. If now hostilities could only be avoided for 8 or 10 days I hope our wishes for a happy solution may be realized. With best wishes and kind regards.—Yours very truly,

J. H. BRAND.

The hope that further hostilities would be avoided was not fulfilled. Two days before Brand wrote, Colley had met his second check at Ingogo. Kruger, however, caught at the chance of a settlement. Frere had noted him as a restraining influence in 1879; he had been against pushing matters to extremes in 1880; he knew that Joubert feared that, if the war went on for any length of time, the Boers must be beaten, a fear which was shared by Hofmeyr in the Colony, for many of the 8,000 burghers of the State were half-hearted, their reputation for steadiness against large numbers of disciplined troops had not yet been established, and British reinforcements were arriving.

Kruger therefore replied that he was so confident that H.M. Government would do right, if only it knew the truth, that he would not fear an enquiry by a Royal Commission; which, he added, would be admitted once the troops in the Transvaal were withdrawn. Naturally the British Government refused on such terms, but ordered Colley to tell Kruger that the commission would be forthcoming as soon as opposition ceased. Colley gave the Boers 48 hours in which to reply; but the message did not reach Kruger at Heidelberg till February 28th, twenty-four hours after Colley had been killed in the rout of Majuba.

In spite of, indeed because of Majuba, Gladstone decided to go on with the negotiations in view of the offer made and the favourable answer received. He was in a miserable position. The Queen's Speech had talked of vindicating authority; the determined lady in whose name Ministers spoke resented all idea of withdrawal; only one-third of his following in the Commons supported the idea of Transvaal independence, and the fiercest opponents of such a policy were radical philanthropists who feared for the natives. To withdraw meant a terrible blow to British prestige in the eyes of whites and blacks alike; already the Natal Zulus were excited at the three defeats of the Imperial arms. Sir Evelyn Wood, Colley's successor, throughout advocated a military decision to be followed by lenient action; but war must mean bloodshed and a possible extension of bloodshed to other parts of South Africa.

Brand kept de Villiers and, through him, the High Commissioner informed of the progress of the negotiations which he was carrying on with combatants whose principals were widely separated and one of whom, at the bottom of the Nek, was spoiling for a fight, while the other, at the top, was beginning to lose control of some of his burghers, especially of the newly arrived youngsters who had as yet seen no fighting. De Villiers advised that the President be left as free a hand as possible:

H. Robinson to de Villiers.

March 16, 1881.

... I agree with you that there is nothing to be gained by your telegraphing to him at this moment. He is on the spot, is able to confer with both sides, and by this time knows as much—perhaps more—than we do as to the views of the Home Government. I have heard nothing further since I last saw you. I suspect Mr.

Hofmeyr could tell you what is going on. Could you not send for him and sound him as to whether they are likely to accept the terms offered?

De Villiers did not consult Hofmeyr, for he rightly judged that he could know no more than he himself did. Hofmeyr, indeed, had just been severely snubbed by the harassed Joubert for his well-intentioned efforts to mediate. Negotiations for peace were, however, successful. Kimberley on March 12th promised that, if the Boers dispersed, a Royal Commission consisting of Sir Hercules, Wood and de Villiers would be appointed, with Brand as *amicus curiae*, to consider "complete self-government under British suzerainty with British Resident at Pretoria, and provisions for protection of native interests and as to frontier affairs. Control over relations with foreign powers to be reserved."¹ Four days later Wood met the Boer Triumvirate, Kruger, Pretorius and Joubert, with Jorissen and a few others, near Laing's Nek. He refused Kruger's demand for the immediate withdrawal of the Transvaal garrisons and for a bi-lateral commission. He found that the Boers made so many objections to the proposed terms that he invited Joubert to fight it out, to which that canny commander replied that "we shall not win now and I am in favour of a peaceful settlement." He was indeed, for he told his commandants that, if they refused the liberal terms, they must seek another general. Brand's arrival and pressure by friends in London eased the strain. The Boer leaders accepted suzerainty as defined by Wood to mean that "the country has entire self-government as regards its own interior affairs, but that it cannot take action against or with an outside power without the permission of the suzerain."² The explicit statement that it also included the right of the suzerain to move troops through the dependent State was omitted, at Jorissen's request, on the plea that that was understood. The question of control of foreign and native affairs was left to the Commission, with two other questions which caused much heart-searching among the Boer delegates. They dreaded having to pay compensation for goods commandeered; for the Transvaal could not possibly pay all the claims at once, and default might lead to re-annexation. Still more did they object to the proposal

¹ C. 3114, p. 49.

² C. 3114, pp. 51-52.

that Great Britain might have to retain the native and gold-bearing territories east of the thirtieth degree of east longitude, and only faced the prospect when Brand privately assured them of his conviction that the Commission would not recommend the partition of the State. At last, on March 23rd, the peace terms were ratified and next day the Nek was almost bare of its defenders.

De Villiers and Wood, united in little else, combined to urge the High Commissioner to proceed at once to Natal in time to open proceedings on April 23rd, the date verbally named by Wood to the Boers. "We shall," wrote de Villiers, "have to require from the Transvaal people a strict compliance with those terms, and it therefore seems very desirable that they should be strictly complied with on our side." The sorely tried High Commissioner, busy with the affairs of Basutoland and the tottering Sprigg Cabinet, replied curtly enough that the peace terms read "as soon as possible" and "the 'possible' must of course be interpreted reasonably. If it does not include a due regard for other interests in my charge, quite as important as those of the Transvaal, I should not have been appointed."¹ De Villiers returned the soft answer that turneth away official wrath, for we know that Sir Hercules was as anxious as he to reach Natal, whence Wood was bombarding the Colonial Secretary with requests to let him fight it out. "This will give decisive military result," he wired, "and happiest result for the country. I guarantee we dislodge them." At de Villiers' suggestion, Sir Hercules readily agreed that he and Wood should open the proceedings without him; wherefore de Villiers sailed for Durban, leaving the High Commissioner to deal with his "other interests."

These were grave enough. The Colonial forces in Basutoland had met with several reverses and, in spite of costly victories, had made but little headway. Expenses mounted up, and the levies began to melt away. At last the rebel chiefs accepted the High Commissioner's arbitration. He saved the face of the Colonial Government, but the solid gains—and the guns—remained with the Basuto. Meanwhile de Villiers had posted up from Durban to Newcastle as fast as relays of swift mules would carry him. He found the town full of men abandoning the Transvaal, Wood in his tent working sixteen hours a day to clear up the after effects

¹ de V. to Robinson, April 16th and 17th; Robinson to de V., April 16th, 1881.

of Wolseley's Zulu settlement, and another tent pitched for himself, since there was no room in the inn. Under these depressing circumstances he and Wood opened the Royal Commission on April 29th, the very day on which Robinson gave his Basuto Award.

The first duty which fell to them was to refuse to recognize the existence of the Volksraad of 1877. It was a point on which Wood was insistent. While waiting for de Villiers, he had travelled up to Heidelberg and, at considerable personal risk, obliged the Boers to lower the Vierkleur. "There cannot," he said, "be two governments in one country at the same moment," and the Boer leaders gravely admitted that he was right. Now, he was apt to be quarrelsome about any act of the Triumvirate which smacked of a claim to be a government *in esse*. De Villiers, however, diverted the discussion to the trials of Boers accused of breaches of the rules of civilized warfare. Wood and the Transvaal Attorney-General pressed for a special tribunal; but de Villiers objected that this would need special legislation, which would give rise to such distrust that the success of the Commission would be jeopardized. He held that there was no question that Captain Elliott and Andrew Malcolm had been murdered in the Transvaal and Dr. Barber in the Free State, and he pressed vigorously and successfully for trials. Other cases he held were either fair executions or outside the scope of the commission. The High Commissioner arrived on May 10th and upheld his opinion on all points, except in the case of William Finlay. Above all Sir Hercules agreed that a special tribunal was out of the question; so, with the example of the Koegas jury in their minds, the commissioners let the three cases of undoubted murder go before the ordinary courts. As was to be expected, under the circumstances, all the accused were acquitted.

Bad news accompanied the arrival of the High Commissioner. The ill-success of the Basuto war had robbed the Sprigg Ministry of its few remaining shreds of credit. It had now fallen. The final blow was given by Cecil Rhodes and other newly arrived members from Griqualand West, who declared that they had come to get a railway for Kimberley and, since Sprigg could not give it them, he must make way for some one who could. It was Rhodes' first political achievement, and it was done in the interests of the railway to the North. Worse still was the news that,

on the ill-defined Western border of the Transvaal, the mere news of the impending British withdrawal had inspired the "pro-British chieftain, Montsioa, to attack the "pro-Boer" Machabi. Cronje, the hero of Potchefstroom, was said to be marching to avenge the Transvaal protégé. All the commissioners could do was to send Colonel Buller and General Joubert to the scene of the trouble and push on with their task, hoping for the best.

The Commissioners were not a happy party. Wood frankly hated his work, and hankered to the last for a route-march in force through the Transvaal as a warning to all whom it might concern. He differed on many points from Robinson and on most from de Villiers, whom he suspected of a desire to whittle away British paramountcy to the uttermost. Once, he differed so bluntly that Robinson privately urged him to be more accommodating. "How can I?" blurted out the unhappy soldier. "That glib lawyer's tongue talks me round every time—and he's always right." At last he begged to be relieved of his duties. "Don't say that," cried Robinson, "I have just spent half the morning persuading de Villiers to stay on!" De Villiers' position was simple. On his appointment he had indeed received an anticipatory whoop of triumph from the spokesman of Hollander sympathisers and the Delagoa railway interest;¹ but, as far as was humanly possible, he was neither pro-Boer nor pro-British. He held that the actions of the Commission were governed by the peace terms and common-sense. "Legally," he afterwards told Kotze at Pretoria, "you are right, logically you are right. Unfortunately we have to think politically. You here are not the only people to be satisfied. The people over there must be satisfied too." Then as ever he refused to argue politics like a lawyer. He kept the Boer leaders at arms' length lest men might say that he had been swayed by racial feeling, and thereby earned the long-lived suspicion of Kruger and his stalwarts. With Sir Hercules, he began with respect and ended with affection. "No one knows," he told his wife, "what a sterling good man he is, so anxious to do what is right." Only once, and then in private, did the High Commissioner express his distaste for the work he had to do, and that was after breaking the news to the chiefs assembled at Pretoria that the long arm of the White Queen

¹ Beelaerts van Blokland to de V., March 23, 1881.

was to be withdrawn. For the rest he held the scales of justice even, and received small thanks for his pains.

The Commission sat at Newcastle till May 31st, considering the murder trials, charges of slavery and claims for compensation, from those of the excellent Patrick O'Sullivan, who declared his Lydenburg farms "an Imperial question," downwards. The Secretary of State's instructions caused much trouble. In some respects the Boer leaders objected that they went beyond the peace terms and de Villiers agreed with them. Kimberley's demands that the Keate Award boundary must be settled, provision made for the public debt and the lawful acts done by the outgoing Government recognized were reasonable enough; but he interpreted the control of the external relations of the Transvaal State, as "including, of course, the conclusion of treaties and the conduct of diplomatic intercourse with foreign powers."¹ De Villiers' opposition was overborne on this point, and the official interpretation nearly earned the rejection of the Convention by the Volksraad.

Then came the question of boundaries. The Transvaal was to be furnished with definite frontiers for the first time. On the West, the Keate Award line had been repudiated by the old Republican Government and profoundly modified by the British administration, which in 1880 had drawn a line cutting off native lands and seventy-five unoccupied farms from the lands on which farmers were actually settled. The Transvaalers objected and de Villiers, while accepting the line in principle, urged that it be extended to include all the lands of Machabi, Moshette and Mas-souw, who had always looked to the Republican Government as their friend. His advice was not taken; the lands of the three chieftains were partitioned; and they and their people remained to plague their neighbours for four troubled years to come.

The western problem was as nothing compared to the eastern. The Commission had to decide whether Great Britain should retain all or any of the land lying east of the thirtieth degree. The Boers had agreed to this at the Nek, and now they brought forward a hundred and one good reasons against any such retention, even blandly asserting that they had only agreed to it because they had believed it would never be carried out. The Imperial Government on principle and by inclination was averse

¹ C. 3114, p. 7.

to any fresh acquisition of territory; but the British subjects on the Lydenburg goldfields and the swarming tribes, especially Secocoeni and his people, had to be considered. Philanthropic pressure was all in the direction of retaining the northern districts of the Waterberg and Zoutpansberg as well; but to this Kimberley would not listen. Cynics may say and do say that the gold was the cause of this solicitude for the natives; but the correspondence shows that the Imperial Government and the Commissioners were thinking mainly of native interests, the danger of border wars with the Zulus and the Swazi, and the complications likely to follow a rush of British subjects to the mineral areas of Lydenburg. "No government of the Boers in the Transvaal," the Commissioners recorded unanimously, "ever exercised authority enough to control the movements of the individual settlers upon the frontiers of their State, and the Zulu frontier had been in particular a theatre of contention."¹ Wood fought hard for retention for, now that the Imperial Government had broken Secocoeni and Cetewayo and disarmed the natives and checked the gun traffic, the eastern natives would be helpless. At the very least, he pleaded, let the south-eastern territories be retained in the interests of the peace of Swaziland, Zululand and Natal. The High Commissioner and de Villiers were puzzled by "this very embarrassing subject." De Villiers had indeed noted that "it never embarrassed me," but he crossed that remark out as soon as he began to examine the facts. On the one hand were the Boer leaders offering at last to stand by their promise, but joining with Brand to declare that it would mean trouble with their followers. On the other were large sections of British and South African opinion anxious for retention, the blow to British prestige which must follow withdrawal in the eyes of the natives, and the conviction, which all three commissioners shared, that the tribes would prefer British to Boer rule. For it must be one or the other; the natives could not be left to themselves. Frere's experience of "black Alsatias" precluded that possibility. At last Sir Hercules and de Villiers decided against retention and in favour of a bargain. Retention would mean war with the Boers sooner or later, especially as "sentiment, in a great measure had led them into insurrection." "No," said Wood, "taxation"; but Wood was outvoted.

¹ C. 3114, p. 16.

Swaziland was to be independent, and special terms were arranged for safeguarding Secocoeni; for the rest, the High Commissioner and de Villiers bargained, in return for no retention of territory, for fuller powers for the British Resident at Pretoria, the creation of a Native Location Commission, the right of natives to hold land vested in this Commission, the settlement of the Keate Award area and the veto of the Queen on all laws affecting natives.¹ This, they declared, would be "a more general and satisfactory form of protection for the natives within and around the Transvaal" and "a generous concession to the feelings and wishes of the people" likely to ease the general situation; but de Villiers cautiously crossed out the expression of the fears of himself and his fellow commissioners that, if the territory were retained, Boers would trek westward as they had done in Burgers's time or would avenge the partition on the persons of the western natives. All things are lawful to think, but all are not expedient to be written in a State document. Wood, in despair, tendered his resignation, which the Secretary of State refused to accept; the Boer leaders objected to the maintenance of the Zulu and Swazi boundaries drawn in 1879 and 1880, and to the obligation to compensate farmers whose farms lay beyond those lines; but, when de Villiers suggested that the Locations Commission might arrange a change of boundaries for the better, they gave way. On June 10th the boundaries were roughly defined.

One other vital point was discussed at Newcastle. Kruger assured the commissioners that, as in the old days, there would be equal protection for all, burghers and non-burghers. "And equal privileges?" asked Wood, who had already told de Villiers that he feared that Kruger would set up an impossible franchise. "We make no difference," replied Kruger, "so far as burgher rights are concerned."² There may perhaps be some slight difference in the case of a young person who has just come into the country." A few days later Jorissen explained that "a newcomer has not his burgher rights immediately. According to our old 'Grondwet' (Constitution) you had to reside a year in the country... In the law relating to the franchise there is a

¹ Robinson to Colonial Secretary, May 22, 1881; C. 3114, p. 64; also pp. 19 and 28 *et seq.*

² C. 3219, p. 25.

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stipulation for the oath of allegiance to be taken to the State . . . The last revision of that law was also made in 1876." ¹ It was the first of many.

However, no man can foretell the future; and, in the middle of June, the Commission travelled up to Pretoria. There they laboured, for six days a week, Sir Hercules corresponding by cable with Downing Street and de Villiers drafting the Convention. At last it was ready in all its 36 clauses, 20 of which the Boer delegates accepted at once. There were many points to which they objected, notably the provision for the revival of the Queen's authority in case the Volksraad refused to ratify the Convention. Both parties were finding that it was easier to annex a State than to disannex it. The old Volksraad was dead; the idea of summoning a new Volksraad under British administration was abandoned; it was therefore arranged that the civil government should be handed over to the Triumvirate as soon as the Convention was signed, and the Volksraad elected to ratify the Convention within three months. Then, and then only, would the troops march out. The Triumvirate declared that they could not answer for their followers if the Queen's authority were revived; there was, however, no help for it and they passed on to urge their objections to the boundaries, the Native Locations Commission, the power of the Resident and the financial terms.

De Villiers was able to smooth over many of the remaining difficulties. He softened the brusque wording of the clause prohibiting the slave-trade; tried in vain explicitly to empower the Transvaal to bargain with the Swazis for a railway corridor down to Delagoa Bay; successfully kept open the way for confederation along the economic road by providing for complete freedom of trade between the Transvaal and H.M. possessions and, with the same end in view, supported Jorissen's proposal that "no goods intended for the Transvaal and imported through one of H.M. Colonies shall be subject to a higher duty than goods intended for the Colony." ² But the Commission could not bind the Colonies, and the clause had to go. He also checked the last desperate attempt of the Transvaalers to scotch the Locations Commission on the plea that it was *infra dig.* for their future President to serve on such a body. "Very well," said he, "let him deputé someone to act for him." So it was done.

¹ C. 3219, p. 53.

² C. 3219, p. 105.

Finally finance provided a fruitful field of misunderstandings. The outstanding fact was that the Transvaal had been poor before the annexation, and promised to be poorer after the retrocession; for the new British capital was pouring out of the country, the debt was vastly increased, and compensation for goods commandeered had to be paid. De Villiers held that payments for goods commandeered was fair but inadmissible under the peace terms, which had only mentioned losses due to unjustifiable acts. He was outvoted by his colleagues, and he therefore persuaded the Triumvirate to leave all claims to the joint sub-committee rather than refer commandeering claims to the ordinary courts. After all, two of the Transvaal judges, de Wet and Kotze, were members of the sub-committee and de Villiers, as ever, was anxious to avoid a clash of jurisdictions. The Boers were very suspicious; they feared that they might be saddled with indirect claims; but at last he convinced them that they would not have to pay the gentleman who demanded £75,000 because his flag had been insulted. "No," broke in Sir Hercules, "it is only £50,000." But, big or little, the commissioners had to request H.M. Government to advance the necessary funds, since there was no prospect of the Boers "getting the money on fair terms by other means."

De Villiers held that the peace terms did not call upon the Transvaal to contribute to the salary of the Resident; but he admitted that the native hut tax might reasonably be ear-marked for it, as the Resident's presence would benefit the natives; "at least," he added reflectively, "I hope so." Then came pensions, compensation for displaced officials and the public debt. The Triumvirate strenuously opposed the idea that they should compensate civil servants whom the new Government was unable to employ; they protested against pensions as being alien to the tradition of their State, and that was true for a good reason. As for the debt, Robinson and de Villiers agreed to cut out the cost of the successful campaign against Secocoeni as a bad debt, and frankly told the Colonial Secretary that the Boers could never find by taxation the £112,000, which the debt proposed demanded annually. So the financial wrangle dragged on till Brand began to exert pressure. "President Brand," Robinson reported to Lord Kimberley, "has just called upon me to beg me to urge upon you the great desirability of not prolonging the present

state of tension. . . . We have already discussed with the Boer leaders the proposals of which you have approved, and, bearing in mind that they have their public opinion to count with after retrocession, we do not think that on the whole they have shown an unreasonable spirit."¹ At the last moment the amount of the debt was reduced, the hated pension and official compensation clauses cut out and, after a vain effort by the Triumvirate to move the Commission in the matter of Imperial control over foreign affairs and the powers of the Resident, the Pretoria Convention was signed on August 3rd. Next day the High Commissioner read the Proclamation to the assembled multitudes and left Hudson, the new Resident, to face the native chiefs, while the Loyalists marched in procession to bury the Union Jack, stopping outside the lodgings of Brand and de Villiers to express their disapproval in the customary manner. On the 5th the Commission broke up. They left behind them the troops in the garrison towns and three harassed gentlemen faced with an empty treasury, an overdraft, and the grim prospect of presenting a most unpalatable convention to the new Volksraad.

Sir Hercules and de Villiers completed the report of the Commission in Cape Town under a dropping fire of telegrams from Wood in Natal. The Imperial Government showed its appreciation of the way in which the Commissioners had done their difficult work by conferring the K.C.M.G. on de Villiers and Brand:

J. H. Brand to de Villiers.

Bloemfontein, *March 23, 1882.*

. . . You have certainly been of signal service in bringing the state of affairs to a conclusion which will I hope in course of time tend to bind together the whole of South Africa. With regard to myself although I would have preferred to have remained without any decoration, yet I felt after hearing the views of our Executive Council, and after having—upon laying the communication and the order I received from H.M. the King of Portugal before the Volksraad—accepted the order, that it would not have been right in me not to receive the offer of H.M.'s Government. I consider that we ought to cultivate the most cordial relations with H.M.'s and the Cape Governments. . . . I have been the subject of many leading articles pro and con. But my conscience tells me that what I did, I did, without regard to my own personal wishes, for the promotion of good feeling. . . .

¹ R. Commission to Kimberley, July 22, 1881.

Brand, like de Villiers, was always looking ahead for signs of better times. He had need of all his optimism, for in the Transvaal storm signals were already flying. The Volksraad met at the close of September 1881 and, in spite of Kruger's warning that, if the Convention were not ratified, there would be war again, furiously urged all the old objections to the settlement. However, the leaders played for time to allow passions to cool and, although an aggressive telegram caused Gladstone so much perturbation that he ordered Wood to prepare for emergencies, the telegram turned out to have been drafted by a Hollander and the Raad showed that it meant to ratify. The debates proceeded amid growing confusion. On October 17th on the new western border, Moshette was induced by his Transvaal supporters to attack Montsioa in revenge for his assault on Machabi. On the same day Joubert presided at a meeting which founded a branch of du Toit's Afrikander Bond in the Transvaal. Massouw also with his fighting tail of Transvaalers and British was known to be preparing to raid Mankoroane and his European allies from Griqualand West and the Colony. At the same time the Volksraad made a new departure in South African fiscal policy by levying customs duties on Colonial as well as foreign goods. The creation of an internal tariff was an ill-omen for the future; nevertheless, the Raad decided to ratify the Convention as the necessary preliminary to proving to a stiff-necked Colonial Secretary that further concessions were necessary and on October 25th it did ratify it, declaring that the Triumvirate had done "a fervent act of love for the Fatherland when they, upon their own responsibility, signed such an unsatisfactory State document." Never were a Convention and its makers damned with fainter praise; and, in Natal, Wood sat down to write to his wife: "In a few years, however, we shall have to take over the country." *Resurgam.*

CHAPTER IX

CHARACTER AND TASTES

EARLY in life, de Villiers had shown himself possessed of a strong character and well-defined tastes and opinions. Now, in his fortieth year he was a man of proved ability in law and politics, reasonably supplied with this world's goods. The family fortunes had indeed risen. Jacob, his elder brother, was magistrate at Prince Albert; Charles was fairly established as an attorney in Cape Town; Melius had, in 1876, been appointed judge in the three-judge High Court at Bloemfontein which, as he laughingly admitted, "rather resembles a locomotive driving a wheelbarrow," but which, for that very reason, gave him leisure to acquire the fund of legal and literary knowledge for which he later on became justly noted.

In 1875 de Villiers had moved from Newlands to a large house, "Oude Wynberg," eight miles from Cape Town, in the midst of thick woods which still sheltered pheasants and buck. The old home at the Paarl had been sold, and he had built a house on his new estate for the sisters who had done so much for him while he was a lad. It is not so certain that he acceded to the request of a distant relative, who presided over a school for girls in the Free State, and who desired a piano "as the people down here think it the one thing needful in education, no matter whether they can read or write." Meanwhile, he began to build the present "Wynberg House," whither he removed in 1882, selling the "Oude Wynberg" homestead and part of the surrounding land.

Throughout his life, however, he bought more land than he sold. His French blood showed itself in a passion for "la terre," which intensified with age. In 1882, beside "Wynberg House," he owned a cottage at Kalk Bay on the False Bay coast, and two

farms in the Transvaal, "Schoongezicht" in the Marico district and "Baviaansfontein" in the Waterberg, bought at £53 and £48 respectively; for land was cheap in the distant Republic. This was only a beginning. Presently he purchased a third farm in the Transvaal and two in the Free State. Later on, he bought one or two farms on the Olifants River in the western Colony, but these, with the farms in the Republics, he sold some years before his death. The land he bought to keep was near his birthplace, the Paarl, and in the neighbouring Drakenstein valley. Near the Paarl, he first bought "Boschplaats" and then the farms "Bartholomew's Klip" and "Eland's Kloof" on either side. At the time of his death he owned some 35,000 acres in this neighbourhood. His farms in the Drakenstein valley were smaller but more valuable. In 1895 he bought "Rust en Vrede," 400 acres exclusive of rough ground on the slopes of the Simonsberg, hard by the great fruit farms which Rhodes had just begun to develop. He would not rest, however, until he had secured "Le Plaisir Merle," a farm of 800 acres, one of the oldest in that part of the country, lying between "Rust en Vrede" and the mountain. It was not until 1912 that he became owner of the long, low, whitewashed building with the massive, mutilated Huguenot oak overshadowing the stoep, which looked out across the "Rust en Vrede" lands to the mountains beyond and to the French Hoek valley in which Pierre de Villiers and his two brothers had built their homes full two hundred years before. Of all his farms, de Villiers loved "Le Plaisir Merle" the best. It was there that he hoped to end his days when the time came for him to retire, and it was in the little graveyard on the farm that he wished to be buried.

The time never came for him to play Cincinnatus. Nevertheless, in the intervals of his other occupations, he proved himself a keen and practical farmer with a firm belief in the top twelve inches of the soil as the true source of a nation's wealth. "We have the soil to cultivate," he told the students of his old college in 1882, "and upon the success with which this is done the future prosperity of our Colony mainly depends. There are drawbacks in this as in every other occupation, but on the whole, taking the good with the bad, it is the safest as well as the pleasantest occupation." Fourteen years later, when all South Africa was counting the cost of the Rand and Rhodesian booms

and the gamble of the Raid which had followed them, he returned to the charge, urging the good folk of the Paarl to apply science to their farming :

. . . It is really a matter of life and death to this Colony. My sole desire is that my fellow-countrymen may be among the fittest that will survive in the struggle. We have no manufactures to speak of and as yet no payable gold fields have been discovered in this Colony. But no gold fields can rival in wealth production the agricultural resources of the country. Gold mines are exhausted in course of time. . . . The real good which the discovery of gold does to a country is to stimulate energy and enterprise and attract a population which requires to be fed by the produce of the soil. We should not however confine our productions to the wants of our own population but seek for markets elsewhere. Those markets, however, we shall not find for our fruits or our wines, for our feathers or for our wool, unless we produce the best of everything not by way of samples only but in large and marketable quantities.

He had long ago warned his friends the farmers to keep clear of speculation in the diamond and gold share markets of which they knew nothing. He might now at the Paarl have enlightened them on the ways of those markets for he himself was a shrewd investor. In the early 'nineties especially, he interviewed his broker daily in Chambers before the opening of Court, and it was noted that the shares which he bought usually went up and those that he sold went down. But of this he said nothing. Instead he went on to display a deeper knowledge of maggots, aphides, dorthesia, phylloxera, orange scale and those other creeping things innumerable which plagued the lives of most of his hearers.

It was, however, not so much de Villiers the Chief Justice who spoke to this Paarl assembly, as de Villiers the fruit farmer, fresh from his newly acquired farm of "Rust en Vrede." The message which he gave them was that which he had given thirty years before when, as a young member of Parliament, he had dilated in the press on a theme, old in those days and still perennially new, the hard lot and manifold shortcomings of the Cape winefarmer.¹ He had advocated self-help and co-operation rather than reliance on Government aid. Improve your wines, he wrote. "Our sole object has hitherto been to increase the quantity, not to improve the quality of our wines. . . . We have been too much in the habit of looking for immediate profits, instead

¹ *Het Volksblad*, July 21, 1868.

of striving for remote advantages." In the valley opposite Wynberg House, he laid out a vineyard and built a house for a vine specialist, who was to make the vineyard and its wines a model for other farmers. He persevered for many years without much success, for the land was not well suited to the purpose. At last he abandoned the attempt and sold much of the land below the house; but some of the vinestocks remain to-day as a witness to his efforts to practise what he preached.

He was something of a pioneer in the fruit farming which has since attained such large proportions in the Western Province. He learnt much from H. E. V. Pickstone, the maker of the Rhodes fruit farms at Drakenstein; he was one of the first to lay down artesian drainage, at first with stones and then with pipes; he was also one of the first to export grapes packed in cork-dust to the London market, where his hannepoots fetched as much as a guinea a box. He planted his orchards at "Rust en Vrede," with an eye to the export trade which he believed was coming. "Le Plaisir Merle" was planted chiefly with vines, though there were oranges and lemons on the upper lands behind the farm; but, at "Rust en Vrede," the vines gradually made way for citrus trees and one of the finest pear orchards in South Africa. At first he imported orange and lemon trees from Italy and Australia, for there were as yet no nurseries in South Africa. The Australians, like the wattles and gums before them, did well, but the Italians often failed to stand the voyage and the subsequent fumigation at the docks. As a citrus farmer, de Villiers made good. On his frequent visits to London, he never failed to see for himself the condition in which his fruit was reaching Covent Garden and, lest the craft and mystery should die out in his family, he afterwards encouraged his elder son to go to California, there to learn the methods of fruit farming best suited to the Western Province.

He was more successful with fruit and vines than with his other ventures. He tried to breed mules on his Free State farms and at "Boschplaats," while on his other Paarl farms he ran ostriches. He was keenly interested in these ungainly but profitable fowl as early as 1881, keeping the more valuable birds at Wynberg House; but, in spite of all his care, he never made his fortune from feathers or mules.

His knowledge and interest in plants—and he was reputed to

know how to acclimatize the Cape silver tree in English green-houses—were equalled by his love of animals. Like most healthy-minded men, he liked to have dogs and horses about him. He always kept pointers at Wynberg House and, later on, setters. Once he had a boar-hound of which he was especially fond, perhaps because of its dignity so like his own. When the gardener of an ill neighbour shot it, he nursed it for weeks in vain, and was so grieved at its death that he never replaced it. He would scour the country for good horses and always had a fine pair for the carriage, driven in the 'eighties by an old Malay coachman and in later days by a coloured man, Nicolaas. Towards the end of his life he supplemented the carriage with a motor-car,—the question of which make was best suited to South Africa occupied his mind on the voyage to England in 1909 as much as the Draft Union Bill—but the car never ousted the horses. He rode well. Until 1885 he was a member of the Cape Jockey Club and, though he resigned in that year, he noted in his diary that "Lord Palmerston very truly remarked that the outside of a horse is the best thing for the inside of a man." He followed the prescription faithfully, long after a heavy fall from his horse in 1896 had caused some anxiety for his life.

In later years he and Lady de Villiers became pigeon fanciers, flying their carrier pigeons home from the Cape Flats; but the creatures in which he was most keenly and consistently interested were bees. He was, for a time, much attracted by even smaller organisms and carried on a lively discussion with Dr. Meiring Beck on the subject of microbes; but sooner or later he always returned to his beloved bees. He had kept them at the Paarl as a boy and, after his death, a drawer in his desk was found full of bee-keeping apparatus. He studied bees in print and by observation. "Observed drones in all my hives earlier than usual," he noted in April 1885. "Query; may not the early rains have fostered the flowers which in turn would induce the bees to begin rearing the drone brood earlier than usual?" About this time he was driving with Mr. Merriman far from home, when a bee alighted on his hand. To Merriman's amazement he cried, "Hullo, here's one of my bees." The secret of the recognition was that the bee was an Italian immigrant. As early as 1881 de Villiers had persuaded his brother Melius to

bring him a Ligurian swarm from London, one of the first such swarms to be imported to South Africa. On arrival all were apparently dead; but within a week a new swarm appeared in the hive and, with it, de Villiers Italianised his own bees. But Merriman saw to it that the Chief was chaffed for his uncanny powers of recognition and his unpatriotic reliance upon Italianate bees rather than the "ware Afrikaner" variety. Long years after, during the session of the National Convention, the joke went round that the Chief had imported this subtle form of foreign labour—the Chinese were still on the Rand in 1908—because South African bees were so lazy, but that the second generation of Italians had avenged their exiled parents by becoming as lazy as the rest. "Nay," said de Villiers, "the South African bees were so efficient that they collected enough honey in one year to last for two and therefore rested the second year." Nevertheless, he valued his Italians, though one new swarm led to disaster. Old John, the coloured gardener, understood the old-fashioned skeps; but one day de Villiers drove home with a new fashioned hive with a removable top section. John picked it up by the top, talking the while, and put it on his head. It was the top upper half only and his head disappeared inside among the bees. With superb presence of mind—for his master was still in the waggonette holding in the restive horses—he gently put it back upon its stand and then fled for his life, so badly stung that he was laid up for a week.

De Villiers' love of animals did not damp his taste for shooting, though he hated merely wounding his quarry. The early diaries are full of references to shooting, and good shooting on his part at least. Every year, after his elder son was big enough to accompany him, he went to "Paarl Diamant" for the quail shooting and regularly found sport at the Breslers' at Hermon. He retained his keen eye and steady hand to the end. Not long before his death, he and a party of young men were practising with the rifle at Bresler's. All missed the mark, a schoolboy's cap at 300 yards, at the first round. The others went on missing it but de Villiers found it with his old mauser at the second shot.

He was not a great fisherman though he enjoyed the sport. In the 'eighties he used to drive down to Noah's Ark or Miller's Point with Sir Ernest Kilpin, then second clerk in the House of

Assembly. "I used to supply the bait at 6d.," Sir Ernest relates, "and he the lunch." Later on he and Sir Henry Loch used to vary their fishing in the troubled waters of South African politics of the early 'nineties by fishing off the rocks of False Bay. Once at least in the early days his skill as a fisherman, such as it was, helped him and Lady de Villiers out of a difficulty. They were expecting Judge Fitzpatrick to lunch at their Kalk Bay cottage. At breakfast Lady de Villiers remembered that the Judge was a Catholic, that it was Friday, that there was no fish in the house and no shops within reach. De Villiers seized his rod, hurried down to the rocks and toiled for two hours but took nothing. Time was running short and he determined on one last cast. Luck was with him and he landed his fish, which he was careful to point out at lunch was appropriately enough a red Roman. But Fitzpatrick never knew how nearly he had missed his lunch that day.

Altogether de Villiers was an active man with a healthy taste for the open air. Many people in Cape Town still remember him, lean, wiry, with his head thrust forward from his square shoulders, stepping eagerly with short, quick strides along Parliament Street towards the old Supreme Court buildings. Late in life his rapid footfalls were punctuated with the tap, tap of his stick; but the mounted policeman charged with the news of King Edward's death found him, in spite of his sixty-eight years, far up the slopes of the mountain behind Hermon.

He was always a busy man, so much wrapped up in his judicial and parliamentary duties that, in their younger days especially, his children saw little of him. He held that wide interests were part of the proper equipment of a judge, and indeed of any lawyer. He set great store by the study of history, especially that of South Africa which, when he was a young man, was but little known. As a student at Utrecht he had upbraided his friends for lack of interest in their own past, and had set out to trace the links which bound his family to La Rochelle. In 1877 he had warmly supported Merriman in his efforts to form a society to further historical, scientific and literary research. "Cape history," wrote Merriman, "is peculiarly rich in historical matter. . . . It remains locked up unless some bold spirit obscures and destroys a paper of real value by publishing it in the *Cape Monthly* cheek by jowl with the twaddle which

usually fills the pages of that admirable periodical."¹ Hence the South African Philosophical Society of which de Villiers became a foundation member. In his oft-quoted address to the South African College students in 1882, and much later in a speech at the Paarl, he urged his audiences, especially such of them as aspired to parliamentary honours, to read history and by no means to neglect South African history, "comparatively short and uneventful" as it was; a description more modest than accurate in the year of grace 1896. "It will," he pleaded, "bring out clearly the good traits of the two chief European races in South Africa and, whichever of them we may ourselves belong to, it will induce us to seek and accept the co-operation of the other for the advancement of our own common country." He himself set a good example by taking a leading part in organizing the bicentenary celebration of the Revocation of the Edict of Nantes, and the coming of the Huguenots to the Cape. For many years thereafter he corresponded with a distant relative, Christoffel de Villiers, who was compiling a massive register of the genealogies of the old Cape families, and with friends in France who were carrying on a similar investigation. He thus did something to rescue South African history from neglect; though his optimistic prophecy that "to know all is to forgive all" still remains to be fulfilled.

True to his advice to legal aspirants, he sought to extend his own interests in many directions and could, in one and the same letter, show a lively interest in Bushman paintings, Charles I.'s financial worries and Stevenson's doings in Samoa. Throughout his life he read as much as the great and growing pressure of work would allow, chiefly on current politics, the law, travels and natural history. At one time his main relaxation, if relaxation it can be called, was chess. He was a sound player and never went on circuit without his travelling chess-board, till ill-health in the later 'nineties compelled him to give up the game because of the mental strain. With returning strength, he learned bridge as an amusement, and soon played better than many people who took it seriously. But his chief delight at all times was a full dress discussion on some serious subject, amid a cloud of cigar smoke. He could not always indulge his taste. Newcomers, especially, felt awe rather than affection

¹ Merriman to de V., May 12, 1877.

for this grave, shy, gentle man. They felt that they were in a "presence," and it is not easy to talk freely to such a being. Yet the first steps had to come, if at all, from their side, for de Villiers' shyness and reserve forbade him to make the approach. He thereby suffered much. He lived too much to himself. As a barrister he had been noted as quiet and studious, earning a reputation for unsociability by his early withdrawal to bed while on circuit. As Chief Justice he was forced into an attitude of aloofness. Cape society, when he was young and indeed when he was no longer young, was small and intimate. The Chief Justice must never forget that he was Chief Justice. He therefore cultivated his native dignity as a protective covering and, with the passage of time, that covering hardened. Worse still, he had a bad memory for names and faces, however readily he could recognize his own bees.

In reality he was kindly, considerate, eager for sympathy and to sympathize, and easy to talk to once the first plunge had been taken. He was an excellent conversationalist, convincing in argument, lucid and straightforward in speech. Like many great men he was essentially simple minded; in some respects even unsophisticated, in spite of his aptitude for business and his daily contact with human frailty in the courts. He lacked repartee, but did not feel the lack once he had ceased to be a member of the House of Assembly, for few ventured to offer the Chief Justice an opportunity to exercise the ready answer that arouses wrath. His sense of humour was not highly developed, but those who knew him best knew that he was possessed of a certain dry humour and appreciated humour in others. Once, as a young barrister on circuit, he shot a bustard and gave it to the then Chief Justice, Sir William Hodges. A day or two later, Sir William thanked him, but remarked that it was the close season. "Surely," replied de Villiers, "travellers may shoot even then." "Yes," replied the Chief, "but only for their own consumption." "Well, Sir William," was the unabashed retort, "when I sent you that bird I thought, of course, you would invite me to share it." Again, when he himself sat in the seat of Sir William, he went shooting with the Court interpreter, Godfrey Watermeyer, a man who was reputed never to be at a loss. He wounded a partridge, stuck a few feathers into its brain to kill it and, showing it to Watermeyer,

asked him whether he had ever seen that species of partridge before. "Oh yes," answered Watermeyer, "I know them well—*perdrix barbata!*" Once more, late in life, he was watching a cricket match at Newlands, for he was fond of the game. One of his learned brethren, who was more fortunate in the field than upon the Bench, was acting as umpire. "Is not that Judge ——?" he asked. "Yes," replied his companion. "H'm," said he, "the work ought to suit him. There's no appeal." Once, he even went so far as to display a sense of humour in court, but admittedly humour of a grim kind befitting the scene and the occasion. A sorry and apparently impecunious scamp was in the dock—not for the first time. De Villiers was about to sentence him to a year's imprisonment when counsel, urged thereto by his attorney, asked that the penalty should rather be a fine. "Oh," said the Chief, glaring, "he can pay a fine, can he? How much can he pay?" Anxious consultation with friends and relatives at the back of the Court resulted in the announcement that £50 would be forthcoming. "Very good," replied de Villiers, "the sentence of the Court will be a year's imprisonment *and* a fine of £50."

These flashes of humour, sardonic and otherwise, were rare. De Villiers went through life, sensitive and serious, observant, balanced in judgment but debarred by his office, his aloofness and an excess of caution from becoming a leader of men. But if he could not lead, he could guide. From the early 'eighties onwards, men of all shades of political opinion came to him for advice as to one whom they could trust. Excellent in counsel he was. How excellent, men only realized after they had, as they too often did, rejected his advice.

CHAPTER X

THE EIGHTIES

THE mere ratification of the Pretoria Convention failed to bring peace and prosperity to South Africa. The frenzied speculation in diamond shares which had set in with the formation of mining companies at Kimberley in 1876 had reached its height in 1881. War expenditure had swelled the tide of fictitious prosperity which flowed from Table Bay to Lydenburg. Now the troops and the glory departed. Natal, after the pomps and ceremonies of the Wolseley régime, drifted into a political backwater, clamouring for responsible government and an augmented Imperial garrison. In the Cape Colony, the overcapitalized diamond companies began to topple, the banks suddenly shortened credit and, in 1882, the crash came. The Scanlen Ministry gave way so completely to what one indignant judge of the Grahamstown court stigmatized as the "retrenchment mania" that de Villiers was hard put to it to find two advocates willing to abandon their lucrative practices for the meagre salaries offered to judges in the new three-judge court of Griqualand West. But there was no help for it. Times were bad and growing worse. Phylloxera once more visited the Western Province vineyards; drought smote the lands and red-water fever the cattle; smallpox scourged Cape Town and worked its way up-country to the stricken Diamond Fields, whence it travelled to the Free State and Basutoland.

Drought, red-water, smallpox—or was it the "bullous disease allied to pemphigus" diagnosed by Dr. Jameson, the rising Kimberley practitioner?—locusts and the illicit diamond buyers of Griqualand West made light of the most carefully beacons boundaries and the most jealously guarded state-independence. They were, however, not the only reminders of the essential unity of South Africa. The failure of the hasty policy of confederation

¹ Colvin, *Jameson*, i. p. 32.

had shaken the prestige of the Imperial Government in the eyes of the Dutch, the English and the Natives alike. Among the Dutch, the war had ensured the success of du Toit's Afrikaner Bond, which spread rapidly through the Colony attacking the champions of the English and High Dutch languages indiscriminately. Even Hofmeyr did not escape its strictures, for du Toit maintained that the use of Afrikaans and of the name Afrikaner was the true and only mark of a patriot. Merriman promptly assailed the Bond as a racial nuisance, and de Villiers publicly declared that though "at the bottom of the movement . . . there is much that is patriotic and therefore praiseworthy . . . it is the unenlightened patriotism of the uneducated." But, unenlightened or not, the Bond was soon firmly established in the two Republics as a pan-Afrikaner and anti-British institution, and du Toit himself presently went north to Pretoria as superintendent-general of education.

The breakdown of the imperial policy profoundly affected the outlook of English-speaking Cape Colonists. A stimulus was given to the "Colonial" policy which Merriman had already enunciated in his passage of arms with Froude at Uitenhage, a policy which was essentially that of Hofmeyr: a fuller realization of what self-government meant, the Union Jack for defence, by all means, but not the Union Jack as a cloak for interference in the internal affairs of the Colony. This point of view had first shown itself in the politics of the Anglican Church in South Africa. Not for the first time in history had the Church pointed the way politically to the State. The quarrels, which had divided the Anglican community in Natal into adherents of the Church of England as by law established and members of the Church of the Province of South Africa, had their counterpart in the Colony. In its broadest aspect the issue was part of that general movement of the religious bodies deriving directly or indirectly from Rome away from State control, which has been one of the features of the nineteenth century. In its local form it raised two questions. Must Anglican Bishops in South Africa be appointed by Letters Patent and consecrated by the Archbishop of Canterbury, and was the Church in South Africa bound, as was the Mother Church, by acts of an Imperial Parliament in which its members had no voice? De Villiers, a member of the Dutch Reformed Church, was called upon to decide both questions.

Dean Williams of Grahamstown was a cantankerous man, and his superior, Bishop Merriman, was one who could ill brook opposition. The story runs that the Dean declined to join with the clergy of the diocese in prayers for rain till inspection of the barometer convinced him that rain was coming. He then prayed for rain on his own account and, when the windows of heaven had indeed been opened, preached at his reverend father in God and his clerical brethren on the text: "the fervent effectual prayer of a righteous man availeth much." The quarrel arose, however, from the Dean's denial of the right of Bishop Merriman to officiate in St. George's Cathedral, Grahamstown, without his permission. Dean Williams had been appointed by the Imperial Government as Colonial Chaplain of the Church of England, had taken the oath of obedience to the then Bishop appointed in the old style by Letters Patent, and had also promised to conform to the rules of the diocesan synod in all matters not contrary to the laws of the Church of England. In 1870 the Bishop of Cape Town summoned the first synod of the Church of the Province of South Africa, which the Dean duly attended; next year St. George's was transferred to the Bishop of Grahamstown for the perpetual use of the Church of England; and soon afterwards the Dean, at the bidding of the Bishop of Cape Town, presided over a diocesan synod which elected Merriman as Bishop.

Signs of trouble appeared in 1875, when the Dean announced the forthcoming meeting of the provincial synod without prejudice to the rights of members of the Church of England in the Cathedral at Grahamstown. He did not attend the synod and thereafter began to dispute the Bishop's right to officiate in St. George's without his leave. The crisis came in 1879. The Bishop gave notice that he intended to preach, but the Dean seized the pulpit first and began a sermon of his own. The Bishop protested, left the church followed by half of the congregation, and summoned the Dean before the diocesan court. The Dean was suspended *in absentia* and then, after due warning, excommunicated. Nevertheless he continued to officiate and the Bishop appealed to the courts to enforce the sentences of the ecclesiastical tribunal and to declare the rights of the Dean and himself in the Cathedral.¹

De Villiers gave judgment in favour of the fiery Dean, since

¹ Merriman v. Williams, Aug. 26, 1880.

the elected Bishop could not, in strict law, be recognized as the successor of a Bishop appointed by Letters Patent, even though that practice had fallen into desuetude in self-governing Colonies. On the larger issue, he concluded that, if the Church of the Province "desires to have all the advantages of a perfectly free and independent Church, it cannot claim to be part of the Church of England, and as such entitled, of right, to the endowments devoted to the Church in this Colony." Then, turning towards the triumphant Williams, he added, "this is a court for the enforcement of the laws of the land, and not for the inculcation of Christian charity"; and, having expressed the hope that the question of endowments would be settled by legislation, he gave judgment in such a way as to leave it open to the Bishop to appeal to the Privy Council. The appeal was duly lodged and Lord Hobhouse upheld de Villiers' decision, bearing witness that "in the careful and elaborate judgment of the Chief Justice . . . every topic in turn is handled with a fullness and clearness which are of the greatest assistance to those who have to review it."

The "colonial" spirit might grow in Church and State, the Republics might turn their backs upon the South, the British Government might register vows of non-interference, but the Natives remained. The authority of the Cape officials in Basutoland had been reduced to a shadow, yet the Colony was responsible directly or indirectly for the administration of all Kaffirland to the south, with the exception of independent Pondoland. The Scanlen Ministry talked of abandoning both Kaffirland and Basutoland to the Imperial authorities; but at last it decided to tighten its hold on the former and to let the latter go. Thus, early in 1884, H.M. Government, in spite of its good resolutions, found itself installed in Basutoland in the very heart of South Africa.

The real difficulties of the Transvaal also lay with the natives. The early years of the restored Republican Government were depressing and dangerous. "Money," Hudson, the British Resident, confessed to de Villiers, "is very tight and most industries stagnant."¹ Nor was all well among the Republican officials. Hudson declared that his relations with the Triumvirate were excellent; but Kruger and Joubert were rivals for the Presidency, and Chief Justice Kotze, who had been by no

¹ Hudson to de V., April 17, 1882.

means happy during the British régime, found Kruger so suspicious that he took de Villiers' advice and accepted a seat on the bench of the new High Court of Griqualand West.¹ A short experience of the Kimberley of 1882 sufficed however, and, yielding easily to the persuasion of friends in the Transvaal, he returned to Pretoria, there to administer justice till Kruger, who had just entered on his first term of office as President unopposed, drove him out in 1898.²

Official friction and public poverty, though serious, were as nothing to the dangers arising from the natives within and without the borders of the State. In 1882 the burghers successfully carried through a desperate and exhausting war with Mapoch in the heart of the Republic; but, beyond the south-eastern frontier, chaos reigned among the Zulus, where the petty chiefs waged war on each other and then on Cetewayo, who in 1883 was restored as King of a truncated Zululand; while on the western border fighting became endemic between the rival chieftains and their white supporters. There, before the end of 1882, the little Republics of Stellaland and Goshen, representing the price paid in land by the chiefs to their European allies, were thrust out on the flank of the Transvaal across the Great North Road. In the ordinary course of events these infant states would be absorbed by the Transvaal and, as that hard-pressed Republic was already pursuing a customs policy hostile to British and Colonial trade, absorption could hardly be looked upon with equanimity in either Cape Town or London.

The artificial western boundary had been defined in the Pretoria Convention against de Villiers' advice, and the Transvaalers had not ceased to protest against it. Nor had they ceased to protest against other limitations on their freedom of action. In February 1884, most of their objections were met in the London Convention which superseded that signed three years previously at Pretoria. Even the suzerainty was abandoned by H.M. Government on condition that the new western boundary excluded the main road to the North.³ That was the *quid pro*

¹ Kotze to de V., July 1880.

² Kotze to de V., Sept. 3, 1883.

³ In the draft of a letter to Sir Alfred (now Lord) Milner on October 6, 1899, de Villiers wrote: "In 1884 when the President went to England he informed me that he intended to have the suzerainty abolished and he afterwards informed me with great satisfaction that his object had been accomplished. The real cause of all the subsequent trouble was the substitution of the 1884 convention without inserting the suzerainty from the 1881 convention. . . ."

quo and, with it and the prospect of a Delagoa Bay railway at last, Kruger and his colleagues returned home, after visiting the Hague, Berlin, Paris and Lisbon. They were accompanied by a young Dutch lawyer, Dr. W. J. Leyds, who became State Attorney in the room of Dr. Jorissen, dismissed. Meanwhile the Colonial Secretary contemplated extending a British protectorate over those portions of Stellaland and Goshen which still lay beyond the new boundary, as a preliminary to the annexation of the territory by the Cape Colony. For a new political factor was entering South Africa. In May 1883, Herr Lüderitz of Bremen had established himself at Angra Pequeña in the centre of a coast which the Cape had long vaguely regarded as being within its sphere. What would happen to the Great North Road if the Germans made good their claim to the coast and possibly the hinterland? What action might the South African Republic take in the hitherto unrecognized, but none the less real, Republics of Stellaland and Goshen straddling across that road? The Boers were a restive people. In April 1884, eight hundred of them from all the South African States, but mainly from the Transvaal, rode with Lukas Meyer to restore Dinizulu, son of Cetewayo, as king of the Zulus. They succeeded, received the promise of most of Zululand, proclaimed the New Republic and invited Joubert, Commandant-General of the Transvaal, to become their President.

In March reassuring reports reached London of the attitude of the Boers in Stellaland. The London Convention empowered the Colonial Secretary to send a commissioner to Bechuanaland, to co-operate with a similar official on the Transvaal side of the border for the maintenance of peace, as soon as the Republic had ratified the Convention. The Volksraad did not ratify it till August; nevertheless in April Lord Derby made the false step of sending the Rev. John Mackenzie north as deputy-commissioner. Mackenzie made treaties with some of the chiefs and at the end of July prematurely hoisted the Union Jack at Vryburg, the capital of Stellaland. The High Commissioner made him pull it down again, for he had endangered the ratification of the Convention and frightened the new Cape Ministry, whose Premier, Upington, "the Afrikaner from Cork," was dependent on Hofmeyr's Bond, and therefore loath to incur expense by taking over the territory and anxious to avoid offending the Transvaal.

Mackenzie was recalled and Rhodes sent up to take his place. He reached Stellaland in the first week of August. In the same week the expected happened. Bismarck, having decided to smile on French colonial aspirations as a consolation for the loss of Alsace-Lorraine, felt it incumbent on him to twist the lion's tail. He therefore gave his own "colonials" their head. In July Dr. Nachtigal secured Togoland and the Cameroons; in November the first treaty was signed with a native chief in East Africa; and on August 7th a German protectorate was declared over the coast of Namaqualand.

The dreaded first-class European power had arrived. Next day however the Transvaal Volksraad ratified the London Convention and Rhodes found the Stellalanders amenable to argument. Not so the men of Goshen. They had just defeated Montsioa and were in no mood to negotiate. Rhodes therefore retired to Vryburg, leaving Joubert, the Transvaal commissioner, to receive Montsioa's request to be taken under Transvaal protection. On September 16th Kruger annexed Goshen, subject to the Queen's consent as provided in the newly ratified Convention. Without waiting for that consent the Rev. S. J. du Toit, who had taken Joubert's place as commissioner and who shared Mackenzie's love of bunting, ran up the Vierkleur.

Two results followed immediately from this second ebullition of militant clericalism. Joubert ostentatiously resigned his post as Commandant-General as a protest; but his real motive lay deeper than that and threw a curious light on some of the difficulties with which the apparently autocratic Kruger had to grapple.

J. G. Kotze to de Villiers.

Pretoria, Oct. 27, 1884.

... The real reason is disappointment and jealousy. It is well known that *before* he went to the Western boundary to meet Rhodes, Joubert contemplated resignation. After his departure to the Western border he was invited to become President of the New Republic in Zululand. Joubert wrote from the border to Mrs. Joubert ... to pack up and be ready to leave Pretoria on 20th September.... On his arrival here... news had arrived in Pretoria by wire of the proceedings in Cape Town and elsewhere. Jorissen thought this a splendid opportunity to go for Kruger and du Toit. He talked the General round, not into resigning ... but

into alleging as the reason of his resignation the proclamation *in re Montsioa*. . . . Time will now show whether [Jorissen] and his friends will succeed in ousting Kruger, who by his concession policy is weakening his position. It is also feared that Lydenburg and Wakkerstroom may join the New Republic in Zululand, and it is whispered confidentially that Joubert is waiting till this happens and then hopes to become President of these three united into one. . . .

Kruger's action gave the signal for an outburst of pent-up feeling in the Colony. Rhodes at Vryburg demanded British intervention—for the Imperial factor had its uses—and in Cape Town and Port Elizabeth Advocate J. W. Leonard formed the Imperial League to clamour for extreme measures and the avenging of Majuba. On October 3rd the High Commissioner was informed that Sir Charles Warren was coming out with a considerable force.

The noise of the shouting reached de Villiers on the Eastern circuit. It was his first official visit to the East since 1877. The address of welcome at each court-town gave him an opening for a little excursion into politics. At Aliwal North, before Kruger's annexation of Goshen, he dwelt at some length on the general situation. Now, at East London, the address of welcome referred to the Transvaal's "breach of the Convention," and he declared himself reluctant to believe that the Transvaal had indeed broken faith; but that, "if it were so, the Transvaal people would have disgraced themselves in the eyes of the civilized world." He was promptly attacked by the extremists for making political speeches from the bench and for daring to hope that the Transvaalers had kept faith. But whatever his hopes, he was not easy in his mind. He had vivid recollections of Transvaal methods of diplomacy and suspected that the Transvaal Government was feeling its ground in Goshen to see how far it could safely go:

De Villiers to J. G. Kotze.

King Williamstown, Oct. 5, 1884.

. . . . Could you not impress upon them that the surest way of ultimately attaining the ends they have in view and of securing the sympathy of all South Africans is to abide faithfully by the very strictest terms of the Convention. I have hitherto always

maintained that the Transvaal authorities are sincerely endeavouring to carry out their treaty obligations, but I confess that of late my faith has been rudely shaken.

His cautious hopes were justified. On October 6th Kruger ordered du Toit to lower his flag and, a week later, on receipt of the long delayed British reply, withdrew his proclamation. After all it had only been provisional,¹ and, as he had told the Executive councillors who warned him of the danger of war, he had only issued it to impress upon the British Government the need for drastic action to end the bloodshed, with the full intention of withdrawing it if any objection was raised.

Warren now arrived to take the necessary drastic action. He marched north to Mafeking at the head of 5000 men, guns rumbling and sabres clanking. He found the Goshenites fled back into the Transvaal. As for the rest of the acts of Warren, how he conferred with Kruger in Rhodes's presence, how he proclaimed martial law in Stellaland and, at the High Commissioner's orders, de-proclaimed it, and how he tried to upset Rhodes's land settlement, "are they not written in the book of Jasher?" But, in spite of the element of opera bouffe, Warren's Great Trek was essentially serious and it served its purpose. Fair warning was given to all whom it might concern that Great Britain and her Colonies had and meant to retain an interest in the interior of Africa. In September 1885, the Crown Colony of British Bechuanaland was proclaimed south of the Molopo, though the Cape refused to take over the territory; and, in November, a protectorate was extended over the remainder of the country from the river to the twenty-second degree of South Latitude. It was a little more than four years since the British troops had marched down through Laing's Nek out of the Transvaal.

In South-east Africa, Lydenburg and Wakkerstroom did not supply the Republican parody of Evelyn Wood's proposed partition of the Transvaal. Neither did Joubert become President of the New Republic; but, in the autumn of 1884, an agent of the indefatigable Herr Lüderitz appeared at St. Lucia Bay, which was presumably included in the undefined boundaries of that State. Great Britain's reply was to hoist the Union Jack at

¹ Kotze to de V., Oct. 27, 1884.

the Bay, amid a chorus of protest from Vryheid, Pretoria and Berlin. An acrimonious correspondence, concerning much of the hitherto unappropriated coast from the Tugela to Delagoa Bay, followed with the Wilhelmstrasse till, in May 1885, Bismarck gave way in return for concessions in the Cameroons. "St. Lucia Bay," he afterwards confessed, "was too far from the Transvaal to be valuable," neither were the Boers "disposed to take any proper action." On the other side of Natal, thanks to the presence of German concessionaires once more and to the necessity for safeguarding the trade and customs revenue of Cape Colony, a British protectorate was proclaimed over the Pondoland coast; but, as late as August 1885, Bismarck hinted strongly at the need for a German protectorate over that troubled territory. It was his last effort. The Berlin Conference had prescribed rules for the scramble for Africa, which had now become general; he had secured most of what he really wanted; he realized that France had by no means given up the idea of *la revanche*. "We must now hold rather with the English," he said, and he was as good as his word.

The German invasion cleared the air in South Africa. Men had to make up their minds either to work with each other, with Great Britain, or with the newly arrived *tertium quid*. The choice became less difficult as the bitter memories of Carnarvon's federation policy faded and the ensuing commercial depression slackened. Racial bitterness began to evaporate. The Bond flickered out in the Republics. Brand had condemned it from the first as a possible *imperium in imperio* in the Free State; in the Transvaal, Kruger frowned upon an organization which had his rival Joubert for a patron; in the Colony, Hofmeyr combined the Bond with his Farmers' Defence Association, and steadily transformed the new society into a purely Colonial institution, loyal to the Queen but jealously watchful of local privileges and Dutch interests. More and more of the English-speaking citizens of the Colony took up the "colonial" point of view, led by the High Commissioner himself. However much Sir Hercules Robinson's attitude may have annoyed the dwindling Jingo party in the Colony and in Great Britain, it allayed suspicion of the Imperial factor in all South Africa and made it possible for Brand to cultivate good relations once more with his neighbours north and south.

During the later 'eighties South African politics steadily shifted from the racial to the economic battle-ground. Railways were on the point of linking up state with state. In both Republics many of the farmers were uneasy at the advance of the iron horse, the competitor of the ox and the potential enemy of their cherished independence; nevertheless the iron horse steadily advanced towards the Transvaal. The financial prospects of that State were becoming less desperate. A gold rush to Lydenburg had taken place in 1882, and the government, foreseeing a rapid increase in the floating mining population, raised the term of residence necessary for the franchise from one year to five. Next year gold-bearing quartz was found at Barberton, a waggon-road to Delagoa Bay was begun and a concession granted by the Portuguese to McMurdo, an American citizen, to build a railway across the fever-belt between that port and the Transvaal frontier. There was no doubt about the gold, and de Villiers helped the Gold Laws Commission to frame a law to meet the rapidly changing conditions in the hitherto rural Republic.¹ Neither, unfortunately, was there any doubt about the concession policy on which the new government embarked; a policy which disgusted the miners and some of the Boers by throwing many of the resources of the State into the hands of foreigners and which yet failed to make the State self-supporting. The climax was reached in 1884 when a railway monopoly, in which the government did retain a share, was granted to a Hollando-German syndicate. Kruger was indeed turning more and more and not altogether willingly to Continentals for support. Heads of departments his own burghers might be; but, as his State became more complex, he was obliged to rely on educated Germans and, still more, Hollanders for the actual work of administration. Individual Hollanders were often deservedly popular; but as a class they were disliked throughout South Africa. Even when anti-British feeling was at its hottest in 1881, the Free State declined to appoint an otherwise suitable candidate to the bench because of the "prevalent dislike to Hollanders";² and, eleven years later, Reitz, President of that Republic, told de Villiers that he was thinking of sending his son to Leyden if he could not afford to send him to England or Scot-

¹ H. W. Cooper to de V., June 21, 1884.

² Melius de Villiers to de V., Feb. 1881.

land ; but, he added, " I would do my best to enable him to spend at least some months of the year in London and Edinburgh, so that he may not become a Hollander, but remain an Afrikaner (or as you would prefer calling it) a South African." ¹ De Villiers would appreciate that point. Thirty years before, when, after trial of Utrecht and Berlin, he had finally gone to London and was hard put to it to justify his change of plans to his guardians, he had boasted that he too was " every inch a South African." ² London had not changed him in that respect at least. But to speak of being a South African was one thing ; to be one in 1885 was another. The relations of the states and colonies to one another were all in the direction of accentuating local differences and, in this accentuation of localism, the Transvaal with its reliance on Hollanders and its exclusive customs policy set the example. It was a bad example and was naturally widely imitated. In 1884 the Cape Colony retaliated against the Transvaal tariff of 1881. It speedily became evident that railways were to be as fruitful a source of trouble as tariffs. The Cape railways in 1885 were already at Kimberley and near the southern Free State border at two points. The Colony was anxious to carry them northward to the Transvaal, for the Natal line was creeping slowly up from Pietermaritzburg towards the same goal and McMurdo's line was imperceptibly advancing across the flats behind Lourenço Marques. For the moment the two colonies were the only serious competitors ; both used their railways as a means of raising general revenue and, to compensate for the longer sea-voyage, Natal levied lower customs duties than did the Cape. Customs and railway questions were thus already combined ; they were serious and they would become infinitely more so if the Republics built their own railways and the mineral wealth of the Transvaal were once fairly tapped.

Fear of a customs and railway war drove men to consider the possibility of economic union. The British Colonies, which in the past had retained the whole of the duties levied at their ports on goods destined for the interior, could not claim much consideration at the hands of the Republics ; but on the other hand the Cape had begun to pursue a more liberal policy, first towards Basutoland and then towards the Free State. Now in July 1885 a hopeful portent appeared in the northern heavens. The

¹ Reitz to de V., 1892.

² De V. to J. de Villiers, June 1863.

impecunious Transvaal, harassed by a clamorous mining population on the eastern goldfields, heard that McMurdo's railway had stopped dead. Kruger sent Sammy Marks, de Villiers' pedlar friend of the 1871 circuit, to take soundings at Cape Town and, in January 1886, Brand suggested a general customs union. Kruger went even further and asked the Cape Government for a customs agreement and the extension of the Kimberley railway into the Transvaal.

It was a golden opportunity but, in spite of Rhodes' entreaties, the hard-pressed Upington Ministry threw it away. The decision was fatal. When in July the Cape proposed a customs conference, Natal temporized and the Transvaal refused point-blank. The tide had turned at last. In May it was known that rich gold-bearing conglomerate had been found along the Rand; in September the goldfields were proclaimed, the great Sheba mine opened at Barberton, and goldfields discovered in other parts of the Republic. The Transvaal at once assumed a hitherto unheard of importance in the political life of South Africa. It signalized the event by rebuffing another request from Cape Town for a customs union and by making a determined effort to draw the Free State into its exclusive economic orbit. For, now that the Rand had been proved, the Netherlands Railway Company had at length begun to build its trunk line from Pretoria to meet McMurdo's railway which was once more advancing from Delagoa Bay. Twice the Free State and Transvaal governments conferred in 1887 without result. Brand decided to keep his hands free to build or admit railways to his State as he and his burghers saw fit. Kruger on the other hand refused Brand's proposal for a federation of the two Republics and would offer nothing but an alliance of such a kind as would give him an unlimited call on the resources of the Free State. He and his followers showed clearly that they desired a port of their own through which to get into touch with European powers; but Brand had no mind to transfer the State system of the Continent to South African soil. He therefore turned his eyes once more towards the South and met the eyes of men who were gazing with growing anxiety northward.

Among those men was de Villiers. Since his service on the Transvaal Royal Commission he had taken little active part in the dreary politics of South Africa. They had been purely local

and party politics and he was debarred by his judicial office from touching them. But, now that the stream of politics was deepening and broadening and flowing once more in the direction of federation, he began to feel his way forward. He was in close touch with Brand and with Sir Hercules Robinson, with whose liberal views he sympathized and indeed did much to form. In May 1885, in proposing the toast of the evening at a public dinner to Hofmeyr, he prophesied that the new Houses of Parliament, which had just been occupied for the first time, were meant for something larger than a mere colonial legislature, and added that Hofmeyr was the man to bring federation about. The Home Rule debates of 1886 at Westminster, the approaching Colonial Conference and the Jubilee of 1887 filled the air with talk of Imperial federation. He seized the opportunity afforded by a petition asking for the grant of a higher status to Colonial judges when in England to suggest their eligibility for the Judicial Committee of the Privy Council. Such a revolutionary idea demanded time for reflection and the Imperial authorities did not make up their minds for nine years; nevertheless the idea took root and spread. In the work of the first Colonial Conference he took no part. He was talked of as a delegate; but in the event the Colony was represented by its Attorney-General, Upington, and by Hofmeyr, who expounded his famous scheme for an Imperial tariff against foreign goods for the maintenance of the navy.

Imperial federation, however, economic or political, might wait and did wait. The urgent matter was to achieve some sort of working arrangement between the states and colonies of South Africa. De Villiers naturally first approached the problem from the legal side and, early in 1886, discussed the possibility of a South African court of appeal with a party of judges and advocates from all parts of the country. Chief Justice Kotze objected, truly enough, that such a court was out of the question so long as the Transvaal clung to its policy of isolation; in the same year the Cape court of appeal, which might have formed the nucleus of the court de Villiers desired, was abolished; nevertheless he did what he could to keep the idea of such a court before men's eyes as the one means of checking a disastrous divergence of law and practice of the Republican and Colonial courts at the very moment when economic conditions were drawing the Republics

and Colonies close together. News from the Transvaal and his own experiences in Griqualand West underlined and emphasized the need for one law and, if possible, for one administration in common South African concerns. The Northern Republic was a curious amalgam of potential wealth and political instability. The prospect of the realization of Burgers's dreams of "golden joys," wrote Kotze, "makes some people feel rather uncomfortable at times."¹ The discomfort was destined to grow, not only in the Transvaal but in all South Africa. Newcomers poured into the goldfields; before the end of 1886 nearly 12,000 had arrived; six months later the output of gold was regular and assured, and still the tide of immigration rose. The farmers' Republic was faced with an industrial problem of the first order, with which its rulers, its burghers and its constitution were ill-fitted to cope; but, if the economic condition of the State had been changed in a night, the Volksraad could revolutionize the law in a day. This unicameral legislature had hitherto legislated in two ways; either by wet (law), a slow process entailing three months' warning to the public, or by besluit (resolution), a method which involved no such delay. The danger of panic legislation in face of the new situation was obvious; nevertheless Chief Justice Kotze and his colleagues, in delivering judgment in the McCorkindale case² in November 1884, held that the Volksraad besluits had the full force of law. The issue was difficult and Kotze found that Sir Sidney Shippard of Grahamstown, most learned of judges, differed from him. He therefore asked de Villiers his opinion.

De Villiers to J. G. Kotze.

King Williamstown, Oct. 5, 1884.

... The only question which the Court has to determine is whether the form in which the law has been promulgated is the form prescribed by the Legislature itself. . . . If I had had time at my disposal I should have wished to explain why, in my opinion, the analogy of the American Constitution is not applicable. . . . For the present I must content myself with saying that your reasoning appears to me to be incapable of refutation. . . .

Thus encouraged Kotze replied that "no form is prescribed by

¹ Kotze to de V., Nov. 11, 1886.

² *Executors of McCorkindale v. Bok N.O.*, Nov. 15, 1884.

the law according to which a Volksraad Resolution must be shaped. . . . The Volksraad can by a bare majority of one vote repeal all the laws, etc., by a Resolution. The public expression of such a view will startle a good many people."¹ Kotze boldly gave his ruling, a ruling which he reaffirmed three years later, with the concurrence of Esselen but against the opinion of Jorissen.² Henceforward the fact had to be faced that a besluit had the force of law, that the Grondwet itself was in no stronger position as against the Volksraad than any other law, and that it was not within the power of the Courts to set aside a besluit. But de Villiers and Kotze had not had their last discussion by any means on the validity of Volksraad resolutions. The question was destined to take de Villiers north to Pretoria in 1897 to settle, if by any means it were capable of settlement, a quarrel between Kruger and his Chief Justice which threatened to wreck the Republic.

The courts had therefore recognized the powers of the Legislature, wide and dangerous though they were. Their own relations with the Executive remained to be defined. Roughly speaking, the story of the Republican institutions in South Africa has been the growth of the civil executive at the expense of the legislature and even of the bench. Towards the close of 1886, a wealthy and influential supporter of the Government was tried for embezzlement. The accused was guilty of carelessness rather than dishonesty. Nevertheless at the first trial he was sentenced to imprisonment by a single judge, who, at the request of counsel, reserved several points for the consideration of the full court. Kruger, who was much beholden to the accused, wished to exercise his prerogative of pardon; but the judge insisted that the points reserved must be disposed of first. The advocate however told the registrar of the court that he withdrew the reservations, which it was not in his power to do; whereupon Kruger pardoned the prisoner. The judge resigned; the Chief Justice hurried back from circuit to Pretoria, had the unlucky man rearrested and asked de Villiers for advice.³ De Villiers held that the Executive could not pardon the prisoner without

¹ Kotze to de V., Oct. 27, 1884.

² Trustees . . . of Theodore Doms v. Bok N.O., Dec. 24, 1887.

³ Kotze to de V., Oct. 15, 1886.

first consulting the judge who had passed sentence, but this it had apparently done :

De Villiers to J. G. Kotze.

Cape Town, Oct. 23, 1886.

... A rearrest could only be ordered upon the application of the prosecutor, and if ... the State was really the prosecutor, the Judge would seem to me to have no ground for interference. He may protest or he may resign, but seeing that the Executive ... is entrusted with "the power of the sword," I think that the judicial branch is helpless if the Executive chooses to exercise its full powers. ... My answers are of course confined to the legal aspects of the questions. ... Looking at their political aspects one is simply astounded at the ignorance, the folly and the perversity which characterize the proceedings of the Transvaal Executive. ...

Kotze agreed. "The shock," he wrote, "which the immediate release ... has given to the credit of the country is undoubtedly very serious"; and then, branching off to a wider subject, he added, "there are eminent lawyers who hold that if a law is not passed by the Legislature in the form prescribed by the Constitution the judges are bound to ignore and not enforce such a law."¹ Kotze was evidently changing his mind on the validity of *besluiten*, a change premonitory of trouble to come. For the moment he won his point. A full court set aside the conviction and the prisoner was set free by order of the court and not of the Executive; but the incident did not tend to ease the growing strain between Kruger and his Chief Justice. Kotze indeed found his position so unbearable that he once more asked de Villiers to find him a seat on the Colonial bench. He thought better of it, however, when he heard that the President intended to ask the Volksraad to forbid the judges to question the validity of Executive Council resolutions beyond referring them to the legislature for a decision. He remained at Pretoria and girded up his loins to resist this startling claim of the Executive to legislate.

De Villiers realized that, in the absence of federation or at least of a South African appeal court, trouble must arise in the kaleidoscopic Transvaal. On the other hand, trouble had already arisen at Kimberley, trouble which could only be effectively disposed of by common action on the part of all the states of South Africa. His interests in Griqualand West, political, financial and

¹ Kotze to de V., Nov. 11, 1886.

judicial, had grown since he had sent the irreproachable Mr. Brunt to seek diamonds for him in the early 'seventies. The condition of the diggings had changed out of all knowledge. Then, the diamond fields had been jealously preserved as the small man's happy hunting-ground; but the surface diggings became unworkable and, in 1876, joint stock companies were permitted to operate. For a time these associations did well in their search for diamonds and, in some cases, extremely well by the sale of shares to the British, French and South African publics. Presently shafts were sunk beneath the masses of fallen debris in the old diggings and the open pit system was rapidly abandoned. Prices improved; the arrival of the railway in 1885 added to the prosperity of the town; but there was war between the rival companies in the confused and wasteful galleries driven underground and, on the surface, cut-throat competition brought down the price of stones once more. All this pointed directly at the need for amalgamation and, by the middle of 1885, the claims in the four great diamondiferous areas were in less than one hundred pairs of hands. Two years later, Rhodes's De Beers Company held all the claims in his "nice little mine," and Barnato held most of those in the Kimberley mine. Both men were watching for the inevitable fall of reef which would bring the Bultfontein and Dutoitspan mines on to the rapidly narrowing market.

Diamonds, by their nature, are peculiarly suited to illicit trade. Almost from the first the diamond fields had attracted to them the sweepings of three continents. Canteen-keepers and others debauched the native labourers and poor whites, and drove a lucrative illicit traffic in diamonds by trading on their weaknesses. An act of 1882 had sought to cope with I.D.B. by consolidating a mass of previous laws and regulations; three years later its efficacy was increased by its extension to the whole Colony; but the Republican frontiers were close at hand in case of emergencies. I.D.B. went on and the canteens flourished. The mining companies stepped in where the law failed. By the middle of 1887 most of them had adopted the compound system as the only means of keeping their native labourers under surveillance and protecting them from the canteen-keepers. At once the local storekeepers raised the cry that the companies were buying goods from wholesalers at Port Elizabeth, and the wholesalers replied with the accusation that they were buying

locally. There were however more serious complaints. The police and detectives, from the Commissioner downwards, were accused of malpractices, of engaging in I.D.B., of taking bribes from regular practitioners, of procuring evidence and hence promotion by planting stones on innocent persons. At last William Ross, in the course of a speech in the Legislative Council moving for a commission to enquire into the administration of the diamond laws, referred to one of the detectives, Wassilio Rojesky, as "an unmitigated scoundrel." He was challenged to repeat his words in an unprivileged place, which he did with gusto and much elaboration. Rojesky was ordered to clear himself. He brought an action for damages against Ross and, when judgment was given on three counts in favour of the defendant, fled the country with the assistance of the commissioner of police.

In face of this scandal the Government appointed a strong commission, with de Villiers as chairman, to enquire into the whole position. It was not the first time that de Villiers had been called upon to sit in judgment on the affairs of Kimberley. In October 1885 he had arbitrated between the Standholders League, as tenants, and the company which was landlord of the Dutoitspan and Bultfontein areas. The manager wrote that his principals were not altogether pleased with his decision; but then neither were the standholders. "There could perhaps be," he added, "no stronger proof of its fairness."

So to Kimberley de Villiers travelled, and Lady de Villiers with him. The commissioners sat in the dust and oppressive heat of the place from September 26th till October 3rd, de Villiers leaning back in his chair, taking no notes, but patiently trying to extort the truth from the stream of witnesses which passed before him. There was, however, a lighter side to the doings of the commission. Lady de Villiers visited De Beers and, as the custom then was in the case of favoured guests, was allowed to pick over a small quantity of blue ground in which Rhodes had tactfully hidden a large diamond. She declined to accept the stone, knowing full well that de Villiers had sold all his diamond shares to avert any suspicion of bias in his recommendations. She duly related the story to her approving husband; "but," she added, "I took this tiny one as a memento." "But, my dear," replied the horrified Chief Justice, "the principle is the same!" The story

runs that Rhodes laughed, put the diamond in his pocket and lost it on the way to the club; but either this stone or another from the same source found its way to Wynberg House, for a "Rhodes's diamond" was always among Lady de Villiers' most jealously guarded treasures.

On his return to Cape Town, de Villiers bade the secretary see the mass of evidence through the press and sat down to compile his long report without notes. All save one clause was accepted by his fellow-commissioners and, even on the disputed point, he drafted the necessary amendment. Two of the detectives were pronounced dubious characters, the commissioner censured for his folly, and the remainder of the charges against him and his subordinates dismissed because, as the exuberant Mr. Ross would have said, the witnesses were such unmitigated scoundrels. "Trapping," that is the offering of stones by detectives to suspected persons in the hope that they would swallow the bait, was defended as the only means of coping with I.D.B. as with the cognate illicit liquor traffic; the growing practice of searching employees on leaving the mines and the compounding of natives was approved of, with the proviso that the registrar of natives must see that the labourers understood the terms of their contracts, that a protector of natives inspected the compounds, and that, since Europeans could not be compounded, the only safeguard against I.D.B. was to select good men and pay them well. It was de Villiers' well-worn prescription for securing a good frontier police, a good magistracy and a strong bench.

De Villiers had strenuously resisted the proposal of certain witnesses that I.D.B. cases should be tried before a judge and jury, partly on the ground that the present special court worked satisfactorily, but mainly because a local jury was out of the question in cases which roused such intense political and personal feeling. He and the majority of the commission also opposed the recommendation of their colleagues that the diamond trade acts be abolished as an intolerable violation of the liberty of the subject. It is hard to see how they could have taken any other course. The whole diamond industry was artificial; if it was to be carried on successfully the liberty of the majority must be sacrificed to check the cupidity of the few. They did agree that the excessive penalties of the acts, which had defeated their own ends, should be modified; they urged that the Republican

borders should be more closely watched and expressed the pious belief that the larger companies would submit to an export tax on diamonds to provide the sinews of a large police force; but they concluded that the true remedy for I.D.B. was the co-operation of the South-African governments; in other words, federation.

Most of the recommendations of de Villiers' commission were embodied in the Amendment Act of 1888. Meanwhile, the chairman had one other duty to perform, this time from the bench. In March 1888, Rhodes and Barnato had come to terms. Two months later the old De Beers Company disappeared to make way for De Beers Consolidated and the shareholders of the Kimberley mine were called upon to ratify the amalgamation. A few refused to do so and carried their objection to the Supreme Court, on the ground that the trust deed of their company only permitted them to unite with a "similar" company. They were painfully conscious that the offspring of Rhodes's imagination was no such thing. Barnato himself had been sorely puzzled by the amazing trust deed on which Rhodes insisted. His keen, twinkling eyes saw nothing but the diamonds; Rhodes's steady gaze was directed to the Zambesi and beyond. De Villiers admitted that the objectors were in the right. "Diamond mining," he said, "forms an insignificant portion of the powers which may be exercised by the company. . . . The powers of the company are as extensive as those of any company that ever existed."¹

Rhodes and his friends took the hint which de Villiers dropped in giving judgment for the plaintiffs. They liquidated the Kimberley Company and bought up its assets for De Beers Consolidated. A few months later the expected fall of reef duly occurred at Bultfontein and Dutoitspan; De Beers secured control; and the amalgamation was complete. De Beers Consolidated was Kimberley. A monotonous peace and prosperity descended on the city; the more enterprising and less scrupulous of the Kimberley underworld began to drift away to the Witwatersrand; thither also the diamond magnates began to direct part of their energy and capital. The storm-centre of South Africa shifted from the sandy wastes of Griqualand West to the heart of the Transvaal.

¹ *Phillipps and others v. Central Diamond Mining Company*, Aug. 20, 1888. (*Juta*, vi. 152.)

CHAPTER XI

THE NORTH

DURING the year 1888 the scattered European communities of South Africa were steadily and with increasing rapidity drawn along converging lines towards the north. Business interests overstepped State boundaries. Railways, telegraphs, posts, the mere increase of European population and the coming and going of Bantu tribesmen to the diamond mines of Kimberley and the goldfields of Lydenburg and the Witwatersrand, all drew them nearer to one another. State isolation could never be preserved for any length of time; the only alternatives were federation or collision. As it was, the country was forming into two hostile economic camps, north-east against south-west; for though the Cape and the Free State had agreed on principles at a railway and customs conference in January, the Transvaal had refused to take part, and Natal had repudiated the actions of its delegates and begun to hurry on its railway towards the Free State.

The area of possible friction was also extending rapidly towards the Zambesi and down through Swaziland to the Indian Ocean. It was not clear whether the northern border of the Bechuanaland Protectorate was intended to cut the Transvaal off from expansion northwards beyond the Limpopo. Sir Hercules Robinson recommended that it should be drawn so as to leave the Republic a window towards the north; but there could be no doubt that the Transvaal was cut off from the sea to the east by the British annexation of the remains of Zululand and the inclusion of Tongaland in the British sphere of influence. The Transvaal thereupon absorbed the New Republic and made no secret of its desire to reassert whatever control it may once have had over Swaziland and to make its way down to the sea at Kosi Bay in Tongaland, through the lands of the Swazis and of the petty chiefs,

Zambaan and Umbegiza, whom the Queen of the Tongas claimed as vassals.

In Swaziland, confusion bred chaos. Stock-farmers from the Transvaal, concession hunters from all the adjacent territories secured grazing rights and monopolies of the most amazing scope and variety from the Swazi King, whose love of champagne and coursing greyhounds blinded him to all other considerations. The Shepstone family, hereditary guardians of Natal native policy, intrigued for a protectorate against Joubert, the Transvaal commandant-general; the European settlers elected a temporary governing committee, and the Transvaal declared that it was already in treaty with Zambaan and Umbegiza. Similar confusion threatened to break out on the northern borders of the Transvaal and Bechuanaland Protectorate. There Lobengula, King of the Matabele and reputed overlord of the Mashona, ruled wide grasslands which were said to conceal King Solomon's mines. Transvaal cattle-farmers cast longing eyes across the Limpopo and concession hunters camped with their cases of champagne round the royal kraal at Bulawayo; while others busied themselves in the dominions of Khama, King of the Bamangwato, Lobengula's rival and the most northerly chief in the Protectorate.

The need for a South African government which could override the particularism of the States and Colonies and adjust their economic differences was patent; but the only semblance of any such authority was that of the High Commissioner. His position was anomalous. A constitutional governor in the Colony itself, he was also the channel through which Natal and, as a matter of convenience, the Republics approached the Imperial Government; Governor of the Crown Colony of Bechuanaland, administrator of Basutoland, guardian of the Bechuanaland Protectorate and representative of the Queen in the eyes of the independent native chiefs. The extent of his authority varied in these different spheres as widely as did his official titles; nevertheless, he and he alone had the inestimable advantage of being concerned with all of them and knowing what was going on in all of them. From the first, the office of High Commissioner had been exercised by the Governor of the Cape Colony; inevitably so, for the Colony was the foundation of European society in South Africa and it was at the Cape that Great Britain's interests had hitherto

lain. Latterly, however, this arrangement had been challenged as Great Britain's interests spread further afield. Frere had been obliged to hand over his powers in South-East Africa to Wolseley; the state of Bechuanaland, Basutoland and the Transkei had either called for or pointed towards direct Imperial intervention to relieve the self-governing Cape Colony of responsibilities which it was either unable to bear or unwilling to assume. Now, in 1888, wide extension of European control in Southern Africa was plainly about to take place. Assuming that this extension was to be British, was it to be carried out by the Colonial or by the Imperial authorities?

The Rev. John Mackenzie regarded it as his life's work to induce the British Government to extend its direct authority over the native territories as far north as the Zambesi. He demanded that the Governor of the Cape Colony concern himself only with the internal affairs of that Colony and give up the wide, indefinite powers which he wielded outside it to a specially appointed official, who might in time become the Governor-General of a federal South Africa. Otherwise he feared that the exercise of these joint powers by one man might lead, indeed had already led to the Governor, ruling on the advice of responsible Ministers, proving more than a match for the High Commissioner.

Sir Hercules had justified his dual position in the eyes of two Liberal Secretaries of State, and Hofmeyr in person had used his influence to the same end with the short-lived Conservative Ministry of 1885. Nevertheless Mackenzie had found powerful supporters in England and in the Colony; and though W. E. Forster, the ex-Irish Secretary, had recently died and the *Cape Times* had swung round to the "Colonial" point of view, it was suspected at Cape Town that Lord Knutsford, the new Colonial Secretary, sympathized with the idea of the division of powers and the pursuit of an Imperial as distinct from a Colonial policy in South Africa.

De Villiers supported Sir Hercules on public and on private grounds. The High Commissioner was his friend; he knew that he understood South Africa; he knew also that the policy of *divide et impera* had led to disaster in Frere's case; he believed that it must produce still more devastating effects were it repeated in the more complex and extensive South African political world of 1888.

He found an opportunity of bearding Mackenzie and his leading supporters at headquarters in London. He sailed for England in April to help remove legal difficulties which had arisen over the proposed Cape-Free State customs union. The Republic was after all an independent State and the Imperial Government foresaw trouble with Belgium and Germany, with whom Great Britain had most-favoured-nation commercial treaties, if one of her Colonies gave a preference to the goods of such a State. At the end of a long correspondence the Cape was empowered to enter a customs union with other South African States as far as concerned goods imported overland but not by sea. Meanwhile de Villiers had made his unblushing descent into politics at a crowded meeting in the Cannon Street Hotel. The audience had come nominally to hear Mackenzie read a paper, but really to hear Chamberlain make a pronouncement on the affairs of Bechuanaland and the North. The member for Birmingham was not in the Ministry but, like Hofmeyr at the Cape, he was one of the powers behind the Throne. Coming from such a man at such a time his speech was of first-class importance. He declared that a crisis had been reached in South Africa. To withdraw meant throwing the Dutch, even in the Colony, into the arms of Germany: the only possible alternative, the assumption of wide responsibility, must be taken in the interests of Imperial and not of Colonial policy. On the question of the division of powers he expressed no opinion beyond intimating that much depended on the personality of the holder. With this appeal to the audience and the Ministry not to nail Sir Hercules' ears to the pump, he made way for Mackenzie, who concluded his address by a sustained attack on Robinson and his double duties. General Warren followed in the same strain, whereupon Chamberlain departed. Then de Villiers was called upon. Those who question his moral courage should ponder his speech and its setting. He declared that Chamberlain had done wrong to suggest that any crisis existed in South Africa, but "you have to go away from home to hear the news." Then turning to Mackenzie, he blandly told him that he disagreed with most of what he said and that he knew personally that the ex-Ministers, Derby and Granville, looked on the South African situation as promising; declared that Sir Hercules had done "more for South Africa than any other living statesman," and,

although he had to admit that the attitude of the Transvaal was unsympathetic to the rest of South Africa, insisted that the Colonists, including the Dutch as a whole, were loyal to the Crown. Finally he declared that there was not "any marked difference between the native policy of the English Colonist and the Dutch Colonist, except this, that the typical English Colonists . . . at such places as Grahamstown and Queenstown demanded . . . a more vigorous native policy in respect of the natives than the older Dutch Colonists did."¹

On de Villiers' return to the Cape, the High Commissioner took up the cudgels on his own behalf. He was sure of his Ministry; the legislative council, with de Villiers in the chair, had resolved that any division of powers would be harmful; he therefore spoke his mind to the Secretary of State. After this singularly blunt letter, he cannot have hoped that he was *persona grata* in Downing Street.² Nor was he. Throughout the trying year that followed he knew that his tenure of either office was insecure.

It was fortunate that Sir Hercules was left in possession of his authority as High Commissioner. Within a week of de Villiers' return Brand died. The choice of his successor must influence the course of politics in South Africa profoundly; for Brand had long been, geographically, by instinct and by training, the central figure. Chief Justice Reitz at once took the field; another candidate appeared in the north-east of the Republic whose claims no one took seriously; but one powerful party sounded Hofmeyr, while yet another approached de Villiers. Brand had always pointed to him as his successor; some of Brand's staunchest supporters urged him to stand, and the burghers of Harrismith declared in his favour. At first he returned a half-hearted *nolo episcopari*;³ whereupon the pressure was redoubled. He hesitated, but at last he refused the office definitely. "It seems to me," he wrote, "a matter of the very highest importance that your future President should be the choice of the nation and not of a section of the people. . . . Chief Justice Reitz who, I presume, will be one of the candidates, is well known there and will be more likely than myself to secure

¹ *Cape Times*, June 8, 1888.

² Robinson to Knutsford, June 11, 1888.

³ de V. to (Landsberg), July 27, 1888.

that unanimity." ¹ To the fear of splitting the vote was added the knowledge that the Cape bench would be fatally weakened by his departure at the very time that he was hoping to strengthen it as the nucleus of the South African appeal court, to which the trend of events in South Africa seemed to point. His scheme for the present could be carried out better from the bench, the legislative council and the stoep of Wynberg House than from the White House at Bloemfontein. So Reitz was duly installed as President and de Villiers' brother, Melius, became Chief Justice in his stead; Marthinus Steyn, the Attorney-General, "an honest and plodding sort of man," according to Melius, ² took his seat on the bench beside Gregorowski; and, on de Villiers' recommendation, A. G. McGregor, one of the many Scots who did as much for the old Free State as their fathers before them had done for the Cape Colony, became Attorney-General.

Meanwhile, hard upon Brand's death, a cloud like unto a man's hand had appeared in the north and threatened to overcast the heavens. A year previously, a Transvaaler, Grobler, had signed a treaty with Lobengula giving his fellow-burghers a privileged position in Matabeleland. The High Commissioner, urged thereto by Rhodes, thereupon sent the ex-missionary, J. S. Moffat, to Bulawayo to safeguard British interests. Moffat did so with such success that in February 1888 the King placed his treaty-making powers under the control of the High Commissioner who, in spite of Transvaal protests, ratified the treaty. In July Grobler, who had been appointed Transvaal consul at Bulawayo, ventured into territory in dispute between Khama and the Matabele monarch and was mortally wounded in a scuffle with one of Khama's subordinate chiefs. At once an outcry was raised at Pretoria, where it was freely hinted that Khama had been egged on by certain British officials. The High Commissioner acted with prompt prudence. He repeated his assertion that Lobengula's dominions were in the British sphere and bade Sir Sidney Shippard, Deputy Commissioner of the Protectorate, hold an enquiry while General Joubert investigated the matter on behalf of the Republic. Sir Hercules talked of sending de Villiers up to Pretoria to effect a settlement; ³ but, finally, he

¹ de V. to J. G. Fraser, Aug. 8, 1888.

² Melius de Villiers to de V., Jan. 16, 1889.

³ J. G. Kotze to de V., Sept. 7, 1888.

decided to await Shippard's report. The report was not calculated to soothe the ruffled feelings in Pretoria. "I cannot," wrote Sir Hercules, "quite agree in all his recommendations; but it is so much a question of the value of evidence that I should be very glad to have privately the opinion of a trained legal mind like yours."¹

The report was modified and sent to London, followed by the suggestion that de Villiers should arbitrate; for, wrote Robinson, "there is trouble in this matter if it is not judiciously handled."² De Villiers was willing to serve, but was doubtful of his reception by Kruger. "During the negotiations in 1881," he warned Robinson, "I always kept the Transvaal commissioners at arm's length and, I think, left on them the impression of being too English in my sympathies."³ The Colonial Secretary at once accepted the proposal by telegram, and promised to induce Khama to carry out the award; but he declined to allow any fine to be paid out of the parliamentary grant to Bechuanaland, lest H.M. Government should be held to admit thereby that it was responsible for Khama's acts of internal government. But, he added in a confidential message, "if Khama after doing his best cannot stump up he may possibly be helped."⁴

The consent of the Transvaal authorities was more difficult to obtain. No reply was received for a full fortnight, and then the telegram was so mutilated in transit that further correspondence was necessary. The point at issue had really come down to the amount of compensation to be paid by Khama; but after another three weeks' delay Kruger demanded that this question be referred to the President of the U.S.A. or of the French Republic (who had recently honoured him with the Grand Cross of the Legion of Honour) or to a third party, whose name Sir Hercules did not mention but whose identity may be guessed, in view of the interest Germany was taking in the affairs of South Africa in 1889.⁵ Sir Hercules justly described the proposal as "really ridiculous . . . As to the third referee suggested, I do not think we should quite like to place our case in his hands absolutely." He stood by de

¹ Robinson to de V., Oct. 18, 1888.

² Robinson to de V., Dec. 24, 1888.

³ de V. to Robinson, Dec. 24, 1888.

⁴ Robinson to de V., Jan. 21 and 22, 1889.

⁵ Robinson to de V., March 1, 1889.

Villiers as arbitrator. Foiled on this line, Kruger then proposed that his own Chief Justice should be associated with de Villiers ; but Knutsford cut the matter short by himself fixing the compensation, which Khama paid in person at Pretoria.¹

So the incident closed. De Villiers was not called upon to arbitrate officially, but he did bring his influence to bear directly upon some of the Transvaal authorities. He went north on March 20th ostensibly on the business of the Worcester Mining Company in which he was interested and to spy out the prospects of the Rand whose first boom was just dying down. That, at least, is the impression he left on his wife, who had just sailed with her two daughters to England after entrusting him with £100 to invest in mining shares, a mild flutter in which she took a sporting interest. "Did you see Mr. Sauer when at Johannesburg? Just like my luck he must have been *too late* judging by the state of the market. . . . I am in such hopes that you have been able to work the oracle."² Alas! the oracle of the Rand was in no condition to vouchsafe anything even to De Villiers *in propria persona* ; but if his private interests benefited little, the public weal was advanced and some of the suspicions, which those at Pretoria entertained against him, were wiped away. "The President," wrote Judge Esselen, "was pleased and hopeful at what you wrote. He was especially pleased at the result of the Khama-Grobelaar case."³

Now that the miserable Grobler dispute was disposed of, the President showed signs of abandoning his policy of *Sinn Fein*. Rhodes and Hofmeyr in the Colony gave him every encouragement, stoutly resisting Sprigg's proposal to extend the Kimberley railway northwards on the ground that any proposal to carry the main African line through the Bechuanaland Protectorate must hopelessly alienate Kruger, who had no mind to see the commerce of the Western Transvaal drawn away beyond the borders of his State. Besides, and on this point Rhodes was insistent, "the line of life" ran through the Republic and the most convenient route for heavy traffic to the Rand ran north from Port Elizabeth. Kruger, for his part, now offered to permit this railway to come on to Bloemfontein, provided it stopped there

¹ Robinson to de V., April 20, 1889.

² Lady de Villiers to de V., April 20, 1889.

³ E. Esselen to de V., May 7, 1889.

till his Delagoa Bay line should come within 200 miles of Pretoria; then he would grant Free Trade to the Colony. His complaisance was partly due to the fact that McMurdo's railway had once more ceased to march, but mainly to the fact that British concessionnaires had gained the upper hand in Matabeleland. On October 30, 1888, Lobengula had signed the Rudd concession, thereby giving its holders, Rhodes and Beit, the monopoly of the minerals in his dominions.

Even so Kruger did not despair. Economically it might be necessary, if not exactly to bow the knee to Baal, at least to make terms with him betimes; politically it might be possible to redress the balance by a federation with the Free State. The two Republican Governments met at Potchefstroom and agreed upon mutual free trade and on consultation with each other on future railway construction. On the other hand the Free State retained its freedom to carry on the southern line to Bloemfontein. The federal scheme came to nothing, but a defensive alliance was concluded under which each State promised assistance to the other in case its independence was threatened, provided it was convinced of the justice of its ally's cause. Further than that the Free State would not go, for economically it was still looking to the south. In March 1889, a customs conference met at Bloemfontein. Natal withdrew, vainly calling on the Imperial Government to defend its interests, but the Cape and the Free State at last concluded the long awaited customs union.

Meanwhile Kruger's hopes of obtaining the eastern seaport, which he desired far more than room for expansion northwards, were rising. Early in 1889 the Swazi King dismissed his Natal advisers and granted Eckstein, a Johannesburg German, a concession empowering the holder to cede Swazi territory! At the same time, Zambaan and Umbegiza asked for Transvaal protection. Kruger therefore offered to withdraw all opposition to British expansion in the north, provided H.M. Government left him a free hand in the territories of the Swazi Umbandine, of Umbegiza and Zambaan, and of the Queen of the Tongas wherein lay Kosi Bay. What might have happened had the offer reached the sympathetic High Commissioner it is impossible to say. It reached an acting-Governor, for on May 1st Sir Hercules Robinson had sailed for England.

Sir Hercules' term of office had outlived its allotted span, but

it was confidently hoped in South Africa that he would be re-appointed. De Villiers, remembering his friend's outspoken letter to the Secretary of State in defence of his dual office, did not share that confidence. Most of his political friends in London were in the wilderness, but he had one powerful friend at court. Lord Carnarvon had a genuine interest in and a considerable knowledge, matured by bitter experience, of South African affairs; and to him de Villiers wrote urging him to use his influence to secure Robinson's reappointment. "It is the universal desire of leading men of all parties here that his rule should be prolonged. . . . It would be a great misfortune if, before his policy has had a fair trial . . . a successor should be appointed who might reverse that policy and land us in the troubles of a few years back."¹ Carnarvon promised to do his best, but he was not too sanguine. There were "difficulties" . . . he wrote, "some of them of a rather personal kind—of which you probably know."²

The date of Robinson's departure drew near. Three days before the appointed day, he made his blazing indiscretion at a public dinner in Cape Town, declaring *coram populo* that there was "no permanent place in the future of South Africa for direct Imperial rule on a large scale." With this parting shot at the gates of the Colonial Office he sailed, pursued by an urgent request from the regretful Kruger to use his best endeavours to win him his coveted seaport. Faint hopes were entertained for a time at Cape Town that "Arthur would come again," but de Villiers at least soon heard that those hopes were baseless. "I am sorry," wrote his wife from London, ". . . though I expected this from what Sir Charles Mills had told me, that farewell speech of his at the Cape settled the matter." Yet Sir Hercules was destined to be reappointed; but when he came back to Cape Town in 1895 it was as a changed man to a sadly changed South Africa.

His successor, Sir Henry Loch, Governor of Victoria, could not reach Cape Town before December 1889. In the interval between Robinson's departure and his arrival, all the disputes with the Transvaal came to a head. The Cape rapidly pushed the Port Elizabeth line forward towards Bloemfontein; but

¹ de V. to Carnarvon, Dec. 24, 1888.

² Carnarvon to de V., Jan. 30, 1889.

Hofmeyr failed to induce Kruger to allow it to pass through the Rand and Pretoria on its way to the potential riches of Central Africa. At one moment the President wavered, for McMurdo's railway stopped dead near the Transvaal border and Kruger allowed Joubert to hint to the Natalians that their line might perhaps enter the promised land. It was only a momentary hesitation. "Joubert's talk in Natal," wrote Esselen, "was nonsense. Even in Wakkerstroom, Utrecht and Standerton the large majority are opposed to any line of railway other than the Delagoa Bay line."¹ At the end of June the Portuguese authorities seized McMurdo's railway and carried it on themselves, thereby giving rise to a dreary lawsuit which found employment for the lawyers of the Berne arbitration court for many years, and actually entangled the United States Government in the affairs of South Africa. With the prospect of its own railway, the Transvaal Volksraad showed more clearly even than its President that it would have nothing to do with any railway and customs union. It banged, bolted and barred the door against the joint development of the north which Hofmeyr desired and which Rhodes was at that time willing to countenance. In October 1889 the Delagoa Bay-line reached Republican soil. Henceforward it was rivalry.

Meanwhile in London the Rhodes-Beit syndicate was making straight its path to the Zambesi. It joined hands with a rival group of concessionaires led by Lord Gifford to petition for a charter permitting them to exploit their claims in Bechuanaland and in Lobengula's dominions. Lord Knutsford hesitated to grant the wide powers demanded. Sir Henry Loch was under still fewer illusions and, before his departure for Melbourne *en route* to Cape Town, urged that provision be made for firm control by the Secretary of State and the High Commissioner over the proposed company's political activities. The warnings of the gubernatorial Cassandra passed unheeded. Loch sailed and, on October 31, 1889, a Royal Charter was granted to the British South Africa Company giving it the faculty of wielding very wide and almost uncontrolled powers, provided it obtained the right to exercise them from the sovereign of the "principal sphere" of its operations, Lobengula.

On the same day, the syndicate which lay behind the company

¹ Esselen to de V., May 7, 1889.

signed a railway agreement with the Cape Government. Since the main African line could not go through Kruger's Republic, it must perforce go round it; but go north it must and should with all the driving force of the Chartered Company, H.M. Government and the Cape Colony behind it. Two months later the first rails were laid north of Kimberley.

Rhodes was losing no time; but the exact extent of Lobengula's dominions towards which the railway was heading remained to be determined. The British Government had already repudiated the claims advanced by Portugal to a large area on both sides of the Zambesi and had refused to hear of Germany's "assistance" at the final settlement. Anglo-German claims in East Africa had been adjusted for the most part, but the frontiers between South-West Africa and the British sphere were still under discussion. There was a risk that Portugal and Germany might join hands across Africa and cut off British access to the interior. In the New Year of 1890, friction between Britain and her ancient ally on the lower Zambesi and Shire rivers reached such a pitch that Salisbury launched an ultimatum, before which Portugal drew back pending a general settlement of claims. In the midst of the crisis, one Bowler, announced his intention of trekking from the Transvaal into Mashonaland. The converging interests of the South African communities and of Great Britain had run together in the north with a vengeance.

The news of the proposed trek reached Rhodes at an ill moment. He was busy in Cape Town distributing Chartered shares, largely to Bondsmen whom he was anxious to interest in his ventures. He was also trying to form a local board of control to assist him as managing director in South Africa. He offered de Villiers a seat on the board through a mutual Johannesburg friend. "The board is of course not one in the sense of boards of ordinary land or gold companies. It will for instance not be concerned in promoting companies. It will really legislate, be a sort of permanent executive for the territory." De Villiers declined the invitation. If he found it hard to combine the duties of Chief Justice with those of president of the Legislative Council, he could hardly view membership of an executive-legislature with enthusiasm. Hofmeyr also refused, and Rhodes abandoned the attempt. Instead he received the Company's power of attorney. Henceforward in Africa he was the Company.

Meanwhile Kruger set his face against the Bowler trek, which thereupon collapsed. He also took the statesmanlike course of inviting the High Commissioner to meet him and discuss all outstanding difficulties. The conference took place in March 1890 at Blignaut's Pont, in an atmosphere vitiated by the folly of some Johannesburg irresponsibles who, during the President's passage through their town, had insulted the Vierkleur. Kruger's burghers, already more suspicious than their President of all things British, were furious, and it was to them that Kruger would have to render an account of his stewardship at the Pont. His main aim was to secure Swaziland in exchange for the abandonment of Transvaal claims in the north. He was hopeful, for the Europeans in Swaziland had recently voted in favour of Transvaal rule; the luckless Swazi King had been gathered to his fathers to drink no more; the Queen Dowager with "Offy" Shepstone as adviser reigned in his stead; and a joint British-Transvaal commission had set up a joint committee to rule the whites for the next few months. Even so the British commissioner recommended that government of the Europeans pass to the Transvaal authorities. Loch, however, bound by his instructions, insisted on joint rule over the Europeans and declined to recognize withdrawal in the north as a *quid pro quo* for concessions to the Transvaal in Swaziland. On the other hand, he offered to use his influence to gain leave for Kruger to annex the lands of Umbezisa and to secure by treaty the ownership of a railway strip through Swaziland and sovereign rights over a similar corridor through Tongaland and an area round Kosi Bay, provided the Republic would permit the Cape and Natal lines to enter its territory and would join a customs union with one or other of these colonies. In other words, the port, the railway strips and Swaziland were to be used as levers to dislodge Kruger from his lofty pinnacle of isolation in the general interests of South Africa.

The Imperial Government agreed to all Loch's proposals save his suggestion that the Republic might acquire sovereign rights over the Swaziland corridor. Kruger, for his part, mindful of his burghers and stubborn Volksraad, reluctantly undertook to recommend the scheme to his executive council. He had not done so by the middle of June; wherefore, as the life of the temporary European government in Swaziland was drawing to a

close, Loch mobilized police in Natal to support a British commissioner for the maintenance of order in Swaziland in terms of the London Convention. But he also sent Hofmeyr to Pretoria. Hofmeyr with great difficulty persuaded the Volksraad to ratify the first Swaziland Convention, on the understanding that, once firm joint-rule had been established in Swaziland, the Imperial Government would consider any requests the Republic might make with a desire to meet them as far as possible.

The Convention provided the means of unravelling the fatal web of concessions woven by the late lamented Umbandine. A court of either one or three judges mutually agreed upon by the President and the High Commissioner was to pronounce upon the validity of the concessions. De Villiers had been in constant communication with Hofmeyr on Swazi affairs. Loch now discussed the composition of this court with him. Kruger wanted a single judge to save expense, and named his man. Loch desired a court of three to satisfy public opinion in London and was prepared, on de Villiers' advice, to accept Chief Justice Kotze, any of the Transvaal judges other than Kruger's nominee or any member of the Free State bench.¹ There was talk of de Villiers going up as chairman, *primus inter pares*, as he tactfully explained to Kotze;² but in the end the claims were heard by Kotze, Judge du Toit of the Transvaal, and H. H. Juta, then a rising Cape barrister. But de Villiers suspected Kruger's motives in insisting on his own nominee and regarded his plea of economy as a mere excuse. Leyds, the Transvaal State Secretary, did his best to reassure him. "Als gij denkt dat gij bij den President geen *persona grata* zijt, dan vergiste gij u geheel, dat kan ik u verzekeren."³ De Villiers was not to be reassured so easily. His liking for Transvaal methods of diplomacy was not improving with the years.

On the other hand the prospects of federation were brightening. While Hofmeyr had been in Pretoria mediating in the Swazi crisis, the Sprigg Ministry had fallen and on July 17th Rhodes had become Prime Minister. He had joined hands with Hofmeyr six months previously. Now that the racial fires stirred by the first Transvaal war had died down, there was little to keep them apart, and a common grievance against Kruger's

¹ Loch to de V., Aug. 27, 1890.

² de V. to Kotze, Sept. 10, 1890.

³ W. J. Leyds to de V., Oct. 15, 1890.

economic policy united them. James Sivewright, a stout Bondsman and Rhodes's right-hand man in his railway schemes, had brought them together. They therefore formed a Pitt-Newcastle alliance which, in the course of the ensuing five years, did much to bring federation once more within the sphere of practical politics. Meanwhile, three weeks before Rhodes took office, the Pioneers began their famous march to Mashonaland. As they advanced three important documents were signed: the Bechuanaland Order-in-Council, the Anglo-German treaty defining mutual boundaries in East and South-West Africa, and the Anglo-Portuguese convention fixing the Mozambique B.S.A. boundary, opening the Beira route to traffic and providing for the construction of a railway from that port. By the middle of September Salisbury had been founded and the making of "Rhodesia," the keystone of Rhodes's federation scheme, fairly begun.

CHAPTER XII

PRINCIPALITIES AND POWERS

It is not within the scope of this book to follow out in any detail the fortunes of that policy of economic federation which Rhodes designed as the necessary basis of a closer political union of the States of South Africa. The Prussian Zollverein which had become the German Empire was there as an example; the formation of exclusive economic blocs by European and American powers was a warning. Perhaps the South African economic unit might one day become the nucleus of a British Imperial Zollverein, but the formation of that unit must take place first. The Colony was to be the foundation. It was already joined with the Free State in a customs union; from it was to start the trans-continental telegraph and the Cape-to-Cairo railway; to it was to be added British Bechuanaland. The Bechuanaland Protectorate, on the other hand, was to fall under the rule of the Chartered Company which, if all went well, would soon be established in Matabele and Mashonaland, and might even acquire Gazaland with Beira and the outlet of the Delagoa Bay railway at Komati Poort. Given that, Kruger's game would be up; but even if it were not given, it might reasonably be hoped that one or more new Rands would be discovered north of the Limpopo, that newcomers would pour in as they were already pouring in to the Witwatersrand, and that the Company, having by its railway policy and gold law obtained control of the railway companies and a share in all the mining companies, could hand over the administration to the people of the country. Between them, these territories from Table Bay to the Zambesi, all in greater or less degree controlled by Rhodes himself, could surely bring sufficient pressure on the Transvaal to force it into a railway and customs union. If the Transvaal came in, Natal must

follow suit. As for political federation and the flag, time would decide.

Nevertheless to every public man in South Africa during the 'nineties the question must be put, What think ye of Rhodes? It might be possible to keep Rhodes in the background of an ecclesiastical history of the period, but in any other kind of history or even biography, he inevitably steps into the foreground. Men could love him or they could hate him. Many in their time did both. The one thing no man could do was to ignore him. For in those days Rhodes was politics.

So was it with de Villiers. After his refusal to become a member of the proposed Chartered board of control, he naturally took little direct part in the development of Rhodes's policy. Many of its ramifications were no clearer to him in 1890 than to anyone else; but he approved the general aim. Here was a movement towards federation; something that would end the jarring and friction of the broken political framework of South Africa; a movement directed by the Prime Minister of the Colony and not by the Secretary of State and his commissioners; a movement which had the support of most of the Cape Afrikaners as well as of the English; a belated and much more comprehensive attempt to carry out that unification of South Africa round the old Colony as a centre which had been dimly envisaged by his colleagues in the Molteno Ministry. From 1890 till the middle of 1893 he had high hopes of Rhodes and his policy; from the close of 1893 onwards he became increasingly suspicious; after the Jameson Raid at the New Year of 1896 he became as openly hostile as it was possible for a Chief Justice to be.

Even before Rhodes took office in 1890, de Villiers had been vigorously pushing forward his own schemes for a judicial federation. Now that he was sure of support from a sympathetic Ministry, he redoubled his efforts. He proposed the co-ordination of the requirements in all the South African States and Colonies for the admission of advocates and attorneys; reciprocity of practice at all their bars and at the English bar; a South African Court of Appeal; and the inclusion of Colonial judges in the Judicial Committee of the Privy Council, partly as a means of strengthening the links of Empire, partly as an inducement to the Republics to throw in their lot with the Colony. He failed

all along the line. For the time being, the Imperial Government declined to move in the matter of the Privy Council. The Court of Appeal fared no better. True, the Supreme Court at Cape Town was recognized in 1890¹ as the court of appeal for all Zambesia, when that territory should be in a position to supply the necessary appeals. That at least was a beginning, but Natal and the dominant party in the South African Republic opposed the larger scheme, and the lawyers of the Eastern District Court were suspicious. In the matter of legal reciprocity, the Free State and Natal were enthusiastic; but the Transvaal was once more hostile, the Free State and the Cape Colony were dubious of an unreformed Natal as a partner in such a scheme, and the Inns of Court were apathetic. By the middle of 1892 de Villiers realized that there was little hope of attaining his ends apart from a general federation. The limbs of Leviathan could not function separately. He therefore began to consider returning to active political life. He had hesitated to become Chief Justice in 1873 lest his office might interfere with his work in the interests of closer union. Nearly twenty years' service on the bench had convinced him that it did interfere with that work. Since 1888 he had been coming into ever closer touch with politics and politicians. Since 1890 men whom he knew and with whose policy he sympathized had been in power. From the first his relations with Loch had been more intimate than with any Governor before or after him. Lady de Villiers had paved the way for this friendship in London in 1889. "Our new Governor's wife," she wrote, "is Lady Lytton's twin sister and . . . has a great deal of tact. . . . The general opinion here is that we are to be congratulated on our new Governor. . . . I had a long chat with him, and later in the evening with Sir Hercules. Lady Loch and I got together in a quiet corner of the ballroom and had a long talk about the Cape."² The relations of the two men then, were not simply those of Governor and Chief Justice. They played cricket together with the children at Newlands House, for de Villiers in spite of his austerity could unbend, especially in the presence of children; they fished off the rocks of False Bay and, if they caught little, they could talk freely as the duikers and sea-gulls told no tales. Loch, too, would drop in at times at Wynberg House and soon the talk would

¹ Act 3 of 1890.

² Lady de V. to de V., June 23 and July 16, 1889.

drift round to politics, till he would warn his hosts that windows and doors had ears. Then Lady de Villiers would send him and her husband out to have tea under the orange tree at the back of the house facing the stately buttresses of Table Mountain across the valley, while she closed the offending windows and doors and headed off stray visitors. Loch trusted his Chief Justice absolutely—"one of the most reliable fine characters in South Africa," he told Lady Loch as he lay dying—and the frequency of his visits showed that he valued his cool and moderate counsel. The orange tree under which they talked, grown from a pip planted by de Villiers, still stands; but it does not share with the oaks of Dodona that faculty which would have made it so invaluable to a biographer.

During the parliamentary sessions de Villiers saw a good deal of Rhodes officially and socially, as was inevitable in so small a society as that of the Cape Peninsula; but there was never any real intimacy between the two men. He saw even less of Hofmeyr. He sympathized with Hofmeyr's general policy of attempting to draw the States and Colonies closer together and with his insistence that the Cape Afrikanders must take that share in the government of the country to which their numbers and interests entitled them. Had not he as a young member of Parliament, preached that doctrine himself to the farmers of the Western Province? But Hofmeyr's work lay in the fields of journalism and of party management, forbidden ground to a Chief Justice; so the two men met little.

The politicians of whom de Villiers saw most were John X. Merriman and J. W. Sauer. Merriman had entered Parliament within two years of the day on which he himself had taken his seat; he had become a member of the Molteno Ministry in which he had also served; he was the acknowledged guardian of the economical traditions of that Ministry. Merriman, however, lived three miles away from Wynberg House at the gates of Groote Schuur, while Sauer was de Villiers' near neighbour. He was still nearer to him politically. Both shared a deep love for the Colony and particularly for the Cape Peninsula; both cherished an immense respect for all that was best in English political and social life; both inherited a liberal native policy from William Porter and Saul Solomon. Sauer spent much of his time with de Villiers—quite apart from politics, there was,

he always averred, no babootie in South Africa comparable to that at Wynberg House. He would stroll in, smiling and rubicund, to be greeted by Lady de Villiers, "Well, Mr. Sauer, are the chestnuts in the fire again?" "Yes," he would reply, "— has been kicking over the traces once more," and, with that, he would pass on into the study. Unluckily no shred of Sauer's handwriting survives at Wynberg House, and he himself kept very few of the letters he received. Yet it was with him that de Villiers discussed politics most fully in the 'nineties.

De Villiers thus found Cape political life more and more congenial. In South Africa as a whole there was a smell of spring in the air. Everything, or nearly everything, had moved in the direction of federation since Rhodes had struck hands with Hofmeyr. The customs union had been extended to include Basutoland and Bechuanaland; the Pioneers had for the most part survived two desperate rainy seasons in Mashonaland; the scuffling with the Portuguese had ended with the definition of a boundary which, if it denied the Company the possession of Beira and the mouth of the Limpopo, at least gave it the goldfields of Manica; the telegraph line had already reached Salisbury and the railway would soon cross the fever-stricken lowlands behind Beira. Difficulties with the Transvaalers had also faded away. The proposed Adendorff trek into Banyailand, notoriously organized with the approval of Joubert, had shrivelled before the heat of Kruger's veto, Loch's remonstrances and the fulminations of Hofmeyr's Bondsmen who, wrote Loch, "openly hint that it is time the present weak executive in the Transvaal should be done away with. I have quite to moderate their tone." The remnants of the trekkers dispersed in face of Jameson's police. A like fate had befallen another projected Boer trek into the Promised Land, which must have provided curious hearing to the Chief Justice, the confidant of the High Commissioner. Charles, de Villiers' younger brother, had helped Cavalhao, the Portuguese Consul at Cape Town, to organize a trek of 300 Boer families to Manicaland, there to form a buffer between the Portuguese and the redoubtable Company. After recent events in the neighbourhood of Massikessi, the value of such a buffer was fully appreciated at Beira. A stormy scene had ensued between Mr. de Villiers, the High Commissioner,

and Rhodes; the trekkers had gathered in the northern Transvaal declaring they would fight their way through; but Rhodes had allowed a committee of five to go in and inspect the land, and had dealt with the rest by means of his cheque-book. The trek came to nothing.

In June 1891, Cape law had been extended over the Europeans as far north as the Zambesi by Order-in-Council. The Company itself had gone on ahead across the river, what time Lugard was busy in Uganda, and at the close of the year it had secured the famous Lippert concession which gave it power for one hundred years to deal with land in the Matabele dominions as an owner might. Rhodes's schemes had also prospered south of the Limpopo. The first wild boom in Rand mining shares had ended in the inevitable slump, a slump accentuated by the failure of one of the largest banks in South Africa in the middle of 1890. The shock helped to force the credit of the Cape Colony so low that, even two years later, it was reduced to raising a loan at 93. The shock to the unstable Transvaal was far worse; but bad times, as usual, favoured the cause of union. At the close of 1891 Sivewright had concluded an agreement with Kruger. Thereunder, the Cape was permitted to carry its railway on from Bloemfontein to Johannesburg and to fix the rates on all its length till the end of 1894, in return for a loan which enabled the Netherlands Railway Company to raise sufficient money from the Rothschilds to complete the Delagoa Bay railway. But the Cape line was sure now of getting its foot in first.

During 1892 Rhodes's luck held good on the whole. In the Colony he and Hofmeyr worked well together—he on the front ministerial bench, his ally immediately behind him. Negotiations were in train in London which he hoped might lead to the purchase of Delagoa Bay and thereby furnish an irresistible lever for pressing the Transvaal into the railway and customs union. That Republic had increased its tariff against Colonial produce and Rhodes, like Loch, had to moderate the anti-Transvaal ardour of the Bond. Meanwhile Jameson was administering Mashonaland cheaply in rough-and-ready but none the less effective fashion.

As far as de Villiers could see, federation was well within the bounds of possibility, given time and patience. Towards the close of 1892, therefore, he made up his mind to risk leaving the

bench, if he could thereby further the cause of closer union. Within six months three openings were presented to him: one in the Transvaal, another in the Colony itself and the last in the Free State. Yet, from one cause or another, each of these openings was closed and he remained Chief Justice.

The obstacle to the establishment of a South African Government for all South Africa was the Transvaal. That prickly and unapproachable Republic unfortunately held the economic key of South Africa and, in Delagoa Bay, it had a bolt-hole which the other South African communities were unable to close. On the other hand, all would be well if its Government could be captured. Kruger's second term of office was closing amid a rising storm of personal, religious and political rancour. The Uitlanders and the more liberal Boers regarded Joubert as their champion; but there was good ground for believing that they would support a strong candidate from beyond the borders of the Republic. In Rhodes's eyes, de Villiers was such a candidate. He therefore offered to pay all expenses, if he would stand for the presidency.

Ever since 1881, de Villiers had entertained the mild ambition of one day becoming President at Pretoria, an ambition which partly accounts for Kruger's chilly politeness towards him. Rhodes's proposal was reasonable enough. It would not be the first time that the Cape had supplied a President to one or other of the Republics. Brand had gone to Bloemfontein and Burgers to Pretoria from the old Colony. Nor would an ex-judge as President be an innovation. Reitz, a Cape man, had been Chief Justice of the Free State; Chief Justice Harding of Natal, in 1872, had seriously thought of standing for election in the Transvaal. Two years later Lord Carnarvon and Southey had talked of sending the Recorder of Griqualand West to the Transvaal in the interests of the scheme of federation of that day. Nor, according to Rhodes's plans in 1892, was republican constitution incompatible with membership of a South African federation. Provided the Union Jack were recognized as the federal flag, he was quite willing that the Republicans should keep their own flags for local purposes, much as the Lydenburgers had stipulated for a similar privilege on joining the South African Republic in 1860.

De Villiers decided to feel his way. The election campaign

promised to be more than child's play. Not only were the burgher factions bitterly hostile to one another, but acute friction was arising between the Kruger party and the Uitlanders of the Rand. Kruger, an old-fashioned Boer of the Trek, was faced with the impossible problem of dealing with a large cosmopolitan industrial population dependent on gold-mines owned for the most part by shareholders who had never seen South Africa, organized by white engineers and miners, and worked by swarms of black barbarians. The Boer Government was inefficient. It would have been a miracle had it been otherwise. Its administrative tradition was slack and it now became corrupt, for hitherto unheard-of opportunities were thrust upon Boers who had the acquisitiveness of peasants all the world over. Nevertheless, the intentions of the Transvaal Government were good enough. The gold law, in whose forming de Villiers had had a share, was extremely liberal; the native pass law and the illicit gold and liquor laws had been passed for the benefit of the mines. In practice they were not very effective, especially the illicit liquor law; but here the Boer Government was faced with the same problem on a larger scale which had perplexed the administration of Griqualand West, from the days of Lieutenant-Governor Southey to those of de Villiers' Diamond Law Commission. Kruger was also sympathetic to the European workmen, partly by nature, partly from policy. The Independent Labour Party had just emerged in British politics, and the old President was quick to see that the Uitlanders, as a political force, might be split along the line which divided Capital from Labour.

On one point Kruger was adamant. He would not extend the franchise to the new population. Since his famous conversation with the Royal Commissioners in 1881, the term of residence necessary for the franchise had been raised twice, from one to five years, and then, in 1890, to fourteen. It was in vain that a second Volksraad, elected on a much more easily obtainable franchise, had been created with considerable powers of dealing with matters especially affecting the Rand. The fact remained that, except by favour of the Government or by the fulfilment of almost impossible conditions, the Uitlanders, even Cape Colonists and Free Staters, were informed that they were *μέτοικοι*, taxpayers (most certainly taxpayers) but not citizens

of the State. Thereupon Charles Leonard, an eloquent Cape advocate, formed the National Union at Johannesburg, an essentially middle-class association from which the mining-magnates held aloof at first, for fear of spoiling business, an association pledged to maintain the independence of the Republic but to secure by constitutional means redress of grievances and equal political rights.

Kruger's policy was intelligible. The Uitlander clamour which had preceded the annexation of 1877 had not been forgotten; the Continental concessionnaires, who surrounded the Government, dreaded the loss of their concessions; the Boers feared that they would be swamped politically by men who were draining the native labour from the farms and who might, if they had the power, run the country into debt in the name of development and, when the mines were worked out, quietly leave the country and the debt to the permanent population. For in 1892, before the Deep Levels had been proved, it was by no means certain that the Rand would have a long life. But the trouble went deeper than that. As Selous shrewdly noted, the Uitlanders were alien in spirit to the Boers; they neither mixed with nor understood them, and many desired to do neither the one nor the other. The Boers retaliated with all the puzzled contempt which the countryman has for the dwellers in industrial towns; and here the mutual and ancient antipathy was deepened by the fact that the country-folk were Dutch-Africanders and the town-dwellers largely British.

It is impossible to tell whether many of the Uitlanders would have taken the franchise had it been offered them. Comparatively few had registered even before the drastic law of 1890; but those were the days of the rush to the goldfields, and the newcomers had had much else to do and think about. Probably a good many would have become burghers in the early 'nineties before the character of the agitation changed. In any case, the policy of withholding the franchise was wrong in principle and fatal in practice. It made unnecessary enemies; it differentiated the Republic from all the other States of South Africa; it inflamed other and substantial grievances; it gave a weapon of unimpeachable strength to those who desired the removal of the Republic. To have made the franchise accessible would have strengthened the State; but, a very small Uitlander vote

would have ended the Kruger régime. The presidential and not the Volksraad vote was the real stumbling-block.

De Villiers went north to Pretoria as unobtrusively as possible. Friends were working on his behalf, but he finally decided not to stand. If he stood, he must not only resign his seat upon the Cape bench but he must become a Transvaal burgher. In the early days of the Republic the choice of President had been limited to burghers, but in 1872 that law had been hastily set aside to permit of the election of Burgers of Hanover. In 1890, however, the Volksraad had with equal haste restored the old rule.¹ Doubtless, if a sufficient number of Volksraad members favoured him, the new law could be abolished with equal speed; but he came to the conclusion that most of the Transvaalers would support Kruger. At the best, he would only defeat the old President by a narrow majority and thus become the head of a faction rather than of the State; his liberal opinions were certain to clash with those of the more conservative Transvaalers; and he had no ambition to go down to history as a second Burgers. Nor did he like what he saw and heard at Pretoria. Its ways were not his ways and, on his return home, he delivered himself of the opinion that "a thorough cleaning-out" was required there. The risk was too great; the prospect not sufficiently attractive. He was no Heaven-sent leader of forlorn hopes, and he knew it. Nevertheless, as late as the end of May 1893, Rhodes and he and Esselen, Joubert's right-hand man, were seriously discussing his chances of election at some further date; and Nellmapius, the man who had more influence over Kruger and on Kruger's behalf than any other in the Transvaal, wrote encouragingly: "I and many others hope the time is not too far when we shall be able to induce you to make it [the Transvaal] your home. . . . Providence has reserved for you a very much more important and useful part in the destiny of South Africa, than even the very honoured position you at present occupy. . . . In the meantime there is *no doubt* that our good dear old President will be again re-elected. . . . With all his faults and shortcomings he is by far the best Patriot and the best man we have here now."²

Nellmapius's prescience was justified by the event. After a furious campaign, in which Chief Justice Kotze took part with

¹ Wet No. 3 of 1890.

² Nellmapius to de V., Dec. 11, 1892.

but scant success, Kruger was elected by a narrow majority over Joubert. Nellmapius's second prophecy was also nearly fulfilled. Whatever may have been the views of Providence, Rhodes had apparently marked de Villiers out for a higher post than that of Chief Justice. His cabinet had always been something of a coalition. Faure and Sivewright were Bondsmen; he himself strongly sympathized with the agricultural and commercial policy of the Bond. Merriman, Sauer and Rose-Innes, on the other hand, had no particular love for that institution and differed from it notably on the all-important question of native policy. However, the somewhat incongruous Ministry of all the talents held together until the beginning of 1893. It then collapsed not under external pressure, for the recent elevation of Upington to the bench had fatally weakened the opposition, but from internal strains. James Sivewright, commissioner of public works, on his own responsibility and without calling for tenders, granted the catering and advertising monopoly on the Government railways to a certain Logan for a long term of years. Merriman, Sauer and Rose-Innes, insisted that the contract be cancelled; Rhodes and Sivewright who were in London consented; and Logan successfully sued the Government for £5000. The three protestant Ministers, meanwhile, came to the conclusion that, in the words of a mutual friend, "Jimmy hath lain among the pots" too frequently to make him an acceptable colleague. In April they bade Rhodes choose between them and Sivewright.

It was not an easy choice. Sivewright was so able that Hofmeyr openly called him the "brain-carrier" of the Ministry; he was an influential member of the Bond; it was he who had brought Rhodes and Hofmeyr together; he often accompanied them on those early morning rides on which they arranged much of the political business of the day. Rhodes was also beholden to Sivewright in other directions. Sivewright had helped to carry through the extension of the railway from Kimberley; he had made the famous agreement of 1891 with the Transvaal Government; he had helped him once more during the recent visit to London. He knew much of the ins and outs of his financial schemes and he was not particular in his methods. Altogether he was a dangerous man to antagonize. On the other hand, Rose-Innes was one of the ablest and most per-

suasive advocates at the Cape bar, Sauer the best debater in the House, Merriman a most damaging critic. All three were fine parliamentarians, capable of forming a strong opposition. And Rhodes wanted nothing less.

The cabinet crisis had come at a most unfortunate moment for him. It shook the foundation of his power in the Colony at a time when the superstructure in the north threatened to come crashing about his ears. Hitherto he had been cheerful enough and on the whole with good reason. He had told his Chartered shareholders at the end of 1892 that all was well and would soon be much better in Mashonaland; on New-Year's Day 1893 the first train from Cape Town had entered Pretoria; the abrupt termination of the Natal line into the Free State at Harrismith in favour of an extension northwards over Laing's Nek into the Transvaal had thrown the Southern Republic more completely than ever into the arms of the Cape Colony. But now the tide had turned. Difficulties were steadily accumulating in London and in South Africa. Kruger was entrenched for another five years; negotiations for the purchase of Delagoa Bay were hanging fire; the Beira railway was still unfinished and the Delagoa Bay line was steadily advancing towards Pretoria. It was uncertain whether Gladstone's Liberal Ministry might not withdraw from Uganda, thereby destroying all possibility of the Cape-to-Cairo railway; worst of all, the Chartered Company was *in extremis*. The new Rand had not been revealed in Mashonaland. There, Jameson was doing wonders almost single-handed on a monthly dole of £3000 advanced by De Beers and other supporters; but that could not continue indefinitely. Official staffs and police had been cut down far below the limits of safety, and the burden of maintaining order thus virtually thrust into the hands of the protesting High Commissioner; the Company had been obliged to incur heavy liabilities to De Beers for the purpose of carrying on the main line to Mafeking; and a heartless Imperial Government had refused to allow it to levy a hut-tax on the Mashona over whom it had no jurisdiction. Influential Chartered shareholders were also making trouble in London. It had been officially announced at the end of 1891 that the concessions, other than the Lippert concession, were owned not by the B.S.A. Company, but by a few of its directors and their friends. The Company was indeed permitted to use

these concessions in return for 50 per cent. of its net profits ; but its Board had undertaken to buy the concessions as soon as possible at the price of 1,000,000 specially created Chartered shares. This capitalization, repeatedly postponed, was due to take place at the end of 1893, and some of the shareholders threatened lawsuits if it did take place. Moreover, Lord Ripon, the new Colonial Secretary, had shown himself unexpectedly insistent that the Lippert concession should really pass into the hands of the Chartered Company. Were his attention drawn officially to the curious relationship of that Company with the select group which owned the other concessions, he might well prove less complacent than his predecessor, who had blandly declined to concern himself with the financial side of the northern expansion.

Finally there was the High Commissioner. Loch's personal relations with his Prime Minister were excellent. Rhodes was so much the friend of the family that he confided to Lady Loch that he had never married and never would because he had too much else to do ; he used to drop in after dinner to play halma, always with the elder Miss Loch as partner, for she was the best player and he could not bear to lose ; he entered into competition with Lady Loch in growing big chrysanthemums for the Rosebank Show, till the cart conveying his blooms was overturned, whereafter he would never speak of chrysanthemums. But, on matters of public policy, Loch often differed profoundly from Rhodes, notably on the amount of control to be exercised by himself as High Commissioner over the Chartered Company, and on the destiny of the Bechuanaland Protectorate. Rhodes had learnt that Loch meant what he said. Just before he had taken office, he had casually mentioned to Sir Henry that his Pioneers were about to march. To his surprise, Loch refused to allow a man to move till he was satisfied that they could do so without undue risk to themselves and the peace of South Africa. But he had to dictate a cable to the Secretary of State, in the presence of the incredulous Rhodes, recommending the cancellation of the charter before he could get his way. Now Loch was steadily resisting all proposals to hand over British Bechuanaland to the Cape, that is to Rhodes, or the Protectorate to the Company, that is to Rhodes once more. Some base, he held, the Imperial Government must have. If it would annex

the Protectorate, then the Crown Colony might come to the Cape; but otherwise not, for he would never consent to leave the Company, *videlicet* Rhodes, out of his reach in Zambesia. He was not impressed with the Company's administration and he was frankly anxious as to what it might next do to extricate itself from its anomalous political situation and its financial embarrassments.

In face of all these perplexities, Rhodes was inclined to welcome the release from official duties in the Colony which the breakdown of his Ministry offered him. He knew that it was undesirable for the Prime Minister to be absent so often as he had been; and, as events were shaping now, his absences would become still more frequent. Merriman and his allies urged him to resign and reform his cabinet. At first he refused to do so, but cast around to find a successor. There were only two men under whom he would serve, Hofmeyr and de Villiers. Therefore, after some hesitation, he consulted Hofmeyr. That prudent politician declined to form a Ministry himself and advised Rhodes to sound de Villiers. Hence on the morning of Friday, April 28th, Rhodes called on the Chief Justice in his chambers in the Legislative Council, ostensibly at Sauer's request to discuss some point of etiquette which had arisen out of the cabinet crisis. De Villiers soon saw what he had really come for and gave him an opening. Rhodes paused and then took the plunge. Would de Villiers form a Ministry in which he might take a seat as Minister without portfolio? Such an arrangement would solve many difficulties and de Villiers at the head of the Ministry would be an inducement to the two Republics to throw in their lot with the Colony.

That evening Rhodes called at Wynberg House and discussed the names of possible Ministers. On the following evening he called again, bringing with him a list, in Hofmeyr's writing, of the men who would secure the support of the leader of the Bond. De Villiers, however, disconcerted him by remarking that, though he would naturally give weight to the opinions of so experienced a politician as Hofmeyr, the responsibilities of choosing Ministers would be his alone. He and Rhodes now agreed to invite Faure and Schreiner and, after some hesitation, Sprigg. De Villiers also wanted to include one of the three malcontents because of their parliamentary and administrative

ability, preferably Sauer. Sauer's fate was, however, left undecided and it was agreed that, if he were excluded, Laing would be the best substitute.

Before leaving, Rhodes offered to call again at Wynberg House on the following morning; but de Villiers arranged rather to call for him at Groote Schuur, and to ride part of the way to Cape Town, whither Rhodes was going for his morning talk with Hofmeyr. The suggestion must have caused Rhodes some uneasiness. Throughout he had bound de Villiers to secrecy and seemed especially anxious to keep him and the Three Musketeers as far apart as possible. Now the Chief Justice talked of calling at Groote Schuur where Sauer was spending the week-end. "I can play on Sauer," Rhodes had boasted, "like a piano"; but, on this occasion, the instrument proved unresponsive. Merriman was equally impervious to arguments. Rhodes offered him, through a mutual friend, the post of Agent-General for the Colony in London, the managership of the Cape railways, and, when Merriman pleaded ignorance of the ways of trains, payment of his election expenses—in Great Britain. Rose-Innes, the third member of the party, never knew till all was over that a de Villiers Ministry was under discussion, still less that Rhodes had earmarked him for the Bench.

De Villiers, in blissful ignorance of all these combinations and permutations, met Rhodes on the Sunday morning, handed him a letter agreeing to the Ministry as at first arranged, with this difference, that Sauer was to be included and Sprigg, Sauer's enemy, regarded as doubtful. As they rode towards Cape Town, he explained his position to Rhodes and hinted that, if only he might talk the matter out with Sauer, any difficulties about Sauer and Sprigg serving in the same Ministry could easily be overcome. But Rhodes went on alone to meet Hofmeyr and de Villiers returned home, still pledged to secrecy but otherwise pleased with his morning's work.

The gist of Rhodes's conversation with Hofmeyr was conveyed to him that evening at Wynberg House. Rhodes handed him a pencilled memorandum in the jerky yet expressive style of which he alone possessed the secret:

If Sauer is in—

1st. Sivewright will fling mud, Colony discredited credit will

suffer. Sivewright will utilize his influence with bond members against Ministry.

(b) Sprigg will not go in, and will join Sivewright and malcontent Afrikanders against Ministry.

(c) Schreiner will not go in.

(d) Rhodes cannot go in. Would be better simply to discharge Sivewright fill up vacancy and go on, which he cannot do on account of mud-flinging in House.

Sauer has told Hofmeyr that it is advisable that none of the malcontents himself included shall be in the new Ministry at present.

After a new election and redistribution which may result in extension of Houses, it would be advisable to create new portfolio grass would have grown over squabble, when it would be possible to appoint one or other of the malcontents possibly Sauer.

With Innes on the bench and Sprigg in the cabinet the opposition will not have a possible Prime Minister, but if Sprigg does not go into cabinet he will become an out and out leader of opposition with Sivewright? ? ?

In other words Rhodes knew and Hofmeyr knew that the proper course was to drop the dubious Jimmy back once more among the pots and retain the upright if somewhat difficult malcontents. But the risk was too great. Sivewright might smash more than pots; and, if he was to go, the others must go as well.

De Villiers realized that Sauer would have to be excluded and therefore said he could not form a Ministry. Rhodes seemed rather crestfallen but, as he took his departure, he said he would not take de Villiers' decision as final unless he adhered to it on the following day; meanwhile, he would report progress to Hofmeyr. The two men therefore parted on the understanding, as de Villiers believed, that they would meet again at 1.30 p.m. next day at his chambers in the Legislative Council for a final decision.

After Rhodes had gone, de Villiers sat in his study thinking. Here was a chance of helping forward federation with the support of Loch, Rhodes and Hofmeyr, without the necessity of leaving his friends, his farms and his beloved Peninsula. Loyalty to his friend Sauer gave him pause; but Sauer had just told

Hofmeyr that he had better stay out of the Ministry, the Rhodes-Hofmeyr memorandum showed that his exclusion need be only temporary and, given Rhodes's permission to speak to Sauer, he could surely make his friend understand. He, therefore, made up his mind to take office. He sat down and prepared his address to the electors, putting federation in the forefront; an address which he proposed to read to Rhodes and Hofmeyr at the meeting on Monday together with his list of proposed Ministers—himself as Premier and Colonial Secretary, Rhodes, Sprigg for Crown Lands or the Treasury, Laing for Crown Lands, Faure for Native Affairs, Schreiner as Attorney-General. And so to sleep, perchance to dream.

On the Monday morning, he thought of calling on Rhodes at Groote Schuur to tell him of his decision; but rain was falling in torrents and he contented himself with sending him a note asking him to bring Hofmeyr to the meeting at 1.30, so that he might explain the general lines of his policy. He then went in to town. The isolation in which he had hitherto been working was more than he could stand and he felt he must speak to someone who could be trusted; so, having a few moments before the Court opened, he sent for W. P. Schreiner. Schreiner was a great friend of Rhodes, an able advocate and a man of the nicest honour. To him de Villiers put the situation hypothetically and asked him whether he would serve as Attorney-General. Once Schreiner was satisfied that such a step would not entail hostility to Sprigg, he said he would and told the Chief Justice much that still further strengthened his resolve to take office.

While in Court, de Villiers received a note from Rhodes reporting that Hofmeyr had gone to Somerset West for the day, and that he wanted to see him before discussing matters further. He did not tell him that he had met Sprigg on the steps of the Houses of Parliament, that Sprigg had remarked that he looked worried and had offered to help him, and that he had turned back with him into the building. Monday passed, Tuesday passed; then, on Tuesday evening, Sauer of all people arrived at Wynberg House with a vague message from Rhodes that Hofmeyr was still away but that he hoped to see de Villiers later. One piece of definite news Sauer did give: the cabinet had resigned that day. More than that he did not know; but,

in reply to de Villiers' question, he assured him that he would support his Ministry, even if it did contain Sprigg.

What then was de Villiers' amazement to read next morning in his newspaper that Rhodes was forming a new Ministry himself. Presently a note was handed to him in Court :

C. J. Rhodes to J. H. de Villiers.

Wednesday.

DEAR CHIEF JUSTICE,

I found your condition impossible to carry out so am sorry to say that I must do my best and pull through.—Yours truly,
C. J. RHODES.

PS.—The matter remains between Hofmeyr, yourself and myself I think. Sauer has a suspicion but I have said nothing.

Later in the day de Villiers had his long-deferred interview with Rhodes, who excused himself as best he could. Evidently de Villiers was not satisfied with his explanation for he wrote a long letter recapitulating the course of the negotiations.¹ Rhodes replied on the same day :

C. J. Rhodes to J. H. de Villiers.

Prime Minister's Office, *Friday.*

MY DEAR CHIEF JUSTICE,

I have carefully read your letter. I left you on Sunday with the belief that as far as you were concerned you would not form without one of the old ministers possessed of administrative training and that the one you desired was Sauer. I said I would come again on Monday as I was desirous to see Hofmeyr and also consider if such a course was possible. I found on Monday morning that Hofmeyr was away. I had also had full time to consider the question and I had personally come to the conclusion that it would be impossible for me to be a minister of a new ministry if one of the old ministers between whom differences had occurred became a member of the new ministry but I thought I would see Hofmeyr and ask his advice on his return. He fully agreed with me and I felt therefore in view of your decision on Sunday evening it was hopeless to ask you to reconsider your decision, in fact your answer had been so emphatic I did not expect you to do so. I had asked to see you again in order to consider very carefully whether your condition was possible in any way to carry out.—Yours truly,
C. J. RHODES.

¹ de V. to Rhodes, May 5, 1893. *Vide Appendix, p. 234.*

Meanwhile, the names of the new Ministers had been published. His own name was omitted; Frost's filled the gap; the portfolios had been rearranged; otherwise, the list was the same as his own. The blow was a severe one to his hopes and his pride; for, when all is said and done, it was Rhodes who had urged him to meet him again on the Monday; his note on the Monday morning asking Rhodes to bring Hofmeyr to the meeting must have told Rhodes that he too had been thinking matters over; Rhodes's letter of the Monday morning had spoken of discussing matters with Hofmeyr before seeing him again; yet, thereafter, Rhodes had made no sign till he sent the vague message by Sauer on Tuesday evening to the effect that he still hoped to see him later. By that time, the cabinet's resignation was in the hands of the Governor and the announcement that Rhodes was reforming his Ministry had been issued to the press.

De Villiers took his disappointment quietly enough. No other course indeed was open and, after a passing thought of returning to politics as a private member, he closed the correspondence:

De V. to Rhodes (Draft Letter).

Cape Town, *May 10, 1893.*

MY DEAR RHODES,

I wrote so fully in my last in order to discover the exact point upon which our misunderstanding arose. It is now clear that the point was whether, on parting on Sunday evening (April 30), you were still to reconsider your decision or whether I was to reconsider mine. I unreservedly accept your statement that you understood my wish to be that you should reconsider your decision not to sit with any of the ministers between whom the unfortunate difference had arisen. I feel sure that you will also accept my statement that I quite saw the impossibility of your doing so and that I understood your wish to be that I should reconsider whether, under the circumstances, I could still cooperate with you in the government of the country. During our interview I was, as you rightly say, emphatic, as I did not consider it fair to keep you any longer in suspense. I was very much impressed however by your kind and parting wish that the matter should still be kept open until the following day and accordingly I gave the whole matter the most anxious thought that night. I re-read the notes you had left with me (taken in your conversation with Hofmeyr) and came to the definite decision to throw in my lot with you upon the provisional lines arranged and to settle all the details at the

interview fixed for the following day. Our interview did not take place until the following Wednesday (May 3) when your present arrangements had already been made. I quite accept the assurances you then gave me and only now wish to add that I have since had a long and satisfactory interview with Hofmeyr. Acting on his advice I have decided not for the present to re-enter politics as a private member. With my best wishes for your success, I remain, Yours sincerely,

J. H. DE VILLIERS.

The story of these negotiations has been debated so often that it has been necessary to set out the facts at some length. It has been suggested that Rhodes was playing with de Villiers throughout, and was merely picking his brains. De Villiers never held that view. Besides, such an explanation is unnecessary, for Rhodes and Hofmeyr between them possessed all the brains requisite for designing a cabinet. The true explanation would seem to be much more straightforward. Rhodes was desperately worried at the time. He was anxious to give up his portfolio and yet to retain power. In de Villiers, he and Hofmeyr thought they saw a Premier who would be liked by his colleagues, respected by the Houses and the electorate, a *persona grata* in the Republics and in Great Britain, and who would yet be prepared to leave the direction of policy to them. As the negotiations proceeded they found that he had more independence and a more clear-cut policy than they had given him credit for. Nevertheless, on the Sunday night Rhodes was prepared to go through with the scheme; but, on the Monday morning, Hofmeyr's convenient absence and his chance meeting with Sprigg showed him another way of retaining the power which he must have in May 1893 of all times. He accordingly took it.

As if to console him for his disappointment, on the day after he had written his last letter to Rhodes, de Villiers heard that steps were being taken to secure his election as President of the Free State.¹ Reitz's term of office would expire at the close of the year and, given a strong opponent, his chances of re-election were dubious. Early in 1891, he had fallen foul of a strong party in the Volksraad led by J. G. Frazer, member for Bloemfontein and Voorzitter of the House. Frazer differed from the President's policy of cautious alliance with the Trans-

¹ Melius de Villiers to de V., May 9, 1893.

vaal, for he looked askance at anything which would draw the Free State closer to that Republic; but his first open quarrel with Reitz arose over a question of precedence. He induced the Raad to carry a "reglement van orde" giving him as Voorzitter precedence over the Chief Justice. The President defended his Chief Justice from the Colony, de Villiers came to his brother's aid, and popular opinion in the Free State expressed itself so vigorously that the obnoxious order had to be withdrawn. During the session of 1892, Frazer urged the rights of the Volksraad against the Executive and sought to limit the President's liberty of movement beyond the borders of the State. Reitz thereupon resigned. He was prevailed upon to withdraw his resignation, but his position was none the less weakened, and there was promise of more trouble to come. "Our Constitution," he wrote to de Villiers, "very little altered since 1854, has immense gaps in it and when made gave too much power to the Legislature—a power which that body tenaciously clings to—*Hinc illae lachrymae.*"¹

De Villiers knew fairly accurately what was passing north of the Orange, for, apart from Reitz's letters, he received full information from his brother Melius. Melius was not sanguine at first and was convinced, from the knowledge acquired on circuit, that Reitz would defeat any possible Free State opponent. A strong candidate from outside was another matter. A requisition signed by seven Raad members duly arrived; but there were fifty members to be considered and de Villiers did not feel sure enough of his ground to warrant him resigning his seat on the bench. He therefore asked for time to consider.² He was anxious not to appear to be ousting his friend Reitz, and he was not sure how he would get on with the Free Staters. True, they were far less suspicious of men from the South than were the Transvaalers, for they had received Brand from the Colony and not Burgers; nevertheless, they were not the men of the Western Province with whom he was familiar. Above all he was anxious lest his acceptance of the Free State presidency would militate against his chances of one day succeeding Kruger at Pretoria. He therefore put all his doubts before his brother at Bloemfontein. Melius's reply was encouraging on the whole.

¹ Reitz to de V., June 5, 1892.

² de V. to O. F. S. V., Volksraad members, May 20, 1893.

The tide was running in the Volksraad strongly in de Villiers' favour ; indeed his letter was accompanied by another and larger requisition signed by several of the Wessels family, who were popularly regarded as supporters of Judge Steyn. On the other hand, Melius warned his brother that the Free Staters had their little ways :

Melius de Villiers to de Villiers.

Bloemfontein, May 26, 1893.

I do not know whether you are aware of the sort of people we have to do with in this State. . . . When I was in the district of Vrede last circuit, I enquired what was the reason of public opinion there having veered round so in favour of the President. I was told that in the first place he had always been considered a very proud man but that he having shaken hands with every individual of the assemblage who had gone out to meet him, this had shown that he was a very "nederige" man ; and secondly, that they had been under the impression that he was "een ongeloofige" man (poor Reitz is as little "ongeloofig" as he is proud) but inasmuch as he had issued a proclamation appointing a day of prayer for the destruction of the locusts, this had proved his "godvruchtigheid," and he had consequently become immensely popular. This is the sort of thing one has to put up with in this country. When such a cry is raised and taken up that one is "Engelschgezind" or something like that, it is enough to destroy one's influence . . . to a considerable extent. . . . I must say that I don't think the fact of your having been President here would be any obstacle to your attaining the same position in the Transvaal ; rather the reverse. . . . I have been told since that your nomination is very popular with the Volksraad ; that the idea of the possibility of Steyn being nominated in case Reitz should not stand is by no means relished generally ; and even that it is uncertain whether Reitz will stand again. . . .

There can be little doubt that de Villiers was on the point of accepting, when he received a warning telegram from Ewald Esselen. Now Esselen was, at that time, his regular and trusted correspondent, a leader of the liberal party in the Transvaal, of which Joubert was the figure-head ; hence, if de Villiers aspired to the succession at Pretoria, a man to be listened to. The telegram was followed by a letter full of a hundred and one reasons against de Villiers' acceptance of the invitation. The point of the letter came at the end. " Before I left Cape Town

I saw Rhodes who, at first, also thought that you ought to take the Free State Presidency as a stepping stone to something bigger but after discussion he agreed that it would perhaps be better if you were called in by us as a compromise when things have reached the deadlock they are bound to come to."¹

Had de Villiers not listened to Esselen the course of South African history would have been different. As it was, he promptly declined the Free State offer. Reitz was nominated by an overwhelming majority of the Volksraad, re-elected in November and installed on January 10, 1894. Thus ended de Villiers' contemplated return to active political life. Whether he would have made a successful President or Prime Minister it is useless to speculate. Probably his gifts, his presence, his training as Chief Justice and President of the Legislative Council would have well fitted him to discharge his duties at Bloemfontein or Pretoria; it is much less likely that they would have served him so well as Prime Minister at Cape Town. He himself always regretted the loss of the opportunity of working in the same Ministry as Rhodes, for he believed that, together, they could have done much to further the cause of federation and that, in any case, certain things would have assuredly been left undone. Others, who knew him well, were less sanguine. Sir Henry Loch especially held that his proper place was on the bench; and it may reasonably be conjectured that, in his heart of hearts, de Villiers knew that Loch was right.

APPENDIX

J. H. de Villiers to C. J. Rhodes.

Cape Town, *May 5, 1893.*

MY DEAR RHODES,

I am somewhat puzzled by your note of yesterday's date saying that you had found my condition impossible to carry out—for the only condition mentioned in our interview was that you undertook to be unofficial member of any ministry I should form. Let me very briefly recall the occurrences of the past week while they are fresh in our memories. On Friday morning you called on me at Sauer's request to consult me about some matter of professional etiquette which had arisen in his unfortunate dispute with Sivewright.

¹ E. Esselen to de V., May 29, 1893.

After I had given my view we discussed the political situation and incidentally I let fall the remark that, after twenty years service as Chief Justice, I had a strong inclination to re-enter political life in view of the important questions that may crop up in the near future.

After a few moments consideration you said that the best solution of the crisis would be that I should form a ministry, you undertaking to be unofficial member. You pointed out how undesirable it was that the Premier should be so frequently absent as you would be bound to be. This took me by surprise but you asked me seriously to consider the matter and meet you again. That evening you called at my residence and we discussed the probable names of the ministry I should form. On Saturday evening you again called and we agreed upon the names of Sprigg, Schreiner and Faure, in addition to yours and mine. Coming to Sauer's name we agreed that if he should not take office Laing would be suitable. The doubt in regard to Sauer arose from the fact that he had been a party to the dispute which was wrecking the ministry. You offered to call again on the Sunday morning before riding to town to see Hofmeyr but I said that I would meet you at your residence and ride with you some distance. When we met I handed you a letter agreeing to the ministry as previously arranged except that Sprigg's name was doubtful instead of Sauer's. We both thought that one might not wish to sit with the other. I told you that I had worked with Sprigg in the struggle for responsible government and believed that I could again work with him, my only objection was that he had once landed us in the Basutoland War. As to Sauer I was in the difficulty that you had asked me not to divulge to him what had occurred, and I felt that it might savour of treachery if I took advantage of the interview suggested by him by taking office.

In the course of our ride we had a long and as I thought satisfactory conversation about the political situation. I told you that my sole aim was to advance the good of the country and that my political sympathies were with Hofmeyr, whose object I thought to be to give his countrymen that voice in the government of the country which responsible government was intended to give. If I could have seen Sauer that day the whole matter would have been settled but I was bound by my promise to you. The same evening (Sunday) you called again and showed me a memo containing the objections against Sauer being included. Some of these objections I could not agree with—but I fully realized the force of most of them. I agreed that if I were to form a ministry at all it would have to be without Sauer. I therefore said that my decision was not to undertake the task. You seemed disappointed and asked me not to give a final decision until the following day (Monday). I said as things stood it seemed impossible for me to carry out the plan, but,

on leaving, you said you would not take my decision as final unless I adhered to it on Monday when you would meet me at the Legislative Council at 1.30. To this I consented. After you left I gave the whole matter the fullest consideration and decided that under the circumstances it would be impossible to include Sauer and that I would ask your consent to explain the position to him, feeling sure that he would fully appreciate it. I prepared my address to the electors and made every other preparation for the change. On Monday morning I thought of seeing you before going to town, but could not do so owing to the rain, but I sent a note to you asking you to request Hofmeyr (whom you were going to see) to meet me at the interview. My object was to explain to him personally the general lines of policy I thought desirable. Immediately on my arrival in town I sent for Mr. Schreiner, as I felt it a necessity to consult someone on the situation, for I had stood perfectly alone up to that time. As he was not engaged in politics and I had perfect confidence in his discretion I thought him the most suitable person to consult. I had only a few minutes to spare before the sitting of the court and informed him of the whole situation. I had to be very guarded with him as I could not make a definite offer until 1.30 but I put it to him hypothetically whether, in case I should form a Ministry, he would take office under me as Attorney-General, and he said he would. He was perfectly candid with me and said that he would not have taken the office if it involved opposition to Sir Gordon Sprigg, with whom he had been in confidential relations. He gave me other information which satisfied me that I was doing the right thing to take office. While in court that morning, I received a note from you saying that as Hofmeyr had gone to Somerset West for the day you could not see him and that you thought it best to see me after seeing him. Monday and Tuesday passed without my hearing more from you. On Tuesday evening Sauer called and, strangely enough, gave me a vague message from you that Hofmeyr had not returned and that you would see me later on. He told me that the Ministry had resigned but that he knew nothing more. As your message confirmed me in the view that you and I were still to meet for final decision, I took the opportunity of asking Sauer what his position would be if I formed a Ministry excluding him. He said he well knew that I could not be guilty of treachery against him and that any Ministry I might form, even if it included Sprigg, would have his support. My mind was relieved and I felt that at our postponed interview a final arrangement could be arrived at. On the following morning (Wednesday), I saw in the papers that you were forming a Ministry and when in Court that day, I received the note to which I referred at the outset of this letter. On the following day I saw it announced that the same Ministry

had been formed which we had provisionally agreed upon, except that the name of Frost was substituted for mine. I do not know nor am I entitled to know what induced you to change your mind on the Monday or Tuesday, but I regret that even if you thought that there was some condition in the matter you did not allow me to meet you at the appointed time to give you my final decision as agreed. I was kept in suspense from Monday morning to Wednesday morning waiting for the interview which never came off. I do not write all this by way of reproach but merely to explain to you my own position. In the nature of things I could not take advice from anyone and my fear was that I might be acting unworthily towards Sauer at whose request you first interviewed me. On Monday morning I had a clear course of action before me and if we had met at the appointed time (Hofmeyr's presence being of course not essential) everything would have been arranged provided of course you had not changed your mind. The task you proposed to me was not sought for, and it was only a sense of duty which induced me to consent to undertake it in case His Excellency the Governor should have asked me to do so.—Believe me, Yours sincerely,

J. H. DE VILLIERS.

CHAPTER XIII

ALARMS AND EXCURSIONS

FROM the middle of 1893 onwards the sensitive and somewhat fastidious nostrils of the Chief Justice noted a progressive change in the atmosphere of Cape politics. The smell of spring gradually gave place to the dusty heat of a summer tainted with emanations of l'affaire Logan and charged, before the close of the year, with the stench of mingled gunpowder and blood. In truth, the change was partly in himself and his relations to the all-powerful Prime Minister. His three best political friends, Sauer, Merriman and Rose-Innes, had parted company with Rhodes and, protest he never so cheerfully that his withers were unwrung, he himself felt that Rhodes had betrayed him during the cabinet negotiations. But the real change was in Rhodes. His conduct during the ministerial crisis had, to say the least of it, lacked candour; but that was not the worst. As his pencilled memorandum on the objections to including Sauer in the Ministry and excluding Sivewright had shown, he had seen the right path clearly and had deliberately chosen the other. The choice was the turning point in his political career. The Three Musketeers may have been difficult, but they were straight, they had backbone, they supplied the check upon hasty action which his volcanic temperament required. The new Ministry was not without virtue—was not Schreiner Attorney-General?—but it contained no man who could stand up to him if he became overbearing. The key to the course which events took in South Africa from May 1893 onwards was, that he did begin to lose the patience which he had displayed so markedly and almost unexpectedly since his return to political life in 1889, and that there was no one in his Ministry to impose patience upon him. Outside, there were two checks: Loch and Hofmeyr. When they were removed early in 1895, he

headed straight for political perdition. That time was not yet, but signs of what was coming were already clear enough in the later months of 1893 to alarm de Villiers and the High Commissioner. It was not that the prospects of federation were fading. On the contrary, developments in Natal, the Transvaal and Charterland seemed to bring federation markedly nearer than it had been when Rhodes had asked de Villiers to form a Ministry in April. De Villiers welcomed the grant of responsible government to Natal. In the early 'seventies, he had fought for self-government as a means of inducing the Free State to federate with the Colony and he now hoped that a self-governing Natal would have the same effect on the South African Republic with which it was so closely connected economically. That Republic, too, was so rent by faction that it seemed to be on the point of falling by sections into the hands of the southern Colonies. Kruger's election had given rise to a furious controversy and, though a committee of enquiry at length declared that he had indeed secured a majority, the crisis did not pass without the fingering of rifle-butts and breathing of threatenings and slaughter. In June, Loch found Pretoria still heaving on the groundswell left by the storm. He had met Kruger at Colesberg in March to discuss Swaziland, railways, customs and the east coast port. Apart from provision for tiding the Swazi question over a further stage, nothing was settled; Loch refused Kruger's request for a relaxation of the Queen's control over his treaty-making powers, while his own tentative remarks about the Uitlander franchise and the dynamite monopoly fell on politely deaf ears. In June, he visited the President in his capital, the first High Commissioner to set foot in the town since Sir Hercules Robinson had ridden in with de Villiers and Wood in 1881. He found himself warmly welcomed as the representative of the Queen, who had captured the imagination of many of the burghers who had so stoutly resisted her arms on Laing's Nek; he persuaded the Government to accept the second Swaziland Convention; but he failed to secure ratification by the Volksraad for the moment. From a South African point of view, the most important results of his visit were what he learnt unofficially. The decision of an ecclesiastical dispute by the High Court in favour of Kruger's Doppe Kerk threatened to reawaken the storms of the election time before his astonished eyes. The Volksraad

entertained loosely worded petitions demanding an enquiry into the conduct of the judges, and Chief Justice Kotze and his colleagues closed their court as a protest against discussions in the Legislature hurtful to the dignity of the bench and against the lack of that support which the bench had a right to expect from the Executive. The Volksraad passed a prudent resolution which enabled the judges to reopen their court before the end of the day ; but the incident was an ugly one, the earnest of trouble to come. On his way home, Loch was hailed with enthusiasm in Johannesburg, where he found even the Germans so pro-British that he dismissed from his mind all fear of the " English " Republic which Rhodes dreaded. In short, he returned to the Cape convinced that Kruger did not really enjoy the confidence of the majority of the burghers, that many of the Boers, including the President, felt vaguely that England must one day reoccupy the country, and that, in any case, the Republic would soon be driven by internal strains and stresses to turn towards the Cape and British institutions. He resolved that if the internecine strife between the Boer factions, which had been threatened twice during the past six months, actually broke out, he could not and would not stand aside.

So far so good in de Villiers' eyes ; but the course of events in the far north was disquieting. Rhodes's actions in Matabeleland at the close of the year undoubtedly cleared the path of federation, but he questioned what a Natal friend called the " ethical morality " of many of them. The Matabele had long been a scourge to their native neighbours ; they were a potential danger to the Europeans in Mashonaland. Lobengula was known to have difficulty in restraining his young men ; but he did restrain them to the end, save for one false step when, in July 1893, he sent an impi to punish his Mashona subjects around Victoria. Some of the warriors ran amok and, though they harmed no white man, they alarmed the settlers. A party of Matabele were then chased and fired upon by the Company's police. They made no resistance, being under orders to offer none ; nevertheless, it was reported that they had fired first. Rhodes and his representatives on the spot seized this colourable excuse for settling accounts with the Matabele and thereby establishing the political and financial foundations of the Chartered Company. War was forced on by every means in their power, in spite of the efforts of

Lobengula and the High Commissioner to avert it. The Matabele were defeated in two battles; Bulawayo was captured, while the Imperial Bechuanaland police, who had been also drawn in, immobilized half the impis and opened the southern road to sorely needed supplies. The flight of the King and the vain but gallant stand of Wilson's patrol ended the war—with half the Matabele regiments untouched. Before Wilson fell, the shareholders, driven by the company's lawyer and lured onwards by the hope of the new Rand which surely ran through Bulawayo, agreed to buy out the United Concessions Company by doubling the number of their own shares. The Chartered Company thus secured the concessions at last, used its new credit to raise a sum on debenture large enough to wipe off its debts, to help finance the railway to the north and to provide means for development during the next two years. The next financial crisis would not be due till January 1896.

Hardly had the echoes of the explosion of Lobengula's powder magazine died away among the hills around Bulawayo, than Rhodes began a furious press and platform campaign against the Imperial factor. So far the police had been useful, but Loch must be thrust aside. Loch protested in vain. He had to rely on a Liberal Government, weak in numbers and shattered by the rejection of the second Home Rule Bill; the company's friends in London were strong, and were presently reinforced by the accession of Rosebery to the Premiership. The Matabeleland Order-in-Council of July 1894 extended and regularized the administration of the company in its new province very much on Rhodes's terms. Well might Loch grumble that the company had rehabilitated itself with the loot and prestige of the war, and had then turned and rent the Imperial factor. He sat down gloomily and wrote to Lord Ripon that "the next difficulties, which are already looming in the no distant future, will be with a foreign power, and not with a native tribe." He told de Villiers that he was thinking of Portugal; but in the main his prophecy was correct. The next difficulties were not with a native tribe.

If Loch was angry, de Villiers was alarmed. Inside and outside the Colony Rhodes, during the early months of 1894, was going from strength to strength, gathering power into his hands through his companies and amalgamations, vague power, political and semi-political, with far too little check upon it. His use of

that power in Matabeleland showed that, in his present mood, he would not hesitate to use it again. De Beers was his in the Colony; on the Rand, there was his Consolidated Goldfields Company; and now, beyond the Limpopo, was the Chartered Company waging private war and bullying the Imperial Government. In January 1894, he had gained a new lease of authority in the Colony by winning the general elections, "thin, grey and haggard" though he was; he had then driven in state through the Transkei, overawed the Pondo chief, Sigcau, with a display of machine-gun fire and announced his intention of annexing his country; and, at Kokstad, he had indulged in a tactless outburst against little Natal which also cherished ambitions in the direction of Pondoland, thereby hampering his ally, Sir Harry Escombe, who was doing his best to bring Natal round to the federal point of view. Where was this plunging and trampling to end? Rhodes talked of acquiring the two Bechuanalands as a matter of course; but de Villiers began to share the High Commissioner's opinion that that happy consummation had better be postponed, at any rate as far as the Protectorate was concerned. He even began to suspect Rhodes's motives in seeking to acquire Delagoa Bay. Might not such a stranglehold on the Transvaal, and especially on the Rand, enable him to expand his Consolidated Goldfields Company into a monopoly on the same lines as De Beers at Kimberley? Perhaps his fears were groundless. The De Beers amalgamation had been made to check ruinous competition in a luxury product, whereas there would always be a demand for the gold of the Rand which was in the hands of many powerful groups, each of them jealous of its rivals and most of them prosperous. Nevertheless, something of the sort was already happening in "Rhodesia" where, thanks to Rhodes's gold-law, the Chartered Company was becoming a trust controlling the subsidiary mining companies.

De Villiers expressed his fears to Esselen at Pretoria. The reply showed him that his fears were shared by many Transvaalers:

Ewald Esselen to de Villiers.

Pretoria, April 6, 1894.

... I quite agree with you with regard to the policy Rhodes now seems to be following. It seems to me now to be a threat and menace to the two Republics. Leyds and I have already—

two days ago—discussed the possible results of the various gold mining Companies here being amalgamated. . . . He suggested prohibitive legislation, but I cannot see my way clearly in the matter, so I am still considering—I do not think that when Rhodes started his career he thought of getting rid of the Republics in the manner he is now setting about it. I fancy his success has made him overconfident, and I have become alarmed. I quite agree with you that conciliatory statesmanship is the only thing to bring about a Union strong enough to last. Should Rhodes *threaten* this Republic, he will be made short work of. Once he is removed from the scene there is no one to carry out his schemes.

I was very glad to get your letter expressing gladness at my meeting with the President. Since the Presidential and other elections, and especially after the last session of the Volksraad, I . . . came to the conclusion that some steps had to be taken to prevent the personal, religious and family differences, caused by the election, from being extended and becoming permanent. . . . Whilst still thinking about the best way out of the difficulty, Burgers¹ died suddenly. The day we buried him . . . Koos Smit . . . told me that as Chairman of the Election Committee of Kruger he came to me as Chairman of Joubert's Committee to see whether I was ready and willing to co-operate with him for the benefit of the country. He confessed that the Kruger party could not do without us. . . . admitted that there were grave faults in their administration . . . and that important changes had to be made in the constitution and government of the country. On the other hand, he said, that some of our complaints were unfounded . . . and finally he wanted me to promise that I would accept the Attorney-Generalship should Kruger offer it to me, saying that they would urge Kruger to offer me the appointment and if he refused they would leave him and come over to us. . . . Well, I promised. The Chief [Justice] and Koos Smit called on the President . . . and to their astonishment found, instead of opposition, approval, the old man saying that he had thought of it himself. . . . The same day he mentioned it in the Executive . . . whereupon van Boeschoten nearly fainted. He told the President that I wouldn't go to see him, that the newspapers would be full of the matter the next day, and that the President would suffer in dignity. This by the way to show you what these gentlemen resort to. The old man got frightened and did not send for me . . . thereupon the Chief, Landdrost Schutte and Smit and I called upon the old man. Practically the only question upon which he wanted any assurance from me was that of an extension of the Franchise. He thought, judging by what I had said at the National Union meeting that I was in favour of immediately extending

¹ Attorney-General.

the Franchise universally. This was of course what he had been *told*. I explained to him what I had said and my views generally on the question. He admits that the present law is not good, but he is in favour of this selective scheme of his which I cannot agree with. However we exchanged views generally and the meeting ended by his urging me to come and see him again. . . . The Chief, the Smits, etc. then urged him to offer me the Attorney-Generalship. They were afraid of Leyds who was expected the following week. I told them I would not accept it before Leyds arrived; for if there was to be co-operation I must know where Leyds stood before I entered. . . . Last Saturday morning he (Leyds) . . . explained to me his position and lines of policy—Railway, Language—appointments. . . . Thereupon I saw the President who asked me not to try and oust Leyds, saying that some of his supporters who were opposed to me had told him that I would only accept the office to oust Leyds and break his, Kruger's, neck afterwards. . . .

(The) appointment is a temporary one, Kruger says none of his supporters will say anything against it if made in this way but if he made it a permanent one at once they would rate him for not consulting them. . . .

Apparently Loch was right. Kruger's position was not so strong as it appeared to be. Esselen's letter was a revelation of the intricate system of wheels which revolved within wheels at Pretoria, and may well have cured de Villiers of any ambition to preside over the destinies of the distracted Republic; but the essential point of the letter was that the Transvaalers were being held together by "ties of common funk," a dread of what Rhodes might do next, twenty months before the Jameson Raid.

It was with a mind heavy with doubts and suspicions of Rhodes's purely South African policy that de Villiers attended the Colonial Conference at Ottawa. There, he weighed the more ambitious side of Rhodes's policy of amalgamation and found it wanting. Rhodes had thought of going to Ottawa himself. The Conference had been summoned primarily to discuss Imperial cable communications and trade relations. Ever since he had taken office, he had urged Imperial preference as a means of consolidating the Empire. Even now, he was vainly endeavouring to persuade a rigidly Free Trade British Ministry to include his famous "Rhodes Clause" in the Matabeleland Order-in-Council. That clause was intended to prevent the increase of the existing low tariff on British goods, in the widest sense, imported into Rhodesia; to secure free entry of goods from the South African

customs union into that territory ; and, above all, to ensure that, if and when "Southern Rhodesia" entered that union, Union rates would be made to conform to the low Rhodesian standard. The date fixed for the conference, however, fell in the middle of the Cape session and Rhodes heard at the last moment that a postponement was impossible. He therefore cabled to Sir Charles Mills, the Agent-General in London, to go, and hurried round to Wynberg House. He told the astonished Chief Justice that he wanted him to sail in three days' time. "I must have you," he said. At first, de Villiers said it could not be done ; but his wife, seeing that Rhodes was insistent, bade her husband go about his business as usual while she made the necessary preparations. So, on May 16th, he and she with their elder son as secretary sailed for London, pursued to the ship's side by hurried instructions from Rhodes and by good wishes, a pile of bluebooks and a hint from Hofmeyr that he himself might join them later.

At Ottawa de Villiers found Sir Charles Mills with the Imperial representative, Lord Jersey, who hailed with pleasure the arrival of his "country cousins," for Jersey's family name was Villiers. Business began on June 30th with a resolution asking the Imperial Government to pass the laws necessary for enabling the Colonies to give preference to each other and to Great Britain ; in other words, to do away with the most-favoured-nation treaties between Great Britain, Belgium and the German Zollverein. De Villiers presently admitted that this resolution had passed while his attention had been momentarily distracted ; but he had to wait for two days and a half before bringing forward a motion meeting his objections, while the New South Wales and New Zealand delegates wrangled for the prospective possession of the southern end of the Canadian cable. At last a motion was adopted which still left New Zealand a chance of securing the coveted prize, and the Cape delegates had no difficulty in adding that this cable, when laid, should be extended to the Cape. De Villiers then brought forward his amendment of the preference resolution. That resolution had tacitly admitted the necessity of Imperial legislation before the Cape could give preference to other British Colonies. This was so in the case of the Australian group ; it was not so in those of Canada or the Cape. Still more was he anxious to avoid committing the conference to the idea that British treaties stood in the way of inter-colonial reciprocity.

Like the good lawyer he was, he knew that *littera scripta manet*; he therefore sought to word his amendment so widely that every obstacle might be avoided without necessarily being named. But the other delegates declared that they believed in asking definitely for what they wanted; he therefore withdrew his amendment, after its substance had been taken over into another resolution which was carried.

On July 5th, the results of previous discussions were embodied in a series of resolutions requesting H.M. Government to cancel all laws and treaties which stood in the way of preferential trade within the Empire; recommending such trade between Great Britain and the Colonies; asking that powers be conferred on the Colonies to give preference to each other; and suggesting that, until Great Britain entered the system, any or all of the Colonies should make reciprocal arrangements among themselves. During this debate Hofmeyr, who had been delayed by illness, took his seat. The first and crucial clause in favour of Imperial preference was carried by five votes to three, against New South Wales, New Zealand and Queensland. The remainder were soon adopted, including Hofmeyr's rider that not merely the Cape but other States in the South African customs union be regarded as territory capable of inclusion in the preferential system. On all this series of resolutions de Villiers insisted that it be recorded that he did not vote. He had already explained that the Cape had no power to make treaties of its own mere motion, beyond entering a customs union with other South African States and Colonies as far as concerned goods imported overland and not by sea. Further, he represented only the Cape Colony and not the Free State or any other members of the customs union. Rhodes had indeed written that there would be no difficulty in getting the consent of the Free State; but, until that consent was obtained, de Villiers refused to move.¹

He and his party stayed in North America for some little time after the break-up of the conference. He had already borne the brunt of the overwhelming hospitality of the good Canadians, which had culminated in a visit to Niagara and a banquet at Toronto. Thereafter, he visited Quebec and Montreal, discussing the objections of the Canadian judges to the Privy Council as the final court of appeal, and noting how much more aloof the French

¹ Rhodes to de V., May 15, 1894.

Canadians were from their English fellow-citizens than were the Dutch at the Cape. From the Dominion he passed over into the United States, visited New York, Washington and, in the midst of a terrible heat-wave, Philadelphia. And so to England. He travelled for a time in North Wales, where he caught a bad chill, and had to retire to London to recuperate. At the end of September he was home once more at Cape Town.

He was, on the whole, disappointed with the conference ; but it must be confessed that the fault lay largely in himself. The truth is, that he shared with the Liberal British Government what Rhodes called " this Free Trade craze." Hofmeyr must have found him a chilly colleague at Ottawa, nor can his report have warmed Rhodes's heart ; for he held, on the one hand, that South Africa, like Canada, should make her own ploughs, whereas Rhodes believed that the day of Colonial manufactures was not yet ; and on the other, that any system of preference was dangerous, since it might degenerate into protection—a curious reflection on the only practical method in those days of ensuring the production of Colonial ploughs. Perhaps it was because Rhodes suspected his orthodoxy in the matter of the true preferential faith that he had sent Hofmeyr hurrying after him to Ottawa. If so, Hofmeyr arrived too late to guide his erring footsteps ; for, though de Villiers did publicly express regret that Lord Jersey had done little more than hold a watching brief, he confessed that the proportion which Colonial trade bore to the whole was not enough to warrant Great Britain revolutionizing her fiscal policy. Rhodes might insist that the Imperial Government must " give consideration " to the wishes of over 10,000,000 of its subjects. Rhodes was in Cape Town, and de Villiers in Ottawa had realized that the wishes of the globular 10,000,000 were not identical. Natal was ostentatiously absent, and the mutual jealousies of the Colonies actually represented were not encouraging. Besides, he had soon realized that there was little idea of an equal customs union in the minds of any of them. They were all very human, and what they really wanted was a series of deals among themselves and, above all, with Great Britain. Even from the Cape point of view, he was not sanguine of the future of reciprocity. The Cape could do more, and did do more, business with the United States than with Canada ; she could take Canadian lumber, so desirable for the rapidly expanding mining

industry, but what could she send in return? Wines, as against French wines? He had stoutly assured the Canadians that the Cape could supply them with any quantity of wine, but, on the quality of some of it, he prudently said nothing. It was a point on which he felt keenly. Finally he did not believe that South Africa was so deeply interested in cable and improved steamship facilities with other groups of Colonies as were other members of the conference. Apparently the Cape Town Chamber of Commerce shared his opinion, for it declined to support a subsidy to a direct line of steamers between Canada and the Cape, much to the disappointment of Mackenzie Bowell, Canadian Minister of Commerce, who promised to "urge this question" till something were done.¹ His successor, Richard Dobell, was still urging it as late as April 1897 in vain.²

On the other hand, the Ottawa Conference was not fruitless. Lord Jersey reported to his Government within the month,³ but it was not until nearly a year later—that the Rosebery Ministry pronounced its verdict.⁴ Its Colonial Secretary, Lord Ripon, then issued a masterly defence of Free Trade which must have delighted de Villiers. The Australian Colonies had already been freed from all restrictions on their fiscal freedom; on the other hand, Ripon upheld the German and Belgian treaties, since they did not hamper the Colonies making mutual concessions but only denied them the right of giving a preference to Great Britain. For the rest, the Colonies might, if they wished, give mutual preference, provided there was no discrimination against goods from any particular Colony or from Great Britain; they might have the fullest freedom in dealing with foreign powers, providing existing treaties were honoured and Imperial unity preserved; but, as far as the British Government was concerned, he stigmatized the resolutions in favour of Imperial preference as a delusion and a snare. By dint of short-circuiting the Prime Minister, he despatched his thunderbolt to the Colonial Governors on July 1, 1895. Next day he handed over his duties, including that of reading the replies, to Joseph Chamberlain.

The Salisbury Government freed Great Britain's hands in 1897 by denouncing the commercial treaties with Belgium and Ger-

¹ M. Bowell to de V., Jan. 24, 1895.

² R. Dobell to de V., April 1897.

³ C. 7553, 1894.

⁴ Wolf, *Life of Lord Ripon*, ii, 218 *et seq.*

many. Long before then, however, de Villiers had noted at close quarters in his own Colony some of the difficulties which stood in the way of inter-colonial preference, and the narrow margin which lay between a preferential tariff and protection, naked and unashamed :

De Villiers to Loch.

Wynberg, *May 26, 1895.*

Mr. Rhodes has gained great kudos with the Dutch party by voting for a resolution proposed by Mr. de Waal that the Orange Free State should be asked to consent to an increase of the duty on wheat. We had the curious spectacle of half the ministry voting for the resolution and the other half voting against it. Mr. Rhodes justified this course by the argument that as there is already a duty on wheat any increase is a mere matter of detail upon which Ministers may agree to differ. The fact is that any further increase of the duty on wheat would involve the principle of protection if not positive prohibition in its crudest form. A further step in the direction of inter-colonial free trade was taken when it was rumoured that a shipload of frozen mutton was likely soon to arrive here. A bill was promptly introduced placing a duty of 2d. on every pound of such imported mutton. We ought not any longer to cast stones at President Kruger. . . .

CHAPTER XIV

FORCING THE PACE

DE VILLIERS returned from Canada an anxious and a sick man. He had never been really strong since his dangerous illness soon after his call to the Cape bar in 1866; the heavy labours of the succeeding years culminating in the strain of the journey to Ottawa, the heat of Philadelphia and the drenching cold of North Wales had told upon his health severely. Henceforward, for many years, he was not to know what an unbroken night's sleep meant.

The course of events in South Africa was not conducive to sound slumbers. Evil news had reached him in London on his way to Ottawa, and had called the High Commissioner back to Cape Town and thence to Pretoria with all speed. Not only were the Swazis restive under the restraints imposed on them by the convention which the Transvaal Volksraad had at length ratified, but a serious storm was arising on the Rand. The Volksraad had rejected, in quick succession, two large Uitlander petitions praying for the franchise, and had consolidated the existing franchise laws into an impenetrable barrier to Uitlander aspirations.¹ In face of all this, it had commandeered British subjects for service in a native war. Most of the men called up had gone cheerfully enough, but a few refused to go, in spite of the prospect tentatively held out to them of the franchise as the reward of service.² De Villiers, in London, declared that the recalcitrants were "scarcely wise" as, by obeying the law and even volunteering their services, they might have benefited themselves and their fellows by proving that they had the interests of the Republic at heart. But he was pleading for a sweet reasonableness which

¹ No. 3 of 1894.

² On July 25, 1895, the franchise was granted to those called up.

was disastrously lacking on both sides in the rarefied air of the Transvaal High Veld, then and for many years to come.

Loch had arrived at Pretoria towards the close of June 1894, prudently omitting a visit to Johannesburg at the President's request. At the station an unruly crowd rushed the escort and, to the strains of "Rule Britannia," dragged the presidential carriage to Loch's hotel with the Union Jack mounted on the box. Loch saved the situation by persuading Leyds not to touch the flag. "Let it alone," he whispered. "There is no wind. If you pull it down there will be a row." From the balcony of the hotel he called for three cheers for the President, and got them. But the mob was not the only visitor Loch received. Late that night, Kruger came unattended to his room and asked what he should do, and Loch counselled him to ignore the ebullitions of the afternoon and to appease the Uitlanders.

The commandeering difficulty was easily settled, and the Swazi question advanced another stage upon its weary way. Before returning to Cape Town, however, Loch received an Uitlander deputation. There must have been wild talk on the part of some of its members, for he pointedly asked them how many rifles they had. They told him, and he then emphasized the absolute folly of talking of force.¹ Hence the legend, so diligently propagated after the failure of the Jameson Raid, that Loch had suggested that notable adventure. Loch's correspondence to Ripon at the time gives the lie to that story, if any such refutation were needed. He had indeed quietly mobilized Bechuanaland police on the border, for he was convinced that civil war was coming in the Republic either between the burgher factions or the burghers and the Uitlanders, and he was determined that, if trouble arose, he would give fair warning to Kruger that he held him responsible for British lives and property. If these were not safeguarded he would furnish the protection himself. So a President of the United States might have talked about a Mexican Government and, as in 1893, Loch did not speak without his book. He found a furious struggle raging once more between the Judicature and the other limbs of Leviathan. The Volksraad was again receiving vague petitions against the conduct of the judges and, at the very moment of his visit, the judges protested to the President, demanding security of tenure with fixed increased

¹ *Vide* note, p. 274.

salaries lest they remain financially at the annual mercy of the First Volksraad. In July, the clamour rose crescendo. The Transvaal bar demanded the statutory definition of the position of the judges ensuring their independence and, therewith, "the safety of the Republic." Chief Justice Kotze, despairing of a satisfactory settlement, publicly declared that the country was in danger. A mass meeting in Johannesburg addressed by Leonard and Wessels, the leader of the Transvaal bar, demanded a real Republic and was informed, in somewhat Tappertitian style, that blood must flow if Uitlander grievances were not remedied. Loch, at Cape Town, concluded that, if a Raad similar to the present body were returned at the elections in October, disturbance of the peace must follow.

Others in Johannesburg were concentrating on those elections. Hitherto the mining magnates had taken no part in the Uitlander agitation. Now, however, the deep levels had been proved workable. A long life and a permanent Uitlander population were assured to the Rand, and the desirability of controlling the law as well as the profits was therefore obvious to some of them. Early in June, Lionel Phillips suggested to Alfred Beit plans for raising an election fund to "improve the Volksraad." Moreover, he confided to him that the "goldfields people" were urging him to go to Cape Town to consult Rhodes. Was Rhodes, he asked, to be trusted?

Trustworthy or not, Rhodes was becoming desperate. The luck had turned against him at last, and his schemes had ceased to prosper. The Matabele were indeed out of the way. Uganda was safe, the Wrath to come was slowly ascending the Nile to settle accounts with the Mahdi in the Sudan, building railways—of the Cape gauge—as it came. But "obstacles" in Europe, or more precisely France and Germany, had obliged the Congo Free State to withdraw the cession to Great Britain of a strip of territory north of Lake Tanganyika which would have made straight the path of the Cape-to-Cairo railway. In the face of "obstacles" once more, Rhodes had to give up all hope of securing Delagoa Bay, for Berlin declared that it would not permit the British annexation of Portuguese East Africa even though Lisbon consented. The Transvaal, its importance enhanced by the proving of the deep levels, was now more than ever the keystone of any scheme of economic federation, unless indeed a new Rand did

exist in "Rhodesia." In September Rhodes, Jameson and Hays Hammond, an American engineer from the Rand, travelled round the country in search of El Dorado. Whatever the nature of Hammond's report may have been, it was noted that Rhodes returned home by way of Pretoria and warned Kruger that his policy would unite all South Africa against him; that Jameson was much busied in Johannesburg; and that the fateful Transvaal elections resulted in the return of a Volksraad of unimproved variety. Nevertheless, in January 1895, Rhodes and Jameson were in London confidently prophesying federation within a year.

Meanwhile, the High Commissioner had at last arranged for Transvaal administration in Swaziland, though not for the complete absorption of that territory by the Republic desired by the President. The Transvaal thus took a long stride down towards the Indian Ocean. But it is the last step which counts. Loch had found Kruger still anxious for the removal of the checks upon his treaty-making power; it was notorious that Leyds desired to visit the Continent: a German squadron was due to arrive at Lourenço Marques in May or June to salute the newly completed Delagoa Bay railway: and Germany was taking a more than fraternal interest in the rich and turbulent Republic which lay at the other end of the line. France, too, the ancient enemy, jostling and being jostled by Great Britain in many parts of Africa, had a naval base on the Cape route near Cape Verde and a large expeditionary force in Madagascar; and French investors, a prudent body of men, were largely interested in the Kimberley diamonds and the gold of Rhodesia and the Rand. All the world was learning that the flag follows investments. Loch demanded more troops.

Then, at the end of January 1895, in a speech to the Germans of Pretoria on the Kaiser's birthday, Kruger made a thinly-veiled appeal unto the German Caesar. That speech sealed the fate of his coveted seaport. In May, the British Government annexed Tongaland and its appurtenances up to the Portuguese border; the Transvaal was cut off from the sea; and Kruger declared the annexation an unfriendly act. De Villiers was inclined to agree with him. "The old gentleman," he wrote to Loch, "is, I believe, much exercised about the annexation of Zambaan and Umbegiza's territories. As England was at one time willing that

the Transvaal should have this country if it enters the Customs Union . . . I hope that some arrangement may yet be made." ¹

To which Loch replies :

Loch to de Villiers.

44 Elm Park Gardens, S.W., June 21, 1895.

. . . I am sorry that Kruger should feel sore . . . but he has in a great measure brought it upon himself. I have told him plainly ever since 1890 that Zambaan's could never go to the Transvaal . . . but notwithstanding this, he had his agents in the country—who levied taxes, established a police, etc. and when called upon to explain, always made some excuse or denied the fact. Umbegiza's country could not be dealt with separately from Zambaan's—the conditions by which Kruger was to have access to the sea could not be well carried out by the Government of the Transvaal and Kruger therefore dropped the conditions and all clauses relating to obtaining a road to Kosi Bay. Article 12 however of the Convention of 1893 was retained in that of last December, which preserves to him the right to re-open negotiations on the question, untrammelled by any previous restrictions. . . . I think he now stands in a better position in respect of what he wants to obtain than he did before. . . .

De Villiers did not share Loch's optimism. Stones were flying thick around Kruger's ears, some well-merited, others certainly undeserved. At the beginning of the year the widespread *Argus* group of newspapers, in which Rhodes was deeply interested, had opened its batteries against the Pretoria Government and, to it, the pro-Kruger press replied in kind. Even the judicial calm of the Transvaal High Court was invaded by the clamour, for advocate Leonard attacked one of the judges and imported much fiery politics into his address to the jury.² Nevertheless, de Villiers could only advise his brother Chief Justice, Kotze, to state the true facts from the bench and leave the chairman of the National Union alone, for any other course would lead to an "outcry that the independence of the bar was being assailed."³ The uproar on the Rand was swelled by the outbreak of a railway war between the Republic and the Cape Colony. The railway situation had been radically changed in the new year of 1895. Rhodes's railways had made good progress. The main line was at Mafeking; the line through the fever-belt

¹ de V. to Loch, May 26, 1895.

² Kotze to de V., March 11, 1895.

³ de V. to Kotze, March 16, 1895.

behind Beira was finished; but the Natal line was rapidly approaching Johannesburg and the dreaded Delagoa Bay railway arrived there at the very moment that the Sivewright agreement expired. The Cape thus lost the right to fix rates over the Transvaal portion of the Port Elizabeth-Johannesburg line. It therefore reduced the rates over the remainder, so as to draw away traffic from the shorter Durban and Delagoa routes. The Netherlands Railway Company replied by tripling the rates over the forty miles which it controlled north of the Vaal. In April a railway conference at Cape Town broke down, and the struggle went on.

Meanwhile, Loch had left South Africa at the end of March. He had tendered his resignation some time previously, but had returned to settle the Swazi question, and, presumably, to see the parliamentary session through. Rhodes, however, had determined that he must go early in 1895 and, during his visit to London, had used all his influence to hasten his recall. He had succeeded and it was, as he afterwards confessed to Loch himself, the worst day's work he ever did in his life. Others shared his opinion. De Villiers watched his friend go with many forebodings, and the Presidents of both Republics wrote that they were losing a good friend. They were indeed, for the Imperial factor was practically eliminated. Time enough to call it in, reasoned Rhodes, at a more convenient season. He had already arranged for that contingency. His conversations in London with Sir Hercules Robinson had borne fruit. Sir Hercules had been persuaded, against his better judgment, to return to the Cape as High Commissioner. His appointment aroused much comment in London and South Africa, for he had been closely connected with De Beers and the Standard Bank and, though he now severed his connection with those companies, opposition members in the Cape Parliament did not hesitate to point the moral. De Villiers disapproved of the appointment, for he knew that the Sir Hercules and the South Africa of 1895 were no longer those of 1889. Sir Hercules had left a South Africa in which the racial bitterness was dying away, and nearly everything pointed to a speedy and peaceful federation; now he was coming back, aged even beyond his 71 years, to a South Africa in which the prospects of federation were once more dimmed by the racial passions rising in the Transvaal. Worst of all,

he had left behind him the Rhodes of high enthusiasms and great dreams, the Rhodes of Oriel; he would find now a ruthless Rhodes, a Rhodes spoilt by mingled success and hope deferred, the Rhodes of Kimberley. Would Sir Hercules recognize the difference, and would it matter if he did? Already a cry of alarm had reached de Villiers from Pretoria. "I am, candidly, afraid of Rhodes and Robinson," wrote Esselen. "If they are not careful there is sure to be more race hatred and bitterness. . . . The President was, at first, delighted with Robinson's appointment. Now he is doubting."¹

The departure of Loch and the appointment of Robinson were not the only political changes made in the early months of 1895. On April 4th Hofmeyr resigned his seat in Parliament. The unity of the Bond and his hold upon it had been shaken by the Sivewright inquiry in 1893, when he had been hard put to it to throw a screen of decency over his friend. His attitude on the Glen Grey Act of 1894 had still further weakened his position. He and Rhodes had generally agreed on questions of native policy; the act of 1892, increasing the financial qualification of voters and adding an educational test as a means of excluding "blanket Kaffirs," had been based on one of his resolutions. Two years later Rhodes embodied many of the principles of which he approved in a bill, which gave the natives in the overcrowded Glen Grey area individual tenure of land inalienable without the Governor's consent. The franchise, which this tenure would otherwise have conferred, was withheld. Instead, the natives were to be trained politically through village and district councils. The opposition had desired to give the natives the vote. The rank and file of the Bond, on the other hand, had wanted to give them individual tenure with all its liabilities, frankly with the idea of throwing the territory open to European exploitation. Hofmeyr's defence of Rhodes's policy cost him much. Similarly, rural opposition to the bill to get rid of scab in sheep sorely strained the alliance between the Bond and the Ministry. Finally, Hofmeyr's offer to settle a political feud at Stellenbosch was curtly rejected. It was the last straw. The Bond was splitting before his eyes; his health was becoming increasingly poor, and he resigned. The sole remaining check upon Rhodes was gone.

¹ Esselen to de V., April 23, 1895.

This fact was realized by many in the Colony; not so much by Bondsmen as by some of the English in the Eastern Province, who urged de Villiers to come forward as their leader in Parliament. ". . . With such an one as yourself at the head of the Cape Colony,"¹ wrote Walton, editor of the *Port Elizabeth Herald*, "there would (be) every reason for hoping for the obliterating of the barriers which the suspicions of the Republics have caused them to erect. Above all, the country would breathe freely and there would be no dread of the next possible move of the financial group. . . ."

De Villiers declined the invitation. The gilt on the federation gingerbread was wearing very thin and he had no mind to leave the security of the bench and plunge into the great and increasing confusion of South African politics. It was well that he remained where he was, for there was soon work of the first importance for him to do as Chief Justice.

Accordingly Rhodes was still Prime Minister, unchallenged, when Sir Hercules Robinson arrived at the end of May. The Cape Parliament had already met. Beside confessing the failure of the railway conference, the speech from the Throne had announced the annexation of Pondoland, proposed the annexation of British Bechuanaland, and foreshadowed the extension of the Glen Grey Act to other parts of the Transkeian territories. All were parts of Rhodes's native policy for, in 1894, he had taken up the portfolio of native affairs. But native affairs were only one of his many interests. In moving the bill for the annexation of Bechuanaland, he declared that his policy was free trade from the Cape to Tanganyika, that the Protectorate must go to the Chartered Company and that, since the Company could not administer its territories indefinitely, all that vast area to the north must one day be federated or united with the Colony. It was a hint that relief from the administrative burden of Rhodesia was not the least benefit which the Company expected from federation within the year. Loch saw something of the financial motive which lay behind the British Bechuanaland Bill. "I rather expected this," he wrote, ". . . the real reason is too transparent, viz. to obtain £200,000 from Cape Colony for the benefit of the Chartered Company to be expended in the extension of the Mafeking railway. I am rather doubtful if either House will

¹ E. H. Walton to de V., April 24, 1895.

view favourably such a proposal." ¹ De Villiers assured him he was wrong; and so it proved, for the bill was rapidly carried. ²

During the debates, however, Sauer had moved in vain that the Protectorate should not be handed over to the Company without the consent of the Cape Parliament. His proposal had been due partly to a desire to limit Rhodes's growing power, partly to his own strong sympathy with the natives. De Villiers shared his desire and his sympathy. In bringing forward the Glen Grey Bill, Rhodes had described it as a "bill for Africa." Beside many excellent provisions, that measure contained one which was never actually enforced but which was none the less dangerous. A labour tax of ten shillings was to be levied on all men who did not leave their kraals to work for three months in the year. Something was to be said for it; but it was, none the less, the thin end of a wedge which might be driven far in, especially by a man like Rhodes who hated limits. Of the aforesaid Africa, he already controlled much and proposed to control more. Now, from Matabeleland in the far north, queer tales were drifting down of compulsory labour not merely for public works, a well understood tribal custom, but for private purposes. Rudd, Rhodes's partner on the Rand and elsewhere, was known to favour "compulsory labour, not slavery" on the mines. The "Kaffir boom" was bringing the question of native labour to the front. Rand shares were soaring in Johannesburg, on the London Stock Exchange and the Continental Bourses; Rhodes's and Rudd's Consolidated Gold Fields Company was buying deep levels all along the reef; and, already, in the north, men were talking of federation as the only means of settling the labour problem. If federation were to come—within the year—would the old Cape tradition prevail or would newer or, rather, more ancient methods be adopted throughout?

It was with this question looming on the horizon that de Villiers was called upon to deliver judgment in a case which went to the roots of the liberty of the native subject. The Sigcau case arose whence it should least have been expected, from the Cape native territories. Since 1887, Sigcau, a weak and vacillating chief, had misruled East Pondoland, one of two large and independent native areas in the land between the Natal frontier and the Kei. East and West Pondoland had now been annexed to

¹ Loch to de V., April 26, 1895.

² de V. to Loch, May 26, 1895.

the Colony and de Villiers had already pronounced judgment on certain concessions, granted by Sigcau to two brothers, Cook, which had been challenged by the Cape Government.¹ Though the concessionnaires seemed to have explained their objects more fully and paid a much fairer price than others before or since, de Villiers decided against them, mainly on the ground that "the concessions created no legal obligation, because their execution depended solely on the will of the paramount chief, and there existed no possible means of enforcing them." Truly, a devastating judgment, which must have raised curious thoughts in the mind of the Prime Minister of the Cape. But nothing depended on "poor old Loben" now.

The Sigcau case, however, had nothing to do with the concessions. Rhodes, as Minister for Native Affairs, had merely been exercising that "oriental despotism" which he had once prescribed for tribal natives. The experiment failed. Once before, in 1879, de Villiers had stood out against the Executive in defence of the liberty of native subjects in troublous times, and he recalled that judgment now. In June 1895, Sigcau had been arrested and imprisoned under a proclamation issued for that special purpose. "The Governor," said de Villiers, ". . . has, I must repeat it, arrested, condemned and sentenced an individual without the intervention of any tribunal, without alleging the necessity for such a proceeding, without first altering the general law to meet the case of that individual, and without giving him any opportunity of being heard in self-defence. The Proclamation does not even specify the particular offence of which he has been guilty." The proclamation had merely charged Sigcau vaguely with obstruction, and declared his presence in Pondoland a public danger. A commission had sat upon him while he was in Kokstad gaol and had agreed that, on the whole, he had been an obstruction; but it hastened to add that, thanks largely to his influence, his people had behaved well and that, on the two trifling occasions of which complaint was made, all that could be said was that he had not cordially supported the magistrate and had been too intent on maintaining his dignity—the dignity of a great chief, who would remain chief in the eyes of his people till the day of his death.

¹ Cook Bros. v. Colonial Government, March 1895 (Buch. xii. 86); (Buch. xv. 578).

Sigcau had demanded to know why he was imprisoned and had received no answer, for none was possible, save that which the Warden of the Fleet had given long ago in the days of Charles I.—“*detentus est in prisona . . . per speciale mandatum domini regis.*” But there were still judges in Cape Town. De Villiers, supported by Upington, set aside the pleas of the Government that the proclamation had the force of law in Pondoland and could not be questioned by any court; for, neither by statute nor by any other means, had power been given to the Executive to exercise judicial functions. He concluded:—

. . . Sigcau, it is true, is a native, but he is a British subject, and there are many Englishmen and others resident in the territories who . . . if the respondents' contention be correct, would be liable to be deprived of their life and property, as well as their liberty, otherwise than “by the law of the land.” . . . The Attorney-General has said that the petitioner was ill advised in instituting these proceedings, but I fail to see what other course was open to him. . . . It is a hopeful sign when a native chief seeks by peaceful methods to obtain redress instead of rousing his clan to rebellion. . . . I wish his advisers to tell him this, that if he should ever be found guilty of transgressing the laws of his country, this Court will be as ready to punish him with the heavy hand of the law as it now is to protect him. . . .

So Sigcau was released, and a deep peace pervaded Pondoland. His case was carried to the Privy Council, which duly upheld de Villiers. But de Villiers' judgment proved to have a wider application than to natives in the Transkei. Lord Shaw of Dunfermline has recorded that during the Great War he disagreed, by instinct, with twelve other judges who held that the King's Council could imprison British subjects without trial; but he was not sure of his ground till General Smuts told him that “we settled all that long ago in a case in Pondoland.”¹ And it was so. But, from the point of view of de Villiers and many others in the middle of 1895, not the least sinister feature of the Sigcau incident was the renewed proof it gave of Rhodes's increasing reliance on short-cuts and on force. Lobengula had been swept aside. Sigcau would have shared the same fate but for de Villiers. Meanwhile, a greater than Lobengula or Sigcau still stood in the way of Rhodes's ambition—federation within the year.

¹ *Letters to Isobel*, p. 202.

CHAPTER XV

THE RAID

"Human enterprises must be handled roughly and without too great attention to detail, and a good part of them left to luck."—MONTAIGNE.

IN spite of the growing fierceness of South African politics, de Villiers still cherished hopes of a peaceful federation which would at least bring with it the long awaited court of appeal. One side of his scheme of judicial federation was clearly coming into being. The Rosebery Government had passed the Act admitting Colonial judges to the Privy Council but, in spite of Loch's efforts, had omitted to make the financial provision without which the privilege must remain unexercised. However, there was every possibility of this omission being supplied, and of de Villiers himself taking his seat on the Judicial Committee. "I believe," wrote Loch, "Mr. Chamberlain may take up the question, and I apprehend there can be no reasonable doubt that the first representative should come from the Cape."¹

Whether or no Chamberlain would take up this question, he certainly proposed to take up other and larger questions. The Rosebery Ministry had made way at the end of June for Salisbury, who took office with a large Tory majority over all other parties. Chamberlain, by the mere acceptance of the post, had raised the Colonial Secretaryship to the front rank in the Cabinet and had promised a vigorous Colonial policy. That phrase, reminiscent of Carnarvon, could only mean the encouragement of Australian and South African federation. Already Edmund Garrett, fresh from Stead's *Pall Mall Gazette*, was diligently preaching federation in the *Cape Times*, while Rhodes and his friends were taking their own line in London and in South Africa. In July, while the Kaffir boom was at its height, the issue of 500,000 new Chartered

¹ Loch to de V., Aug. 25, 1895.

shares at a high premium was authorized ; for the railway must be carried onwards from Mafeking and the interest on the Matabele war debentures would fall due at the New Year. If Rhodesia were not speedily embodied in a South African federation, a real administration would have to be formed and then the money would be needed. For the time being, however, the new issue was postponed while the bill for the annexation of British Bechuanaland passed rapidly through the Cape Parliament and Rhodes talked confidently of an immediate transference of the Protectorate to the Company. Jameson was once more in Johannesburg, where, in spite of the distractions of a soaring share market, men talked loudly of blood and grievances. So loudly did they talk that the High Commissioner, furnished as he was with Ripon's instructions to intervene in case of trouble but lacking the troops necessary to make the intervention effective, hurried up to Pretoria. He begged the President to show himself friendly to his neighbours and the strangers within his gates ; but hardly was his back turned when the Volksraad rejected an Uitlander franchise petition with contumely and Kruger, at the end of August, gave notice that the Vaal drifts would be closed to traffic on October 1st.

It was the final move in the railway war which had been carried on throughout the year between the Transvaal and the Colony—a war waged necessarily on Free State soil, to the growing indignation of many Free Staters. To avoid the heavy rates levied by the Netherlands Railway Company over the line between the Vaal and the Rand, Cape merchants loaded their goods on wagons at the river and trekked them in for the last forty miles. This would be impossible if Kruger's threat were carried out. But Kruger had taken a false step. He had outraged Cape and Free State opinion, broken the London Convention and given his enemies a justifiable *casus belli*. Rhodes eagerly seized the opening and arranged secretly with the Imperial Government to take joint action with the Colony. Such a war must mean the overthrow of the rickety Pretoria Government and the achievement of federation. Wherefore, during September, excitement rose to fever pitch, Chartered, De Beers and allied shares climbed to dizzy heights and the Company guaranteed interest on the debentures necessary for carrying the railway on beyond Mafeking. The drifts were duly closed but, at the end of a month of

growing tension, Kruger, in response to an ultimatum, reopened them. Whether or no he realized it, he thereby won the game, for Rhodes was forced back on his alternative plan for securing federation within the year.

The ground was rapidly being cleared for the attempt. H.M. Government, it is true, had refused to hand over the Protectorate, for Khama and other chiefs had gone to London to lay their case before the Queen and there they secured Loch's support. "The Company," Loch wrote to de Villiers, "have yet to show they are a financial success that would justify such a course. . . . I consider also our faith is pledged to Khama. . . . I shall certainly stand up for him. . . ." ¹ On the other hand, on October 18th, the Company was allowed to proclaim its authority over a long railway strip running northwards from Mafeking along the Transvaal border. Rhodes's authority thus ran from Cape Town to the Zambesi round two sides of the South African Republic and, forthwith, the B.S.A. Police began to march down at Pitsani Pothlugo on the western border to occupy a training camp, which would be free from horse-sickness. Or was it, as some said, to defend the railhead against "the ferocious Bechuana?"

In the midst of the clamour rising from the Rand and the clattering of hoofs as the little detachments of police rode south, Reitz, who had long been fighting a losing battle with ill-health, resigned the Presidency of the Free State. Fraser, the Voorzitter of the Volksraad, Judge Steyn and others were expected to come forward as candidates; but a strong party, headed by Abraham Fischer and E. R. Grobler, urged de Villiers to stand, ² assuring him that there would be no difficulty in persuading Steyn to withdraw. "I consider," wrote Melius, "we require something more than the qualifications that Steyn possesses, someone who will have influence with Oom Paul and who is likely also to have it in respect of the British Government. . . ." ³ But de Villiers was cautious; perhaps over-cautious. His health was not what it had been; he hesitated to thrust himself on the electors; all his old fears returned that he might sacrifice his seat on the bench only to find himself the head of a faction

¹ Loch to de V., Aug. 1 and 25, 1895.

² E. R. Grobler to de V., Nov. 26, 1895.

³ Melius de V. to de V., Nov. ? and Nov. 17, 1895.

rather than the President of the State. His brother strove hard to persuade him. "The people have always loyally supported the President chosen by the majority. . . . The only effect of a Volksraad nomination is that its candidate . . . comes before the public with such a prestige that few persons would venture to stand against him. Our people are always so afraid of anything looking like discord that they readily vote for such a candidate though otherwise they might not have done so."¹ De Villiers was not to be persuaded. He was less hopeful of doing the good that he might have expected to do in 1893. Already opinion in the Free State showed signs of swinging to the north. The Volksraad had asked the Cape to modify the terms of the customs union and had resolved to discuss once more a federation with the Transvaal. These were developments with which he could not sympathize and which he might yet be powerless to check. He therefore declined the invitation and left Steyn and Fraser to enter the lists alone; but, however much his refusal may have been dictated by excess of caution and a natural shrinking from the growing turbulence of South African politics, it cannot fairly be charged to pusillanimity. A few weeks later, when politics had become immeasurably more turbulent and bitter, he volunteered to take charge of the destinies of his Colony.

So Christmas passed, with news of men drilling openly in Johannesburg and refugees fleeing the Rand. On December 27th Leonard published a manifesto detailing Uitlander grievances and summoning a monster meeting for January 6th. Hard on this outburst came the rumour that Kruger was in a more accommodating mood. Then, on the 30th, Cape Town was full of whisperings and next day the news was in the papers for all the startled world to see that Johannesburg was up in arms and that Jameson had ridden in to the assistance of the Reformers.

The news of the Raid shocked de Villiers inexpressibly. Here was the end of all his hopes of a peaceful federation founded on consent. Even supposing this raid were successful, would it be worth while to have a Transvaal rushed into a federation at the point of the bayonet, with half its inhabitants, Boer and Uitlander alike, furiously opposed to such a settlement? And if the dash for Johannesburg were to fail, what then? Violence could

¹ Melius de V. to de V., Dec. 1, 1895.

only beget violence, and his whole soul called out for decency and order.

All that was generally known at first was, that Hofmeyr had telegraphed his good wishes to Kruger, that the High Commissioner had called on the Raiders to return, and that Rhodes had offered to resign office. On January 2nd Sir Hercules set out for Pretoria and, on the same day, Jameson surrendered. It was known to very few that, on December 31st, the German consul-general at Pretoria had called on the Executive Council, delivered verbally a very fair advance-copy of the Kaiser's famous telegram of congratulation of January 3rd, and asked permission to bring up German marines from Delagoa Bay for the defence of his consulate. Kruger laughingly offered him fifty of his burghers, if he was afraid; nevertheless, the British agent reported that the President had appealed to France and Germany.¹

The situation was very grave. Great Britain was intensely unpopular on the Continent, Leyds was in Berlin—consulting a throat specialist; and President Cleveland had just issued a revolutionary interpretation of the Monroe Doctrine, which promised to lead to war with the United States.

H. Loch to de V.

44 Elm Park Gardens, S.W., *January 3, 1896.*

. . . I fancy the news that has startled this country and I may say the whole of Europe was as unexpected by you and others in South Africa as by *some* of us here. . . . The question is greatly complicated by the action of Germany who claims rights of interference in the Transvaal that we cannot for a moment admit, and almost threatens war under certain eventualities. With respect to her claims of Protection over the Republic, relations have been strained for some time past, as both the present and late Government have spoken in very plain language to her in repudiation of her right of interference. This difficulty coming at the present moment is very unfortunate, as it is generally feared the United States intend to go to war with us, and that they will have the support of Russia and France. That is bad enough, but to have Germany likewise against us, would reduce us to having to fight for our very existence. . . .

The Kaiser's telegram redoubled the uproar. The *Times* in London and Hofmeyr in the Colony thundered against it; Great Britain equipped a special squadron; popular opinion swung

¹ Sir John Kotze, who was present, relates this incident.

round in favour of the Raiders, and the Poet-Laureate burst into song. Meanwhile, the questions which the Transvaal executive had to settle were what to do with Jameson and his men, and how to persuade Johannesburg to disarm. Chief Justice Kotze and Judge Jorissen at once advised their President to show mercy, and Kruger himself saw clearly enough the value of the cards fate had put into his hands. But he had hard work with some of his executive councillors and commandants. Cronje, who had borne the burden of the defence, raged wildly against Joubert, whose nerve had failed him during the crisis. The cry arose that Jameson must be shot. For three hours the President sat, talking, bullying, pleading, ticking off his points one by one with his pipe-stem on the four fingers of his maimed hand, before he could get his way. Even so, the report reached Cape Town that Jameson was to be shot. At once telegrams began to pour into Pretoria condemning such a step. De Villiers joined in the appeal. He telegraphed to Kotze, "emphatically condemning Jameson's wicked conduct I trust in interest of South Africa that President will be inagnumous hour of triumph."¹ He was soon reassured. Jameson was not to be shot; on the contrary, the Transvaal judges enquired of him whether English law was competent to deal with the Raiders.² He used all his influence to secure such a trial. Memories of the "Koegas" jury of 1879 and of the political trials in the Republics in 1881 were enough to teach him that, in the existing state of feeling on all sides, a satisfactory trial in South Africa was out of the question.

The acute crisis soon passed. The High Commissioner brought pressure on the Johannesburgers to surrender their arms; Kruger granted an amnesty to all, except the leaders, and arrested sixty members of the Reform Committee; Sir Hercules returned to Cape Town; and Jameson and his followers were shipped off to take their punishment in England.

It was the best course that could have been adopted, but it had grave drawbacks:

Lock to de V.

London, *January 15, 1896.*

It is to be regretted, I think, that all the rank and file are being sent home, for they will meet I fear with a great reception—

¹ de V. to Kotze, Jan. 4, 1896.

² E. C. J. Jorissen to de V., Jan. 5, 1896.

the public mind is fearfully confused. While there is the most general condemnation of Jameson's invasion—there is a sentimental feeling in favour of Jameson's rushing to the protection of women and children, and as yet the masses won't believe there were no women and children standing in need of protection, that it was not a philanthropic action but a purely political move—and an indefensible act of filibustering carried out against a friendly State—and an act of disloyalty against the High Commissioner and the Queen. . . .

However, the sky was gradually clearing :

Loch to de V.

London, *January 9, 1896.*

Thanks for your telegram. . . . Kruger's treatment of the question up to this time appears to have been admirable—dictated by statesmanlike policy—and I think he has more friends now in England than he has ever had since Majuba Hill. I do not think the Emperor will press matters too far, as his allies, Austria and Italy, are not with him—France has pretty clearly indicated that war between Germany and England would be their opportunity—and Russia is rather more friendly to us than to Germany. . . . I suppose Hofmeyr will not continue his support to Mr. Rhodes—to whom will the Dutch members give their support? I should have had much greater confidence in the future of the country if you were at the head of the Government. . . . Judging from a distance, I fear more harm has been done during the past few weeks than can be repaired in months—possibly years. . . .

The possibility of de Villiers taking office had also occurred to others. Rhodes's resignation took effect on January 7th and, for a week, Sprigg, with Hofmeyr's assistance, struggled to form a Ministry. Hofmeyr declined to take office; Sprigg himself was unpopular with the Bond; Schreiner feared that a Sprigg Ministry would not be acceptable to the Republics. Many friends, therefore, approached de Villiers, including those Eastern Province politicians who had sounded him nine months before. It was a reasonable proposal. He could rally the bulk of the English speaking Cape Colonists outside the "Rhodesian" party; he could reckon on the support of many Bondsmen, for already the Raid had driven his friends, Merriman and Sauer, into alliance with the Bond. On January 9th he published the answer he had given to all those who had approached him, offering to

form a Ministry on a "broad South African policy," if Hofmeyr or, failing him, Sprigg were unable to form a cabinet. It was a courageous act. He confessed that his health was not good enough for political life, nor was the political situation alluring to one who had spent more than twenty years in the secure tranquility of the Supreme Court. Moreover, as he blandly remarked, his inclinations lay "outside the petty intrigues which constitute so large a portion of Cape politics." This ingenuous description of Cape politics cannot have improved his popularity among the politicians; in any case, the Governor did not send for him. Hofmeyr by no means smiled upon his candidature and, in the end, Sprigg patched together a cabinet. Upington descended from the bench and the Bond gave its support to a Ministry which included Faure, de Water and the recently knighted Sivewright—"We must take Jimmy off the dung-heap," Rhodes had said;—but the fact that de Villiers had not been sent for was a disappointment to many. "Can you not," wrote Judge-President Barry from Grahamstown, "form a ministry?"¹ Loch was still more emphatic. "I regret much," he wrote, "that you have not formed a Government so that large South African questions might have been dealt with. I cannot suppose, however, that the present Government can be a long one."² And at the close of May, when the full and evil effects of the Raid were being felt in all South Africa, Chief Justice Kotze wrote: "Had you been asked and taken the reins in hand I do not for a moment doubt that the position would by now have been decidedly hopeful."³

The situation at the end of May was indeed decidedly less hopeful than it had been even in the middle of January. The shock of the Raid had revolutionized the political situation. On New-Year's Eve, Kruger had held few cards. Three days later he held them all. In the Transvaal, he was rehabilitated and given an unanswerable excuse for arming, which he henceforward did systematically. The Uitlanders and the liberal Boers were silenced; the leading reformers were in jail; the Chamber of Mines was split, one section led by J. B. Robinson throwing in its lot with the Continental party. Outside the Republic, Rhodes's federation scheme was ruined. That was the fact which struck

¹ J. D. Barry to de V., Feb. 21, 1896.

² Loch to de V., Feb. 13, 1896.

³ Kotze to de V., May 26, 1896.

de Villiers first and most cruelly. Rhodes was no longer Prime Minister and not only had Hofmeyr and the Bond turned against him, but many Dutch and English who were by no means Bondsmen. "I thought," wrote Judge Barry, "I saw in him the only man in South Africa who could weld together Dutch and English. . . . I am woefully disappointed and am forced to the conclusion that Rhodes has been at the bottom of a wide and far reaching plot to circumvent the Dutch and make every unit and power in South Africa (including what is understood by the British flag) subservient to a plutocracy of which he himself was the head and front."¹ Barry was less than fair to the fallen Colossus, but what he wrote in his wrath and dismay was in the minds of thousands of Cape Colonists. Not only was Rhodes's base in the old Colony destroyed, but it was by no means certain that the superstructure would be left to him. There was open talk of a cancellation of the Charter. Rhodes himself put a brave face on his troubles and, after a fighting speech at Kimberley, sailed in the middle of January with Beit to London. "I do not know," wrote Loch, "what passed at his interview with Mr. Chamberlain. . . . It is extraordinary the faith that is here entertained in him."² But Rhodes departed from London as suddenly as he had come, and reached Southern Rhodesia at the end of March. His arrival synchronized with the outbreak of the long and exasperating Matabele rebellion which, with the subsequent Mashona rising, inflicted grievous damage on the Rhodesians, and strained the resources of the Chartered Company to the uttermost.

In the Free State, the Raid had destroyed whatever faint hopes Fraser may have entertained of election as President. The Free State burghers had mobilized during the crisis; the sleeping fires of racialism had been awakened and an atmosphere of suspicion created which would henceforward render all constructive work on other than racial lines almost impossible. In March, Steyn was chosen by an overwhelming majority. His advent to power portended an attempt to revive the old referendum to *Het Volk* as a power superior to the Volksraad, the taking over of the railways within the State from the Cape Government and, above all, the drawing closer of the bonds which united the Republic with the Transvaal and drew it away from the Colony.

¹ J. D. Barry to de V., Feb. 21, 1896.

² Loch to de V., Feb. 13, 1896.

During the actual crisis, Kruger had played the statesman and for some time afterwards he showed himself conciliatory. He knew there were weaknesses in his State which needed amendment, nor were friends slow to point them out. "The Johannesburgers," wrote de Villiers to Kotze, "had grievances but they were grievances which should have been removed by constitutional means and at the instance of those only who were directly concerned. I trust the President will now promise to give the franchise to those who are proved to have been loyal to the State during the insurrection. I think also he should know that Afrianders at the Cape as a body stood by him."¹ Loch, too, saw both sides of the question. "Dr. Jameson's mistake does not exonerate Kruger from the obligation that rests on his Government and which should be insisted upon."² But the remedy lay with Kruger. The Raid had tied the hands of the Imperial Government. The Colonial Secretary, indeed, hoped to effect a settlement and invited the President to discuss matters with him in London. He spoiled the effect of his invitation by a rash speech and the publication of his scheme of Home Rule for the Rand before his despatch could reach Pretoria; but Kruger was inclined to accept. "I trust," wrote Loch, "Kruger will not ask impossible conditions—in the face of the Emperor's action it would be impossible for the Government to yield on the 4th article of the Convention of 1884."³ But Kruger naturally meant to make the most of his opportunity. He presented a large bill for material and a still larger bill for moral and intellectual damages, and stipulated for the abrogation of British control over his treaty-making power. Nevertheless, he meant to go to London and the names of his fellow-delegates had even been suggested, when Leyds telegraphed that a high German official urged Kruger to preserve his dignity and to force H.M. Government to go to Canossa. Still Kruger persisted; whereupon the "Continental" party stirred up his burghers and, fearing for his authority, he drew back. "I fear," wrote Loch, "Kruger's refusal to come home is due in some measure to the intrigues of those both in London and in South Africa, to prevent any peaceful settlement. . . . I entertain a very strong belief if he had come, a satisfactory arrangement was almost certain."⁴

¹ de V. to Kotze, Jan. 6, 1896.

² Loch to de V., Jan. 3, 1896.

³ Loch to de V., Jan. 9, 1896.

⁴ Loch to de V., April 25, 1896.

The punishment of the Reform Committee meanwhile proceeded. There was a real difficulty in finding a court adequate for the purpose, for Chief Justice Kotze and one or two of his colleagues had been so closely connected with the work of the Executive during the crisis that they could hardly serve; another judge was in debt; still another, Morice, had blurted out in public that the reform movement was a little thing for which the maximum penalty was a fine of £37 10s. 0d. The tariff for unsuccessful rebellion in the Republic in times past had, indeed, been somewhat lower than the figures he had mentioned; but historical accuracy did not save the too learned judge from an official reprimand. Kotze was therefore sent to Bloemfontein to find a judge. The Free State Chief Justice, Melius de Villiers, was on the point of setting out on circuit and declined to act; but Advocate Gregorowski, who had already been offered a post on the Transvaal bench, consented to preside. At the close of April, he sentenced four of the ringleaders to death, a sentence presently commuted to a heavy fine, and the rank and file to varying fines and terms of imprisonment. All save two of the prisoners were soon released on petition, a promise of abstention from politics for three years and payment of the fines by Rhodes and Beit. "If a poor man's dog comes into my garden," said Kruger, "I shoot him; if a rich man's dog comes, I tie him up and make his master pay." Kruger's clemency, tempered by acquisitiveness though it was, created a good impression. He and the responsible heads of the state were much more moderate than some of the secondary luminaries in the Republic. A few even of the judges supported a proposal to strike off the rolls such of the Reformers as were attorneys.¹ Kotze called on de Villiers to help him uphold the principle of "non bis in uno." De Villiers eagerly supported him. "They have all been heavily sentenced," he wrote, "for the offence to which they pleaded guilty. . . . If a rule *nisi* should be asked for and granted each respondent will be entitled on return of the rule, to explain all the circumstances under which he had rendered himself liable to prosecution."² The prospect of a series of political manifestoes in court was too much even for the most vindictive enemies of the Reformers and no steps were taken.

In the Colony, Parliament met early in May. There was one

¹ Kotze to de V., May 26, 1896.

² de V. to Kotze, May 30, 1896.

question uppermost in the minds of all the members. How far was the Colony implicated in the Raid by the actions of its late Prime Minister? Loch had put into words his own doubts and those of men like minded with himself, as soon as the news of the Raid had reached London :

Loch to de Villiers.

January 3, 1896.

... I am very anxious to learn the view that is taken of Dr. Jameson's action by you and those in whose judgment reliance in the Cape Colony will be placed. . . . The force . . . could not have been organized without Mr. Rhodes's knowledge and sanction. The Company's Directors and officers in London were in entire ignorance of any movement. . . . But if this is true, and if Mr. Rhodes's ignorance is also true, it points to the fact that the Chartered Company is not fit to be entrusted with the wide administrative authority they possess—and if their statement of ignorance is not to be relied on, then they are equally undeserving of being trusted with authority that they can abuse so greatly merely for the purpose of advancing their own personal ambitions. . . .

Loch to de Villiers.

January 15, 1896.

... Until there is an exhaustive enquiry, I don't find I can come to any definite conclusion as to the object Jameson and those acting with him had in view in acting as he did. Was it to establish an English Republic under an English President in close alliance with the Northern development? . . .

In the Assembly, Merriman at once moved in favour of abrogation of the Charter. He had, as he thought, persuaded Hofmeyr to support him, and asked him to win over Schreiner. But the rôles were reversed; Hofmeyr and Schreiner feared lest Crown Colony rule be instituted in Rhodesia, Merriman's motion was rejected and a proposal for a committee of inquiry carried instead.

While the committee strove to pin witnesses down to definite statements of fact—for Rhodes was loyally sheltered by his friends—or, led by Merriman, rose *en bloc* to shake hands with one witness who had obviously told the truth, the whole truth and nothing but the truth, evidence of what lay behind the Raid came in from other sources. The Transvaal Government published the copious correspondence which had been captured, with

the code-book necessary for the deciphering of the same, in the capacious "trommel van Bobby White," one of Jameson's officers. From those letters, official Pretoria wrongly concluded that the Doctor had ridden in under express orders from Rhodes :

J. G. Kotze to de Villiers.

Pretoria, May 26, 1896.

... I sent you yesterday ... our Greenbook No. 2. ... He who can still doubt that Rhodes, the Right Honourable, is guilty must be struck with intellectual blindness. ... That no action is taken against Rhodes by the Imperial Government, putting him on his trial with Jameson cum suis. ... will certainly tend to keep up a lasting breach between the Republics and the Colony. ... He was Prime Minister of the Colony and a member of Parliament. Is it not the clear duty of the Cape Parliament to *impeach him* ?

De Villiers' heart was hot within him, but he took a cooler view of the situation :

De Villiers to Kotze.

May 30, 1896.

... I agree with every word you say about Rhodes except that I do not know by what process the Cape Parliament can impeach him. ... The Attorney-General, however, can prosecute him in the Courts of this Colony for aiding and abetting Jameson. The difficulty would be to obtain such conclusive evidence as would satisfy a jury, many of whom would probably sympathise with Rhodes. ... The whole plot reads like a farce were it not for the serious consequences to South Africa.

I am glad to see that President Kruger has taken the wind out of the sails of the agitators for an amnesty by releasing the bulk of the Reformers. ... I continually had letters from wives and friends of the Reformers asking me to intercede on their behalf, but my invariable answer was that the President would prove merciful without any outside interference. ...

Outside interference of a very serious nature was, none the less, being urged from certain quarters in London during the interval between Jameson's committal and his trial. Mingled warnings and hopes reached de Villiers and his political friends from Lord Loch, from James Bryce, from P. A. Moltano, son of de Villiers' old ministerial chief, and from Sir David Tennant, Agent-General for the Colony. The burden of all these letters was the same : the excitement in London over South African affairs

was equalled only by public ignorance of the facts; a section of the press was clamouring for direct military pressure on the Transvaal; but public opinion was against resort to violence, and, better still, the Colonial Secretary, in spite of imprudent speeches, was keeping his head. "Mr. Chamberlain's intentions," wrote Loch, "are I think very good, but he is surrounded by those who press on him the adoption of dangerous views, some in ignorance of the situation, others to meet their own ends. Should you have any spare time I am always most glad to hear from you."¹

"You and other men," wrote Molteno, "who have South Africa's interests at heart must watch the position and act if you see it becoming dangerous. Already *The Times* says in its article of 15th April that Colonial opinion must be deliberately disregarded."²

Apparently the agitation was serious, and some of its organizers went very far. Friends of the Company and of the Reformers tried to hold Loch, who had been the most effective of all checks upon Rhodes, responsible for the genesis of the rising and the Raid:

Loch to de Villiers.

London, May 2, 1896.

I need scarcely say the whole of these statements are lies. . . . I made a statement last night in the House of Lords which probably will not be telegraphed correctly. . . . I trust you will see that there is no misunderstanding amongst your friends as to the object and purport of my remarks. The telegrams from Mr. Rhodes and Beit etc. put things beyond all doubt. . . .³

The excitement gradually died away with the coming of fuller knowledge of the truth of the Raid. Chamberlain quieted a small but truculent section of the Commons by telling them that war with the Transvaal would be serious and that the Imperial Government could not go to war to force internal reforms upon the Republic. Jameson and his principal officers were sentenced to imprisonment; in the middle of July, Schreiner, more in sorrow than in anger, moved the adoption of the report of the Cape committee of inquiry condemning Rhodes in unmistakable terms. The action of the British Parliament was less decided. It appointed a committee to investigate the history of the Raid and the

¹ Loch to de V., April 25, 1896.

² P. A. Molteno to de V., April 17, 1896.

³ Immediately after his interview with the Johannesburg deputation in 1894, Sir Henry Loch told his Secretary, Mr. J. Smuts, what had passed during the interview. It was precisely what he now told the House of Lords in 1896.

administration of the Chartered Company; but time was required before the necessary information could be obtained, the session was nearly over, and the committee soon adjourned, thereby giving rise to suspicion of its *bona fides* both in England and in South Africa :

Loch to de Villiers.

London, S.W., August 20, 1896.

I have been greatly troubled in my mind at much that has been going on in this country as well as in South Africa. . . . I regret the postponement of the real enquiry, and I believe it will never come off. The policy that led up to what took place both the present and the last Government are really responsible for. I do not mean for a moment that either Government ever contemplated such an act as that which was organized by Mr. Rhodes, but they believed in and trusted him too much and they were doubtless influenced by his belief and promises that he would relieve the Treasury of the expense of administering the Protectorate, with the result that it will cost H.M. Government more in one year than it would have done in half a dozen. . . . The great misfortune for South Africa is to attempt to control too much the freedom of the High Commissioner's action. I am of course speaking of questions outside the Colony itself.

How often had not de Villiers seen the failure of that policy? First, Shepstone had gone to the Transvaal to set Frere an impossible task; and when Frere, with the necessary power at last in his hands, had been in a fair way to solve the problem after all, Wolseley had robbed him of the more vital half of his authority. De Villiers himself had been called on to help unravel as far as might be the tangled results of their divergent policies. No wonder he had fought in the 'eighties to preserve the High Commissionership, one and indivisible, for the Governor of the Cape Colony. The last application of the threadbare policy had been most disastrous of all. It had really been a tacit division of power, and Rhodes, the unofficial High Commissioner, with one foot in the Cape Peninsula, the other on the shores of Tanganyika, and his head too often in the clouds, had seized the substance of authority. It would cost Great Britain more in one year to square the botched account than it would have done in half-a-dozen, not in the Bechuanaland Protectorate only but in all South Africa. The books are not yet closed.

CHAPTER XVI

THE BREAKDOWN

"To your tents, O Israel: now see to thine own house, David."—*I. Kings* 12, v. 16.

THE fact that Rhodes's federation scheme was dead without any immediate hope of a glorious resurrection was brought home to de Villiers in a special manner in the middle of 1896. He had looked to Rhodes to lay the necessary foundations on which his own judicial reforms might rest. Two sections of the superstructure were now completed, just after that foundation had been shattered. The Administration of Justice Act¹ consolidated the position of his court as the court of appeal for the Colony and Matabeleland and he himself received his call to the Judicial Committee of the Privy Council.

News of his appointment reached him at Vryburg at the end of April, while he was holding the first circuit in newly-annexed British Bechuanaland; but, if he hoped to take his seat on the Privy Council in 1896, he was disappointed. Towards the end of June his horse shied at some waggons near Wynberg; he was thrown heavily and three of his ribs were broken. The broken ribs pierced his lungs and, for a time, his life was in danger; but he gradually recovered and was well enough to welcome Lord Rosmead on his return from London at the end of August.

Sir Hercules had been rewarded for his services with a peerage; but the strain of the past few months had broken him. "I share your insomnia troubles," he wrote ". . . I'll drive out to see you at Wynberg House as I want a chat on South African matters. I was quite satisfied with the frame of mind in which I left Mr. Chamberlain. At first he seemed a little under the

¹ No. 35 of 1896.

influence of the war party in London which is composed of society fools and thieves." ¹

The Colonial Secretary's moderation was the most hopeful factor in a gloomy situation. The hand of Heaven as well as the hand of man seemed to be against South Africa. Rinderpest spread southwards from Rhodesia and swept off the cattle in thousands; drought withered the crops and locusts ate up the shrivelled remnant. Worse still, ominous political undercurrents, which were destined to sweep into the war party many who were neither society fools nor thieves, began to make themselves felt. Loch was worried.

Loch to de Villiers.

August 20, 1896.

. . . I do not know what steps are being taken to restore good feeling and confidence between the Dutch and English of the Colony and with the Transvaal and O.F.S. There is an uneasy feeling at home that the S.A.R. supported by Germany intend to take an early opportunity to repudiate the Convention of 1884, so far as it provides control over the entire independence of the Republic—and the denials are not believed, and are similar to similar denials, when the actual correspondence was in our possession. . . . Is any reliance to be placed on the rumours that the Government of the S.A.R. is arming beyond what might be regarded as their legitimate right to protect themselves from any future raid? If they are arming with other objects in view it would lead to very grave and serious results. . . . I have kept silent during the past session . . . but early next session the question as to the future system of Government for the Chartered Company will have to be discussed, and I certainly hope to learn from you personally what your views may be on the subject before that time arrives.

Few enough steps were being taken to restore the good feeling which Loch so greatly desired. A customs conference held at Bloemfontein in September led to nothing. The Transvaal refused to attend; Natal seized upon that refusal as an excuse for withdrawing on the plea that she could only enter a general union; the Free State indeed remained within the existing union but showed clearly that, politically, it was swinging towards the north. The Raid had shocked the Free Staters into an anti-English attitude. Whereas, hitherto, much of their official correspondence with the Colony had been conducted in English,

¹ Rosmead to de V., Sept. 3, 1896.

now their officials, many of them of English or Scottish descent, couched their letters on principle in High Dutch. Something of the same sort was happening in the Colony itself, where the the Afrikaner movement had been galvanized once more into activity. Racialism awoke, "two nations warring in the bosom of a single state." Friends ceased to be friends, families were divided, men began to speak Afrikaans, even High Dutch, as a protest against what they believed the principal English colonists represented; for the Afrikaners were confounding all the English with the pro-Rhodians. True, Hofmeyr and other leaders of the Bond privately adjured Kruger to placate the Uitlanders, but they said nothing in public. There, they offered a contemptuous support to Sprigg's coalition Ministry, while their followers drifted into their own camp and the English gravitated more and more towards the camp of the newly formed Progressive party.

Against this reviving racialism based on linguistic differences, de Villiers protested as strongly as in him lay. He was in a good position to do so. He spoke, wrote and thought in English; he still adhered to the belief expressed in his famous address of 1876 that High Dutch would never make good its footing as a widely spoken language in South Africa, that the spoken Afrikaans could hardly struggle into being as a literary language, and that English would therefore prevail in the long run. He had reaffirmed this belief in 1891 to du Toit, the father of the "eerste taal beweging," who had returned from his sojourn as superintendent-general of education in the Transvaal sadly disillusioned as to the scope offered to the best-intentioned Cape Colonist in that exclusive Republic. "Als ik eenigzins dacht," wrote de Villiers, "dat die algemeene gebruik van die Engelse taal die vaderlands liefde van mijn landgenote zou ondermijn, zou ik zeker met hart en mond met u medewerk, maar, met die voorbeeld van die Vereenigde State van Amerika voor mij, geloof ik nie dat dit 't gevolg zou zijn nie."¹ On the other hand, he believed in a fair field and no favour. More than once he had helped to give the Dutch a more honourable place in the educational system of the Colony. Thanks mainly to his commission of 1880, the choice of the medium of instruction in the schools lay with the elected school committees; in practice, however, it

¹ de V. to du Toit, Nov. 22, 1891.

was alleged that, owing to the low place given the language in the public examinations, the study of Dutch was neglected by both teachers and taught. Hofmeyr had long urged the claims of Dutch in Parliament, the civil service, the university and the schools. A large measure of success had attended his efforts, especially after his alliance with Rhodes. In 1890 he had helped to found the Taalbond to foster the use of Dutch ; that is, of High Dutch and not the spoken Afrikaans. The Taalbond, at first, found the University council unwilling to give Dutch a higher place in the elementary examination. Next year, however, before an education commission, Hofmeyr suggested that, though English should continue to be the medium as a matter of convenience, equal value be given to Dutch and English in the examinations and that a preference be given to candidates who passed in both. By arrangement with Hofmeyr de Villiers then raised the point in the University council and secured its adoption. A little later, President Reitz wrote from Bloemfontein to thank him for all he had done and was still doing. " I am willing to admit," he wrote, " that the bilingual question is a nuisance—but as it exists I try to look it squarely and honestly in the face, and see no other alternative . . . than carrying out as far as practicable the principle of equality for both languages." ¹

De Villiers, therefore, hoped that he would be hearkened to when he addressed a meeting in the Library of his native town, the Paarl, counselling caution in the use of language as a political weapon :

From Dutch to English the step is not so wide as many people suppose. The two languages belong to the same stock. . . . Each of them has its advantages, and if one of them is destined ultimately to prevail it will be that which, on the principle of the survival of the fittest, best supplies the daily social, commercial, religious and intellectual wants of the people.

So he urged his hearers to read Shakespeare, Bunyan, Milton, Pope, Dryden, Fielding, Scott, Macaulay, Dickens "and I venture to add, Darwin." Finally he recommended to them, Burns, "because his works afford an illustration how vernacular of the most homely kind may be ennobled when pressed into the service of true poetry. . . . The time may still come when a Cape Burns will

¹ F. W. Reitz to de V., Aug. 23, 1893.

arise to enforce the phrases of his homely dialect into literature and make them classical."

The language question and the cultural differences, of which language is in a measure the test as well as the vehicle of expression, complicated the university problem. The examining University of the Cape of Good Hope, which de Villiers as Attorney-General had helped to found and on whose council he had served for many years, had long admitted candidates from all the States of South Africa to its examinations. The chief weakness of the University was that it could make no appeal to its students whose loyalty went to their colleges. These were widely separated from one another in space, size and efficiency. To remedy this defect Rhodes had advocated the foundation of that teaching University in the Cape Peninsula which some of de Villiers' Eastern critics had suggested in 1873. De Villiers sympathized with the idea, for he agreed with Rhodes that nothing would more effectively pave the way for the United South Africa of the future. The natural jealousy of the colleges outside the Peninsula killed Rhodes's scheme; and de Villiers, after much consultation with fellow-members of the council, decided that the only feasible plan was the reorganization of the University on a federal basis.¹ As a first step he proposed the admission of representatives from all the states of South Africa to the Council and a fuller recognition of Dutch in the examina-

¹ In February, 1910, just before the inauguration of the Union, he spoke at the degree ceremony of the University of the Cape of Good Hope at a time when the university problem had been complicated by the wholesale creation of local colleges, by the attempt begun in 1905 of the South African College to break away from the examining university, and by the subsequent offer of £500,000 made by Messrs. Otto Beit and Julius Wernher for the building of a teaching university at Groote Schuur. He quoted with approval the warning that "the greatest peril to University education in South Africa lies in the excessive multiplication of institutions with poor endowments and small, underpaid and overworked staffs" and the resolution of a recent South African Conference on university education against the creation of any further colleges. He also gave his blessing to the amalgamation of the University classes of the neighbouring Diocesan College, Rondebosch, with the South African College, which took place in 1910. From 1910 till his death in 1914 he encouraged the Minister of Education in his many but abortive attempts to settle the problem more or less on federal lines. It was only in 1918 that the solution was found by the granting of university charters to the South African College, Cape Town, and the Victoria College, Stellenbosch, on condition that the former removed to the Groote Schuur site. The remaining six colleges then became the federal University of South Africa, from which the Johannesburg college presently broke away as the University of the Witwatersrand. The gap in the federal university was promptly filled by the inclusion of a college at Potchefstroom.

tions as a means of inducing the republicans, especially the Transvaalers, to give their support.

An Act of 1896¹ opened the council to nominees of the Transvaal, Free State and Natal provided their Governments would contribute to the expenses of the University. De Villiers negotiated with Dr. Brebner, superintendent-general of education at Bloemfontein, for geography and tradition alike insisted that the Colony and the Free State, at all events, must work together if anything were to be accomplished. De Villiers promised to do what he could to provide bilingual examinations and thereby make the University "echt Zuid Afrikaansch," and, with the prospect of the return of a new and more sympathetic council in 1897, he hoped for good results. Not that many candidates from the Colony and the Free State, Brebner assured him, would ask for Dutch papers; but all from the Transvaal would, as their education was purely Dutch.

In University matters, as in every other direction in the 'nineties, the Transvaal was the stumbling-block to unity. The Raid had placed the Continental element in the ascendant. The Hollanders at Pretoria, led by Dr. Mansveldt, superintendent-general of education, and Dr. Reinecke, rector of the State Gymnasium, refused to have anything to do with the reformed University.² Some of their objections were well founded, others were mere excuses. The real rock of offence was that the Cape University was too English. In any case, the Hollanders talked of having a University of their own at Pretoria in 1897. The attitude of the Free Staters was less definite. "Our President," wrote Brebner, "believes in mutual respect as I do"; for Steyn was not anti-English so much as ardently pro-Afrikander. He and others at Bloemfontein were anxious to have a teaching University, but they were not so anxious to see it established in Pretoria. Nevertheless, Brebner fairly warned de Villiers that the Free State was small, its sister republic rich and influential. The teaching University might have to be bought at the price of Transvaal-Hollander domination.

De Villiers believed that such an institution could produce nothing but evil in South Africa. The difficulty was to oppose it without fanning the rising flames of racialism. Brebner did

¹ No. 6 of 1896.

² J. Brebner to de V., Sept. 24 and Oct. 16, 1896.

his best to secure the help of Chief Justice Kotze and other friends at Pretoria in urging his and de Villiers' proposals on the redoubtable Dr. Mansveldt and other officials. But he was not sanguine. "It will be a hard task to convince them," he wrote, "... as they seem inclined to adopt a policy of isolation both politically and educationally." Kotze was sympathetic; but he frankly told de Villiers that Brebner was right and asked him to help by mentioning Brebner's proposals publicly, for "a separate University established in Pretoria under purely Hollander management will lead to much mischief in the future."¹ De Villiers refused to move openly:

De Villiers to Kotze.

December 7, 1896.

At the present stage... any interference on my part might do more harm than good. Any suggestions coming from this side might be looked upon with suspicion by Dr. Mansveldt, whereas Dr. Brebner would be regarded as an impartial adviser.... The Jingoës here will oppose the proposal tooth and nail and in fact they have already been crying out against Dr. Brebner as being an emissary from the Transvaal. If only the moderate men in South Africa could have their way how soon everything would be put right!

Kotze was fain to agree. "After the recent exhibition of Jingoism in Cape Town," he wrote, "... the matter must be very carefully handled and cannot be forced."² In the event Natal threw in its lot with the Cape University in 1897, but the Hollander University at Pretoria never took shape. It was discussed from time to time, till the outbreak of war in 1899 destroyed all hope of its realization.

The attitude of the dominant party in the Transvaal on the university question had only been part of the general policy which made that war possible. Kruger's twofold claim for damages due to the Raid had already given rise to a long correspondence with Chamberlain, who declined to pass the claim for moral and intellectual hurt on to the Chartered Company and questioned the extravagant assessment of more tangible injuries. Throughout 1896 he tactfully avoided discussing Kruger's proposal for the abrogation of article four of the London Convention; but the mere fact that it had been made was disquieting. Kruger did not aim at eliminating the British from South Africa; how-

¹ Kotze to de V., Dec. 1, 1896.

² Kotze to de V., Jan. 3, 1897.

ever much the Continental party might encourage him, he had no love for and little confidence in Germany as a possible counterpoise to Great Britain; but he did wish to recover the untrammelled independence, which his State had enjoyed prior to the annexation of 1877, by freeing it from the British control of its treaty-making power. He now concluded extradition treaties with Holland and Portugal and gave his adhesion to the Geneva Convention without reference to the Queen. There was no particular reason why he should have taken this course, unless he and his advisers were determined to see how far they could whittle away article four in practice; and it was precisely article four which H.M. Government could not and would not relinquish. The Volksraad's conduct made matters worse. It passed many laws in 1896; some admittedly for the benefit of the Uitlanders, others possibly so if administered in the right spirit, others again frankly unnecessary and irritating. Johannesburg received a municipal constitution which, in spite of Uitlander criticisms, gave the city a large measure of local self-government; a new education act did something to meet the demand for English education; many Uitlanders who had served the Republic during the Raid were enfranchised. But this was a matter of favour; any general extension of burgher rights was out of the question for some time to come.

Other laws were of more dubious wisdom under the circumstances. The Aliens Expulsion Act had been approved of in principle before the Raid; the Immigration Act aimed mainly at excluding paupers, persons with contagious diseases and other undesirables; the act limiting the right to hold open-air meetings was reasonable enough. It is perfectly true that these acts, in many cases, gave the Executive no greater powers than those exercised by the British Home Secretary; that between 1896 and the outbreak of war in 1899 the Expulsion Act was only exercised once and then amid general approval; that only three open-air meetings were prohibited, two of which were to have been in support of the Government; that the Immigration Act was repealed in 1897 mainly because it inconvenienced neighbouring South African territories; that the Press Law was designed to deal with an outrageous Press. The fact remains that to introduce them one after the other in 1896 was like throwing lighted matches into a powder-magazine. Not only

was the Press Law unnecessary since the law of libel gave all the security the authorities could require ; not only were the Aliens Expulsion and Immigration Acts technical breaches of the London Convention, but no one could say how far an Executive dominated by an unsympathetic group of Continental advisers would carry the powers newly conferred upon it. It was all part of the same root trouble. The Transvaal was a South African State in the making ; the Continental party insisted on pretending that it was a State of the regulation European pattern. They tried to equip young David in Saul's armour to his own great hurt and the hurt of all South Africa.

Towards the close of 1896 the *Uitlander Press* gave tongue, cursing Kruger and all his works as a barrier to the development of the all-important gold industry. The Government newspapers duly replied and were in turn assailed at long range by the Progressive Press in the Colony. There, Edmund Garrett of the *Cape Times* had begun his long and arduous campaign to get Rhodes out into the open as leader of the Progressives. In spite of all that had happened, Rhodes was still the central political figure in South Africa. He had re-established his prestige by his conduct against the Matabele in the field and in the indabas with the chiefs in the Matoppos. The Mashona revolt still smouldered on ; his Company was saddled with debt in addition to its administrative duties ; but the Matabele rebellion was over.

Rhodes slowly worked his way back to Cape Town towards the end of the year. Everyone was anxious to see what line he would take. It was believed that he still cherished hopes of working for federation through the Colony with the necessary support of some at least of the Dutch ; he was known to be angry with the Imperial Government, for his Charter was still in jeopardy. His friends determined that he should go to London to face the music of the Raid inquiry, with a resounding volume of applause from South Africa. He arrived by sea at Port Elizabeth late in December and there made his famous " unctuous rectitude " speech. Thence he travelled up to Kimberley and back to Cape Town, receiving ovations from Dutch and English supporters everywhere.

Rhodes's speeches and the answering outbursts of enthusiasm gave great offence in many quarters. Loch was no enemy of Rhodes, for when Rhodes was in London during the inquiry he

called on him and offered to give him any help he could for old times' sake ; but two things hit him on the raw—Rhodes's persistent disregard of the Imperial factor when it suited his purpose and the fear that he might be lending himself to the Progressives :

Loch to de V.

London, S.W., December 29, 1896.

I find that I am writing on the day that a year ago brought so much injury to South Africa. . . . The great misfortune that has followed to my mind is the revival of strong racial feeling. I hope what one hears as coming from the Cape in this respect may be exaggerated, but I fear it is encouraged by some wrong-headed men. The reception given to Rhodes at Port Elizabeth I was prepared for, for it was in the nature of the Father and the penitent son—he had been regarded there as imbued with Dutch proclivities too pronounced to be removed—his sudden change of front made them open their arms wide. . . . His speech at Port Elizabeth is much condemned in this country—he has received great consideration, considering all the trouble of which he has been the author—and many begin to consider whether all the benefits he claims to have conferred on South Africa and this country are in any way commensurate with the misfortunes and injury he has brought upon both—and whether what he claims as due to his own individual merits is not almost entirely due to the support he has received from the Imperial Government, which he never tires to ignore. I am astonished at the great cordiality of the welcome in Cape Town. . . . I am afraid it will create a bad impression in the Republics, amongst the Dutch and amongst many English both in the Colony and at home.

Loch was right.

Kotze to de Villiers.

Pretoria, Jan. 3rd, 1897.

. . . The events of the past week in Cape Town have made a most unfavourable and deep impression with us up here. Our good President *inter nos* feels very much what he considers a slight, an insult and defiance to the Republics. . . . What is Hofmeyr doing? Of course the whole move has been nothing but a trick to throw dust in the eyes of the English public, but will it succeed in doing that? It is quite evident that unless Rhodes be effectually snuffed out, there will yet be greater trouble in store for South Africa.

De Villiers was a just man who saw all sides of a question. His solicitude for the dying Rhodes and the splendid oration he delivered when he unveiled his statue at Cape Town in 1910

witness to the fact that he modified some of the harsh judgments he now passed upon Rhodes in his reply to Kotze. All the more does the unwonted bitterness of his letter show the strain to which the political atmosphere of the time subjected him :

De Villiers to Chief Justice Kotze.

Cape Town, *January 7, 1897.*

. . . I can assure you there is no necessity for being disturbed about the so-called Rhodes ovations. If your President had appeared in our midst there would have been much more genuine enthusiasm without the expenditure of one-tenth of the money lavished by the friends of Rhodes and, I fear I must add, by the companies under his control. Besides Mr. Fuller and the new Knight, Sir J. Woodhead, there is not a man of influence among those who joined in glorifying Rhodes. . . . There is I am glad to say no law in this Colony to prevent public demonstrations, and it is always an easy matter, by the judicious expenditure of money, to collect a crowd for any purpose whatever. I specially regret Judge Jorissen's remarks, which have greatly pleased Rhodes's friends.

Rhodes will never be effectually snuffed out until his opponents learn not to attach so much importance to the frantic efforts made by his friends to rehabilitate and glorify him.

The Town Council of Cape Town certainly made a great mistake in presenting the address, but after all the address was a very colourless affair. The Town Council refused, as such, to join in the festivities. . . .

One point should never be forgotten, and that is that a great number of Cape Town citizens consider Rhodes a great benefactor to the Colony by reason of his liberal policy in Rhodesia towards the Cape. They condemn the Raid, but they consider that this one act should not blind them to what they consider his great qualities.

To my mind that one act is of such transcendent wickedness as to outweigh all the good he may have done in the past, but it is difficult to impress this view upon many who regard the President as the arch enemy of the Colony.

So Rhodes departed to "face the music." He was likely to meet a more chilly reception in England than on former occasions. Loch finished his New-Year's letter to de Villiers from Eaton Hall, the seat of the Duke of Westminster: "I find a great change," he wrote, "in the tone of those who are staying here with respect to past events in South Africa—now they know more about the true merits of the question." ¹

¹ Loch to de V., Jan. 1, 1897.

CHAPTER XVII

THE JUDGES' CRISIS

THE tumult and the shouting occasioned by Rhodes's progress through the Colony died and, in the New Year of 1897, de Villiers looked forward to a quietly eventful year. In March, his daughter was to marry Philip Cloete, an attorney practising in Pretoria, and he proposed to visit the young couple in their new home before sailing for England to take his seat on the Privy Council. It was to this that he looked forward especially, for he mistrusted the Judicial Committee's appreciation of the finer points of the Roman-Dutch law. Three years previously he had experienced the unwonted shock of seeing one of his judgments reversed; the Sigcau appeal was still undecided and he hoped to arrive in London in time to guide it safely through its final stages. He even asked that the Roman-Dutch appeals be reserved for him; ¹ but the Colonial Secretary replied that he must take his regular share of the work just as it came and that no reservations were possible.²

He had casually mentioned to Chamberlain that he was going to Pretoria at the end of March. That visit took place earlier and at greater speed than he anticipated. From the earliest days of the restored Republic, the relations of President Kruger with Chief Justice Kotze had not been altogether happy. More than once Kotze had thought of returning to the Colony; for some time past he had sought in vain to safeguard the freedom of the bench by securing permanent salaries for the judges; he had unsuccessfully resisted the claim of the Executive to pass resolutions having the force of law until the Volksraad made other provision; he had even stood against Kruger for the Presidency

¹ de V. to Chamberlain, Jan. 27, 1897.

² Chamberlain to de V., Feb. 20, 1897.

in 1893. But on the whole, relations had been peaceable enough ; Kotze had been constantly consulted by the Executive Council and, immediately after the Raid, he had been spoken of as State Secretary in succession to Leyds.¹

Latterly, however, friction had become serious. The rock of offence was the legislative power of the First Volksraad. This body legislated by wet (formal law) or by besluit (resolution). In the former case, according to the Grondwet of 1858, three months' notice was required ; in the latter, no such delay was necessary. Two important judgments delivered by Kotze himself in 1884 and 1887 had recognized the fact that a besluit had the force of law, that the grondwet held no more privileged position than any other law, and that the High Court had no power of testing the validity of a besluit in terms of the Grondwet. Kotze had not been altogether easy in his mind even before he gave the second of his judgments, for in 1886 he was asking himself and de Villiers² whether a judge must not ignore a law which had not been passed in the form prescribed by the Grondwet and whether a besluit was so prescribed. The younger Jorissen certainly held that a judge must do so and had dissented from Kotze and Esselen in the judgment of 1887, and Kotze himself had announced in court that the Grondwet ought to include a clause permitting the High Court to test as in the United States.

Thereafter, in the light of fuller knowledge of the early constitutional history of the Republic, he gradually came to the conclusion that his two judgments had been mistaken. Meanwhile, the Volksraad legislated freely by besluit, and the revised Grondwet of 1889 made no change in the method of legislation. In 1893 Kotze decided that the Grondwet must be protected from hasty alteration by besluit. As he afterwards wrote to de Villiers :—"A written constitution is the sheet anchor of a state, and especially is this so in the case of a Republic. . . . The minority in the State, especially at a time when political feeling runs high, is to be protected against the majority, and this can alone be done by the safeguard of the constitution."³ At one time he nearly carried his point ; but the matter was shelved, the Grondwet was referred to a committee of the Volksraad, and in

¹ Melius de Villiers to de V., March 1, 1896.

² Kotze to de V., Nov. 1886.

³ Kotze to de V., April 26, 1897.

1896 a revised constitution was issued without any of the safeguards he desired.

He had already indicated the ground on which he meant to take his stand. Since neither the Executive nor the Legislature was willing to safeguard the constitution, he fell back on his new conception of the powers of the bench. In giving judgment in May 1895 in the Hess case, he announced by way of a lengthy *obiter dictum* that the court must decide whether or no a law was in conformity with the Grondwet; in other words, he virtually threw aside his previous judgments which had declared besluits binding on the judges.¹

Hardly had he delivered judgment than another case arose which brought matters to a head. In the July of 1895 the Kaffir boom was at its height and peggers assembled in great numbers for the rush to a newly proclaimed goldfield. One speculator, Brown, had engaged a number of men to peg for him; others did the like; and the Government, alarmed at the prospect of collision between the charging platoons, withdrew the proclamation and announced that claims would be distributed by lot. Nevertheless, many claims were pegged and the Executive, to protect itself, induced the Volksraad to pass a resolution absolving it from all liability for damages. Brown duly brought an action against the Government for some £372,000. Kruger, mindful of the Hess case, warned his Chief Justice that he would have to suspend him if he rejected Volksraad besluits. Nevertheless, on January 22, 1897, Kotze gave judgment in Brown's favour and, with the concurrence of Ameshoff, declared that the Volksraad was not a sovereign legislature, that existing law could not be altered by besluit and that the court might refuse to apply any law whose form or substance conflicted with the Grondwet.²

The Executive took up the challenge. It had acted for thirty-five years under the authority of besluits reinforced by two first-class decisions of the High Court. In its eyes, if the principle *stare decisis* was thus to be jettisoned, nothing would remain but "the high court, an illegal institution according to the judgment, floating serenely on the waters of the deluge." Without consulting the judges, it therefore drafted Law No. 1 of 1897 denying the judges' power to test any wet or besluit, prescribing an oath

¹ Hess v. the State, *Cape Law Journal*, xii. p. 226.

² Brown v. Leyds, *Cape Law Journal*, xiv. p. 98.

to be taken by the judges to that effect, and authorizing the President to ask the judges whether they intended to exercise "het zoegenaaemde toetsingsrecht" and, in case of an unsatisfactory reply, to dismiss them.¹ This, in spite of the fact that judges were appointed for life and, under the existing law, could only be dismissed after proper indictment and trial.

The bill was hurriedly debated by the First Volksraad in extraordinary session behind closed doors and laid on the table of the House on February 22nd. The five judges—Kotze, Ameshoff, Jorissen, Morice and Gregorowski—at once protested against the proposed violation of judicial independence, urged delay until the ordinary session of the Raad in May, and offered, if the Raad decided against delay, to show it a way out of the *impasse*. Meanwhile they agreed to stand by each other; to suspend the High Court and Circuit Court temporarily, as they had done in 1893, if the Volksraad debated the bill in such a way as to show disrespect for the court; and, if the bill were actually passed, to adjourn both courts *sine die* and appeal to the people.

They requested that their letter of protest be read to the Volksraad. It was not even laid before the Executive Council. Twice they interviewed the Executive Council and begged the President to withdraw the measure; but Kruger refused to hear of delay, and on February 26th the Volksraad, after listening to a speech by Leyds hostile to the judges, passed the law by *besluit*, thereby adding insult to injury.

On the same day Kotze appealed to de Villiers for support, in spite of his annoyance at his rumoured disagreement with the Brown judgment. "Whatever the merits of the question may be," he wrote, "the Government and legislature have behaved in a most high-handed and unconstitutional manner. . . . I would like to ask you the plain question whether you and your colleagues all over South Africa . . . would be prepared to aid us by a strong and emphatic protest?"² Resolutions supporting the judges had already been signed by many advocates and attorneys in Johannesburg, Dutch and English alike. On March 1st, the judges read a protest in court and appealed to the sovereign people.

Kruger now put the fatal question to Kotze, Ameshoff and Jorissen, and, when they declined to answer unless it were put to

¹ Kotze to de V., March 9, 1897.

² Kotze to de V., Feb. 26, 1897.

all, to Morice and Gregorowski also, though they did not claim the *toetsingsrecht*. The judges thereupon adjourned the High Court till March 8th and declared that, if the questions were not withdrawn by that day, they would refuse to proceed with the Circuit Court. Kruger first broke the judicial strike by appointing Dr. J. Esser, who cheerfully took the new oath, to conduct the circuit and then demanded an answer from the other judges by March 17th.

The crisis was desperate, and its effects were not confined to the Transvaal. The bench had appealed to the people against the Executive and the Legislature. Naturally, the *Uitlander* Press and its allies in the Colony made the most of their opportunity. There were repercussions in the Free State. That Republic had just taken over the administration of its railways from the Cape Government; it was becoming a question how long it would remain in the Cape customs union; its President was to meet President Kruger in the middle of March to discuss the closer union of their two States. Nevertheless, a strong party in the Free State still disliked anything which would draw them towards the north; many others who, *faute de mieux*, supported the policy of closer union, held a low opinion of the Transvaal both as a State and as a neighbour; Steyn himself looked upon his ally with a very cool, judicious eye and shared the alarm of prudent Cape politicians at its methods of financial administration;¹ and all Free Staters from the President downwards were justly proud of the ordered stability of their Republic and of the inviolability of its courts.

De Villiers was under no illusions. He had already written to Kotze questioning the soundness of the Brown judgment and urging him to take thought before answering Kruger's question.² As soon as he heard that Kruger had actually set Law No. 1 in motion he offered his mediation. Kotze eagerly accepted. He sent de Villiers a full statement of the case and concluded:

Kotze to de Villiers.

Pretoria, March 9, 1897.

... Now here is the crux. The Judges, while admitting the full right of Government and Legislature to alter the law as laid down in the Brown judgment by proper legislation and the

¹ M. Steyn to J. X. Merriman, Nov. 16, 1896.

² de V. to Kotze, March 1 and 6, 1897.

constitution by in some way getting at the clear voice of the people, absolutely deny the necessity for this hasty legislation. . . . We are asked under Art. 4 to do violence to our conscience and to recant, on pain of instant dismissal. There is no definition given of the *toetsingsrecht* which is very comprehensive and no Judge dare renounce this right which embraces all sorts of formalities necessary for an injunction of the legislature to conform to, before it can be law, etc. . . . I very much value your kind offer of mediation. . . . You ask me to consider well before giving Kruger our final answer. Now what answer can we give than that we must decline to give beforehand our assurance that we will respect *all* laws and resolutions of the *Volksraad*. . . ? If you see your way clear to bring the President to reason I am sure I will be much obliged to you and so will, I am quite satisfied, the whole of South Africa. . . . There is no time to be lost. Like you I see danger ahead, and our President has for once committed a serious blunder by attempting to punish the Judges for doing what they believe to be their duty. No wonder confidence in South Africa and abroad is shocked, and capital is being withdrawn. . . . Wire me in the name of "Percy" when you leave and will be here. I will in deference to your wish keep this secret.

Two days later Jorissen also sent out an S.O.S. signal to Wynberg House ;¹ but, before either letter reached its destination, de Villiers was on his way north. On March 11th, he assisted at his daughter's wedding. Though his presence enhanced the dignity, it can hardly have added to the gaiety of the occasion. His affections may have been centred on the day but his thoughts were concentrated on the morrow ; and the wedding photographs shows him wearing the countenance of a hanging judge. Next day he set out for the north in such haste that he omitted to ask the customary leave of absence from the Colony and was only reminded of the fact *en route* by friends in Cape Town in time to send a hurried telegram to the Attorney-General before crossing the border. It is not, perhaps, unfair to suggest that there may have been method in his lack of ceremony. Speed and secrecy were the essence of his plan. As it was, tongues and pens were wagging, for watchful and hostile eyes had seen him depart. On March 15th he reached Pretoria. After a conversation with Kotze, he discussed the situation two or three times with the assembled judges. He found that they had already drawn up a letter in which they declined to answer the President's

¹ Jorissen to de V., March 11, 1897.

question, but had withheld it pending his expected arrival in response to Kotze's invitation. He also discovered that Morice, Gregorowski, and, of course, Esser, made no claim to the testing right. He therefore at first tried to persuade them all to answer the President's question as an emergency measure which was not to form a precedent, and to admit that Law No. 1 was part of the law of the land.¹ The most the judges would do was to promise to answer the question when Kruger returned from his treaty-making at Bloemfontein.

De Villiers found that he and Kotze held radically different views on the nature of the Transvaal constitution. Kotze deduced from the early history of the Republic and from the fact that the Rustenburg Grondwet described the people as the source of all authority, that the Volksraad was not a supreme legislature but a legislature subordinate to the sovereign people, which had endowed it with its powers and which presumably still retained the power of altering the constitution. He found a certain measure of support in the Free State, where Chief Justice Melius de Villiers held that big changes in the Free State constitution could not be made regardless of "the voice of the people" and that the Transvaal Volksraad had no power to alter the Grondwet by ordinary legislation.² How the people were to exercise the powers he claimed for it, Kotze did not explain beyond suggesting that the burghers might petition the Volksraad or instruct their delegates to take a certain course. He did not deny that the besluits might be used in emergencies; he did deny that they could be used as the ordinary method of legislation, let alone for the alteration of the Grondwet, which he now regarded as a rigid instrument analogous to the constitution of the United States.³ Further, he held that de Villiers misunderstood and that the Volksraad was unduly straining the meaning of the term besluit. The besluits, he maintained, which must be held inviolable were the decisions given by the Volksraad in its capacity as a court of justice, prior to or just after the promulgation of the Grondwet of 1858 which had created a separate court for the first time. As to the effect of the Brown judgment on the stability of

¹ de V. to Kotze, March 16, 1897.

² Melius de Villiers to de V., Feb. 1891, also *Nineteenth Century*, March 1897.

³ Kotze had discussed the question with James (afterwards Lord) Bryce, the authority on the U.S.A. Constitution, who had visited Pretoria in the latter part of 1895.

the law, he appealed to Bryce on the United States constitution, who taught that where the Supreme Court had to choose between reversing a decision and perpetuating bad law, it might reasonably choose the former course.¹

De Villiers for his part admitted that the Grondwet needed amendment and that the powers of hasty legislation wielded by a single chamber Volksraad were highly dangerous.² Nevertheless, he held that it did hold those powers as a sovereign legislative body and, jealous champion of judicious independence though he was, he believed that the court did not possess the testing-right. It is true that he was prepossessed in favour of British parliamentary practice; but the fact remained that before 1858 the Volksraad had decided all manner of questions by besluit; it had continued to do so; its actions had until recently been upheld in the courts. Yet Kotze was appealing to a sovereign people for whose action the Grondwet, significantly enough, made no provision. He feared two things: the putting into operation of exceptional legislation like Law No. 1 and the possible consequences of the appeal to the "sovereign people," an appeal which would be much more likely to reach the unenfranchised urban Uitlanders than the pastoral burghers. He knew that Kotze was honest in his change of opinion; indeed he persuaded Kruger, in one of his more gracious moments, to admit as much. He also believed that the President was acting in good faith. Kotze would not give way; it was useless to expect Kruger to do so. Therefore, true to his policy of concentrating on substantial justice first and the letter of the law second, he strove to find some *modus vivendi*, even an illogical one, which would ease the deadlock, gain time for ordinary legislation which should put the relations of the Bench, the Executive and the Legislature on a satisfactory footing, and restore the strained fabric of a State, which, in the midst of an industrial revolution, had recently survived one political convulsion and now seemed in a fair way to be afflicted with another. "At the present moment," he wrote to Kotze at the outset, "the important matter is to put an end to the conflict."³ It was the same policy he and Brand had pursued in 1881 when, once before, the Transvaal had been in trouble.

¹ Kotze to de V., March 16, 1897.

² de Villiers to Kotze, March 15, 1897.

³ de Villiers to Kotze, March 15, 1897.

On March 18th he had his one and only interview with the President and very hard work he found it. At first Kruger demanded unconditional surrender; but at last he agreed to an understanding that, if the judges would undertake not to exercise the testing power, he for his part would refrain from enforcing Law No. 1, and would introduce a law establishing safeguards against the hasty alteration of the Grondwet as in the Free State. There, a three-fourths majority of the Volksraad in two successive sessions alone could change the constitution and the High Court enjoyed the power of testing. But he foresaw difficulties. Supposing, he asked, he failed to carry the law amending the constitution, would the judges be entitled to withdraw their undertaking? Moreover such a law could not be carried till 1898, for a committee must be appointed to draft the bill and lay it before the people. If he did not propose the bill in 1897 would it not be said that he had failed to keep his promise? To which de Villiers replied that the understanding was that he would propose the law and honestly do his best to carry it. If he did that he would have done his part and the judges would be bound by their undertaking. Believing also from what they had told him that the judges would be satisfied with legislation in 1898, he promised to do his best to get them to accept the President's terms.¹

He drove round to Kotze's house that afternoon and reported progress. Kotze was doubtful. He wanted a time limit of three months fixed for the introduction of necessary legislation. De Villiers dissuaded him. "Surely," he expostulated, "you do not wish to suggest that the judges do not trust their President." "Unfortunately," replied Kotze, "that is just the position."² De Villiers then met the judges in conclave once more. Kotze was still suspicious. "What guarantee have we got," he asked, "if we submit that the President will do what he promises?" To which Gregorowski replied that they had his word and must assume that he would keep faith.³ They then discussed the draft reply which de Villiers had drawn up, wherein they were made to state that "it will be our duty to abide by the provisions of Law No. 1 of 1897 and not to exercise the power of

¹ *Cape Times*, Feb. 12, 1898, and de V. to Kotze, May 7, 1898.

² Kotze to de V., May 5, 1898.

³ Gregorowski to de V., March 3, 1898.

testing whether existing or future laws or *Volksraadbesluiten* are in accordance with the Grondwet. We do so on the understanding that Your Honour will bring forward a measure whereby the constitution shall be placed on a stable foundation. . . ."

The judges modified the draft in some respects. They stipulated that Kruger must take action "as speedily as possible," a change of wording that de Villiers disliked as, standing by itself, it left the President free to decide upon the speed, whereas the promise of legislation in 1898 was at least definite.¹ Further, as Leyds, to whom de Villiers sent a copy of his draft, was quick to note, the judges struck out the statement that it was their "duty" to abide by Law No. 1.² At last, however, the compromise was agreed upon and on March 19th the judges gave their answer to the President :

. . . The Judges will not test existing and future laws and resolutions of the Volksraad by reference to the Grondwet. The Judges declare this on the understanding that your Honour will, as speedily as possible, submit a draft to the Honourable the Volksraad, whereby the Constitution or Grondwet (guaranteeing among others the independence of the High Court) will be placed upon a sure basis, so that no alteration can be made therein than by means of special legislation alone, after the example . . . of the Orange Free State. In the drawing up of such a draft the Judges are prepared to give the Government and the Volksraad every assistance.³

On the same day de Villiers set out homewards. Three days later Leyds replied to the judges on the President's behalf thanking them, at de Villiers' suggestion, for their offer of assistance and accepting their letter. "It is a matter of satisfaction to His Honour the State President," he added, "to notice that the observations of the Judges with regard to the Grondwet agree with the plans and intentions which His Honour had already formed on the subject."⁴ For the old President would confess to taking advice from no man, however readily he may have acted on it.

The immediate crisis had thus been tided over, and de Villiers was at home once more. There, thanks and encouragement reached him from a few friends who knew and appreciated what

¹ de V. to Kotze, Feb. 16 and March 8, 1898.

² Leyds to de V., March 20, 1897.

³ Judges to Kruger, March 19, 1897 (Kotze, *The Judicial Crisis*, p. 20).

⁴ Leyds to the Judges, March 22, 1897.

he had done, among them President Steyn.¹ But most of the messages which reached him were of another kind, mainly from those who only suspected what he had done and by no means appreciated it. During the actual negotiations at Pretoria, he had found that the way of the peacemakers is hard. Not only did he feel that the President still suspected him as a Colonial who had favoured Great Britain in 1881, but the more rabid of the pro-government papers had accused him of being a spy sent to report to Downing Street on the condition of the Republic. The *Uitlander* papers at first declared that he had come to throw his weight against the judges; and then, when a settlement was made, grumbled that it would have been better if he had never come; which, from the point of view of some of them, was true enough. So that nothing might be lacking, Dormer, ex-editor of the *Argus* which had once been Solomon's, blamed him, as a pro-Boer author of the Pretoria Convention, of being in a measure the cause of the present discontents! Nor was the Progressive press slow to spread the tidings throughout the Colony and even to London, that "Chief Justice de Villiers has left for the Transvaal on, as most people suppose, a secret mission to the Pretoria Government. It is believed that he has gone at the express instance of Mr. Hofmeyr. Cape Ministers are amazed at the Chief Justice's action." Rumours were also abroad that he had gone north to prepare the way to the presidential chair, a reminiscence of his actual adventure in 1892. He was, indeed, charged with most crimes short of the authorship of original sin, for he had been caught between the opposing forces which were waging a press-war of extraordinary bitterness. "Amenities such as these," he presently told the Legislative Council, "I am apt to regard as being used in a Pickwickian sense, but it did occur to me that if such was the attitude of some of the Transvaal papers to a comparative stranger, what treatment would be meted out to a government and people whom they hold in avowed contempt."

So the clamour against him continued through the last days of March. It mingled with, indeed it was really only a part of, the press campaign for and against Kruger's administration. The press in the Colony and certain newspapers in London were violent; but those in Pretoria and Johannesburg, sponsored

¹ Steyn to de V., March 29, 1897.

directly or indirectly by the government, corporations or wealthy individuals, were infinitely worse. De Villiers spoke the truth when he told the Legislative Council that "the chief obstacle in the way of a better understanding . . . is the bitterness of the press on both sides." Kruger took the *Uitlander* press seriously. Thanks to the franchise laws, it was the only regular vehicle of *Uitlander* opinion; and it played upon the fears and prejudices and hopes of an unstable people, who were still supposed by the authorities to possess the balance of 18,000 rifles which had not been given up after the Raid. The government searched mines diligently for the imaginary arms.¹ Meanwhile, the *Uitlander Star* and *Critic* bayed defiance at the snarls of the pro-government *Rand Post* and *Standard and Diggers News*. At last Kruger suppressed the *Star* and the *Critic*. The proprietors of the former promptly appealed to the Colonial Secretary against this suppression, as a breach of the London Convention.

The appeal was well-timed. On March 6th Chamberlain had drawn the attention of the South African Republic to its breaches of the Convention, each small in itself but threatening to amount in the aggregate to the proverbial gap through which a coach and four, or rather a trek-waggon and sixteen might be driven. Towards the end of March, he had followed up the despatch by two speeches; one delivered at a non-party dinner given in honour of Sir Alfred Milner, who was to succeed Lord Rosmead as High Commissioner; the other at the Imperial Institute, again in Milner's presence. He had spoken of the South African situation in tones of anxiety and had called for general support in maintaining Convention rights and the position of Great Britain as paramount power.

Taken by themselves the speeches were not unreasonable. The two Republics had just formed an offensive and defensive alliance and had at last provided for a federal council, which must draw the two states closer together and therefore the Free State away from the British colonies. A certain section of the Cape Bondsmen advocated co-operation with the Republics and thus recalled the days, in the early 'eighties, when the Bond had aimed at becoming a pan-Afrikaner association on an anti-British basis. But the speeches could not be taken by themselves. They were read in Pretoria and in other parts of South Africa in the context

¹ Sape to de V., April 7, 1897.

of Chamberlain's behaviour towards Schreiner before the Committee of No Inquiry into the Raid, the suspicion that he had known more of the Raid than was right and proper, his avowed desire to press on a general settlement of South African affairs, his selection of a new and unknown man to effect that settlement, and, above all, the uproar in Great Britain and South Africa that heralded the return of Rhodes to Cape Town.

Rhodes had done unexpectedly well before the Raid Committee. The Cape Progressives and their London friends were determined to reinstate him as Premier of the Colony, provided he would come out into the open as a Progressive. Garrett had accompanied him to London preaching the true Progressive faith to a morose and irritable listener. But Rhodes kept his own counsel. He felt that it was part of the Bond which had broken with him, not he with them; he still cherished hopes of being able to work with the Dutch as well as with the English. The Chosen People might have turned away for the time being, but Samson was not yet fallen into the hands of the Philistines.

The Philistines were determined to capture him. They were also determined that no possible competitor for the premiership should stand in his way. There was probably only one man in the Colony capable at the time of forming a ministry which would rally to it the moderate mass of Dutch and English. That man was the Chief Justice. De Villiers had notoriously proposed to return to active political life several times during the past five years. He was dangerous, and must be eliminated. Even if he was not, after all, contemplating a descent from the bench, his elimination would serve to advertise Rhodes.

Rhodes sailed on April 3rd, and on the 5th the *London Times* put down its barrage on Wynberg House to cover his advance. De Villiers was preparing, *The Times* declared, to fight Rhodes for the premiership in a trial of strength between Dutch and English. His visit to Pretoria was connected in that wonderful organ, "the public mind," with the formation of an "anti-Rhodes coalition with President Kruger as an outside member." The coming general elections, in short, would perhaps involve the issue of British supremacy in South Africa. At first de Villiers could hardly believe his eyes but at last he saw the wild accusation was serious. As Chief Justice he was naturally hampered in any political controversy but Parliament had just assembled and,

as President of the Legislative Council, he could speak his mind. He arranged with a friend to give him an opening and, on April 9th, he made the most of it :

... I am the person whom the London *Times* considers to be the leader of a political party in opposition to Mr. Rhodes and of a party too which aims at overthrowing British supremacy in South Africa. The association of my name with such a party is so ludicrous that it may well be dismissed with a smile. What pains me, however, is that I should be regarded at all as being in any way associated with party politics. . . . I have never, directly or indirectly, meddled with any purely political question. My only regret now is that I did not speak out at times when it might perhaps have been done to advantage. I should be speaking only half the truth, however, if I did not admit that I regarded Dr. Jameson's raid as an act of treachery towards a friendly State and that I have expressed an opinion to that effect. As one of the framers of the Convention with the South African Republic I cannot regard a deliberate breach of it by either party to it as a light matter, but I have never been able to recognise the right of a Premier of this Colony, acting in his capacity as director of a group of commercial companies, to punish the Republic for its alleged breaches of the Convention. . . . In candour also I ought to admit that at certain critical times I have been approached by politicians of different shades of opinion asking me to place myself at the head of a moderate party with a view to the peaceful union of the different Colonies and States of South Africa. Whatever hopes might at one time have existed of such a union have been dispelled by the recent deplorable events, and, without such an aim to strive after, political life would have no attractions for me. . . . I have seen Mr. Dormer's letter which . . . is not quite fair in throwing on me part of the responsibility for the present state of affairs in the Transvaal. The terms of peace had already been agreed upon when I was appointed one of the Commissioners to settle the details of the retrocession. My share of the responsibility consists in this, that I always loyally adhered to the terms of peace. In doing so I was not influenced by any political motives but by the firm belief that the terms of peace were intended as a reality and not a sham. The third part of the honourable members' question relates to . . . my recent mediation. . . : There is not a particle of truth in the statement that I went to Pretoria at the instance of Mr. Hofmeyr. . . . He knew nothing of my intended departure. The crisis was the most serious which had occurred in the Transvaal since the war of 1881. . . . I firmly believed that both parties had acted on honest convictions, and I felt constrained by an imperative sense of duty to go to Pretoria. . . . Both parties gladly accepted my media-

tion. . . . The question has been asked whether the New Law (No. 1 of 1897) would authorize the Volksraad to assume judicial as well as legislative functions, and, upon this question, I would only make one observation. If ever the Volksraad should pass a law for the trial, condemnation and sentence of an individual without process of law, as the Governor was advised in Sigcau's case to do by Proclamation, I see nothing in the undertaking given by the judges to prevent them from holding that, independently of the Grondwet, a legislative body has not necessarily any judicial functions. I had a long interview with the President, and I am not without hopes that some good may result from my visit beyond the settlement of the judiciary question. . . . I must express my profound regret that circumstances have compelled me to make this long statement. It is the first time for twenty-four years that a personal explanation on my part has been necessary and I trust that it may be the last time. . . .

That was plain speaking and it had its effect. The Council thanked him "for the great services he had rendered to South Africa"; the non-Rhodesian English press in the Colony declared *The Times* was "foolish to pit Rhodes against him, as Rhodes would suffer in the long run;"¹ from London came the news that many ministers and most of the press approved of what he had said; and from far distant Ottawa, Richard Dobell wrote "men have lost their heads over South Africa."²

The carefully engineered scare that de Villiers proposed to lead the Cape Afrikaners, *Hofmeyr juvante*, to an assault on the British connection gradually went the way of all canards. During April, indeed, the whole political atmosphere became calmer. There were still alarms and excursions. The Colony was alarmed by native unrest in Pondoland and Bechuanaland and, in the far north, the Mashona revolt dragged to its close. The Transvaal's reply to Chamberlain's expostulations at the breaches of the Convention was mischievous; for Van Boeschoten, with all the Hollander official's love of driving in the thin edge of the wedge, went far to claim sovereign independent status for the Republic and suggested the reference of disputed points to Swiss arbitration. The Colonial Secretary was in no mood to listen to talk of arbitration by central European powers. The British Government had, or thought it had, good ground to fear a recrudescence of the danger of foreign intervention in

¹ *Diamond Fields Advertiser*, April 13, 1897.

² R. Dobell to de V., April 10, 1897.

South Africa. Early in April, a strong British squadron was sent to Delagoa Bay to prevent the possible acquisition of a political or semi-political area at that port either by France, Germany or the Transvaal.

On the other hand, there were hopeful signs. True, Rhodes had returned just in time to bid farewell to Lord Rosmead. He had been welcomed uproariously by the Progressives with torch-light processions and cheered to the echo when he declared for "equal rights for every white man south of the Zambesi." He had already promised to fight Kruger "constitutionally," and de Villiers could only conclude that he meant to agitate the cause of the Uitlanders in every available newspaper and assembly hall in South Africa. But he made no effort to follow up his pronouncement. So far from coming out as a Progressive, he indicated clearly enough that he had little intention of taking any serious part in the work of the session, beyond giving a silent vote with the minority against the Bond resolution deprecating hostilities between South African states and urging the maintenance of peace by a strict observance of treaties and a friendly settlement of differences with H.M. Government without the intervention of foreign powers. The usual vote of no confidence in the ministry was next taken and defeated by the casting vote of the Speaker. The precarious life of the Sprigg Cabinet was thus ensured for that year at least.

In the Transvaal, affairs seemed to have taken a turn for the better. De Villiers had seized the opportunity given by his interview with Kruger to urge redress of the Uitlanders' grievances—the franchise laws, the irritating Immigration Law, the dynamite monopoly and the railway rates. On many points he believed he had done some good, though on the franchise question the President had proved obdurate. "The discontented people," Kruger had said, "will not be satisfied until they have my country. If I give them the franchise they may ask the Chartered people to rule over them. Their other grievances we are quite ready to redress if there are any. . . . I intend making full enquiries into these and other matters. . . . But don't be under the delusion that any concessions I can make will ever satisfy the enemies of my country."¹ De Villiers had also asked Leyds that laws which irritated the Uitlanders without benefiting

¹ *Cape Times*, Feb. 12, 1898.

anybody, such as that compelling the use of Dutch in certain commercial transactions, should be dropped.¹ Leyds had suavely replied that the new language law had been prepared under the instructions of the Volksraad itself, which had received petitions on the subject; hence, there was little chance of its rejection, though the punishments might be modified. Altogether it was no easy matter to induce both Kruger-Spenlow and the Volksraad-Jorkins to move in the right direction; wherefore, de Villiers called upon President Steyn to exercise judicious pressure. Steyn replied that he had already done so in the conversations leading to the treaty of March and promised to persevere:

M. T. Steyn to de Villiers.

Bloemfontein, *March 29, 1897.*

... I fully agree with you that the Dynamite Monopoly and railway charges are real grievances, altho' at the same time I think that, if the Gold Companies were not so criminally wasteful, these grievances would not be felt so very keenly. . . . As regards the Railway rates (Kruger) answered me that the charges for coal are to be considerably reduced. He is only awaiting the decision of the Directors in Amsterdam. . . .

On the Dynamite Question he is very obstinate. He says that all profit up to now has been used for enlarging the factory, and as soon as dividends are paid he is going to reduce the price. . . . The old President has, it seems to me, a fixed idea that he ought to assist all kinds of factories. . . . "They have cut me off from the sea. I must create a market for the produce of my burghers in my own country." These are not exactly his words, but his idea put into words. . . . I shall again lay my views before the President. I cannot however flatter myself that my views will have greater weight with him than yours. . . .

The leading Rand capitalists were also anxious for peace and quiet. The huge development of the mines, begun in 1895, was reaching its climax and politics were bad for business. They knew, moreover, that a weak, cheap government, which taxed lightly, suited their purposes, and the judges' crisis had shown them how rickety the Kruger administration really was. The Chamber of Mines desired a general rapprochement between the Government and the industry which might include its own amalgamation with the Association of Mines. The President met their advances half-way. The *Star* was allowed to blaze

¹ de V. to Leyds, March 19, 1897.

forth once more as the *Comet*, the *Critic* confessed, what no one had hitherto doubted, that it was the *Transvaal Critic*, the High Court set aside the decree of suppression, and the *Star's* appeal to the Colonial Secretary was withdrawn.

Kruger went further. He declared publicly that the mining industry was the financial basis of the state and appointed a strong Industrial Commission under the liberal Schalk Burger to investigate the economic grievances of the Rand population. The Association of Mines showed no signs of uniting with the Chamber; but both agreed on what the Uitlander grievances really were, a happy unanimity which, as a Johannesburg friend wrote to de Villiers, they celebrated by reducing native wages and proposing to reduce those of their white employees. As to the grievances, "can you," wrote de Villiers' correspondent, "put in a word with the President to come half-way on at least some points?"

De Villiers had already written once more urging Kruger to remedy genuine grievances and, above all, to hasten the fulfilment of his promises to the judges.¹ The reply was curt but encouraging as far as it went. Kruger hoped for good results from his commission and as to the judges "In my addresses to the Volksraad," he wrote, "I have already urged the necessity for the appointment by it of a committee to regulate the Grondwet in the manner promised by me to you. . . ."² Whether or no de Villiers' letter gave the final impetus, the fact remains that, on April 29th, the Executive Council resolved that the President should ask the Volksraad to appoint a commission to draft proposals for the revision of the constitution.

It was under a clearing sky that Sir Alfred Milner landed on May 5th and took the oaths of office at the hands of de Villiers. The British squadron had departed from Delagoa Bay, the industrial commission was sitting in the Transvaal, the revision of the Grondwet was presumably about to be undertaken, the Bond Congress had just declined to co-operate with the federated Republics, and de Villiers, so far from showing any signs of tampering with the British connection, was making his preparations to go to London to attend the Diamond Jubilee celebrations and to take the oath of a Privy Councillor.

¹ de V. to Kruger, April 24, 1897.

² S. J. P. Kruger to de V., April 28, 1897 (de Villiers' translation).

CHAPTER XVIII

THE PRIVY COUNCIL

THE arrival of Sir Alfred Milner was regarded with mixed feelings by the Cape Colonists. The extreme Bondsmen stood gloomily aloof, suspicious of the Imperial Government and all connected with it; the Progressives hailed the new High Commissioner, with an enthusiasm which he found embarrassing, as the strong man who was to straighten out the South African tangle. The general feeling was to give the new man his chance. Nevertheless many including the older moderate leaders were uneasy. Men like Merriman, Sauer and Hofmeyr were loyal British subjects; they regarded Kruger and his régime as a danger to the liberties of South Africa but they disliked and feared the new Imperialism. They remembered that Carnarvon had sent a man without previous experience of South Africa to hurry through his scheme of federation. Now Chamberlain was sending another. Frere had come from India; Milner came from Egypt, an African India. Frere's task had been made impossible by a policy towards the Transvaal over which he had had no control; Milner's hands were tied in advance by the Transvaal policy of others. If Carnarvon's efforts had led to disaster in the comparatively simple South Africa of 1875, they dreaded the results of the more strenuous methods of him whom his enemies called Pushful Joe in the economically complex South Africa of 1897.

De Villiers shared these fears to the full. Rhodes also, he knew, was determined to pick up the threads which had been torn from his grasp in the New Year of 1896. He dreaded lest Milner or Rhodes, or both, should try to push their policies forward with that fatal haste which, in days gone by, had driven Colley to his death at Majuba and himself to the dreary negotiations at Newcastle and Pretoria. For the obstacle in the way of

both policies was still the Transvaal. His anxiety was redoubled by the warnings of friends in London. Most of these political friends were Liberals of that group which had never forgiven Chamberlain for splitting the party on the Home Rule issue and who were genuinely alarmed at his forward foreign and colonial policies. Part of their hate and suspicion inevitably extended to the Colonial Secretary's nominee in South Africa. Frederic Mackarness, Liberal member for Newbury, put the matter quietly but anxiously. "Matters," he wrote, "are drifting steadily into a condition, of which the only outcome can be war. I really believe that Chamberlain has been anxious to avoid it; but Boer legislation in one direction and the absence of it in another, have not made things easy for him. . . . Chamberlain is not a man to do the thing by halves. . . . A continued attitude of *non possumus* will compel intervention from here."¹ P. A. Molteno, son of that Sir John who had waged bitter warfare with Frere and Carnarvon, was much more outspoken :

P. A. Molteno to de V.

10 Palace Court, W., *April 2, 1897.*

. . . I am now doubtful whether even the Cape and Natal Parliaments will prevent Mr. C. from following his policy—he evidently thinks it is now a matter of high Imperial policy . . . and that the colonists are not fit to give an opinion. . . .

The fear is double—one that a strong military power like Germany having a footing there in South Africa may with the aid of one state like the Transvaal also well armed be a serious menace to South Africa as an English possession and that it is best to face the thing in an early stage and stop it. . . . Then there is the second fear, that is that if nothing is done for the Uitlanders they will eventually be strong enough to get their own rights and will then form a republic with huge resources and hostile to England. . . .

I am told that Mr. C.'s colleagues at present refuse to go to war . . . but this tension cannot go on—Kruger needs some wise advice and wise advisers and now Leyds is gone he may chance on some good man but if not then we are certain to have war.

War is Rhodes's game. . . . I am told Rhodes had what purported to be a secret treaty between Transvaal and Germany which he showed to Chamberlain but Lord Salisbury refused to let it be brought out as he will not have our relations with Germany embarrassed—Garrett of the *Cape Times* wrote out openly saying they

¹ F. Mackarness to de V., May 7, 1897.

meant to have war with the Transvaal. I want you to know all this so that you may see how serious is the position and may think over what can be done to prevent it. . . .

I have written Innes, Merriman, Sauer, Schreiner, urging them to combine together. . . . Sir A. Milner is an intelligent, able, and courteous man, but what man can grasp the South African problem straight off and also who will trust a stranger in times of crisis? . . .

Those letters alarmed de Villiers. His nerves were raw and shaken by the physical and mental strains of the Pretoria negotiations and the Press attacks which had accompanied and followed them. Then had come Rhodes and, hard on his heels, the new High Commissioner. The opinion of his friends in Cape Town made him still further suspicious. Merriman, coming away from his first interview with the Governor, told him and Hofmeyr that the new man meant trouble. Worst of all, Lady de Villiers failed to approve of Sir Alfred politically. Her opinion, especially in matters of human nature, always weighed much with de Villiers and, cursed as he was with increasing ill-health, he was especially dependent on her now. From the first and for the first and last time relations between Government House and Wynberg House were chilly. Milner for his part was prepared to be cordial; but he was an austere, self-contained man, like de Villiers himself. The two men lacked easy points of contact. It was a matter for regret, for de Villiers' prestige and moderating counsel might have been invaluable to the High Commissioner in the trying times that were coming. Milner did make one effort to secure his help. De Villiers proposed to sail for England early in June. Before doing so he sent Milner a copy of the notes of his recent interview with Kruger which he had made before leaving Pretoria, partly to show him what he had actually done in the north, partly to forewarn him of Kruger's state of mind. Milner replied in a long letter which reveals his point of view and the policy which at that time he was prepared to adopt:

Sir A. Milner to de Villiers.

Government House, Cape Town, *May 31, 1897.*

(Confidential)

DEAR SIR HENRY DE VILLIERS,

I have read with great interest the notes, which you were kind enough to send me and which I return, of your conversation

with President Kruger. There is certainly nothing in your remarks, to which from my point of view it would be possible to object. I am speaking now, less of your attitude with regard to the decision of the High Court (I am not sufficiently acquainted with the laws of the Transvaal to be able to form an opinion on that point) as of your more general observations on the unhappy differences which have arisen in the Transvaal and between that country and H.M.'s Government. All that you said on this subject appears to me to have been animated by a spirit of impartiality and a hearty desire to promote a better mutual understanding.

There is one remark of the President's on which I should like to comment. At one stage of the interview you say that he recounted at great length the acts, which he thought showed an unfriendly attitude on the part of H.M.'s Government. I own that I feel some difficulty in imagining what those acts could have been, especially in recent times. I am well aware that there have been hostile and unjustifiable acts, deplored and condemned by the British Government, on the part of individual Englishmen. The resentment caused by them is natural, and I make every allowance for it. But, as between the two Governments, it is my firm conviction that, to impartial judges, the balance of unfriendliness would not seem to be on our side.

But, be that as it may, I should like to bury the past. If we have old grounds of complaint, I, for my part, should be willing to forget them. What I care about is the future. How are we to deal with the differences, and there must be differences, which may hereafter arise. Is it to be in a spirit of quarrelsomeness, or with an earnest mutual desire to find a way out, not by appeal to third parties, but by trying as far as possible to oblige one another?

For my own part I should like to make the President an offer. Here I am—an absolutely new man—who, having taken no part in South African affairs hitherto has no old scores to wipe out or old blunders to live down. There is no reason why he and I should not deal with one another in a spirit unembittered by the conflicts of the past.

And I say at once, if in my time acts are done on our side, which the President regards as "unfriendly," do not let him allow them to rankle in his mind or cast about how to retaliate. Let him rather frankly and at once bring his grievance before me. I will either give such an explanation as I hope may remove the impression of unfriendliness, or do my very best to get the cause of complaint removed. I can promise not to approach the subject in the spirit of one who should say "Here is something, which annoys the Transvaal. Now let me see how I can make out a good excuse for it and still continue doing it," but rather with a desire really

to get rid of the subject of annoyance unless it was *essential* to the interests I have to defend. And I would ask that the President should deal with any complaints on my part of "unfriendly" acts in a similar spirit. I am bombarded with grumbles from British subjects about this that or the other grievance in the Transvaal. I am not in the least disposed to take up all of them. On the contrary I do not wish to move about anything that does not seem to me a clear and substantial hardship. But even then I do not want to be always referring home, getting instructions to remonstrate, and *creating diplomatic controversies* which keep up friction. My natural desire would be to bring these matters before the President in some more friendly and less formal manner, but then I should hope that he too, on his side, would meet me in the spirit which I have just indicated as guiding myself, should not regard any complaints of mine as wanton or provocative and seek simply to put me off with a plausible answer, but should say to himself "how can I help this man, who wants to live on good terms with me? Let me try to get rid of what he feels to be 'unfriendly' acts as long as they are not really *essential* to the interests I have to defend."

Some day I hope I may meet President Kruger and explain to him in person my point of view. In the meantime there is no difficulty in our communicating with one another, should need arise. We have in Mr. Greene at Pretoria an Agent of ability and tact, who can distinguish between informal representations and the exchange of diplomatic notes. And there are other and even less formal channels of communication, through persons here who are in the President's confidence. All I can say is, my ear is open to any friendly representations on his part. I wish his to be open to mine, and I wish him to realize that my complaints, should I make them, would not be the captious complaints of a man seeking a quarrel, but the straightforward appeals of a man anxious to avert one.—

Yours very sincerely,

A. MILNER.

"Less formal channels of communication" could only mean that the High Commissioner, like Mackarness and other Liberal friends in England, was relying on de Villiers to use his influence with Kruger. Whether it was that de Villiers questioned what those essential interests might be, on which Milner laid such stress; whether it was that he, like Steyn, was painfully conscious that he was not in the President's confidence; whether it was simply that, within two days of the receipt of the letter, he sailed on a five months' visit to England, the fact remains that he did not reply to the High Commissioner's letter. So on Milner's side

was bred the distrust that prevented him from ever discussing politics alone with his Chief Justice.

Distrust was in the air of South Africa in the middle of 1897. De Villiers found that all was not well between Kruger and Kotze and, what touched him more nearly, between Kotze and himself. Towards the close of April he had discussed with Kotze, who was on holiday in Cape Town, the legal changes necessary to carry out the arrangement made with Kruger in March. De Villiers hoped that the revised Grondwet embodying the "arrangement" would be accompanied by redress of Uitlander grievances; for he knew that if the present restricted franchise were carried over into a revised constitution, it would take more than a judges' crisis to secure its alteration.¹ He therefore wrote to Kruger urging him to deal with both questions.² He even regarded the redress of Uitlander grievances as the more important of the two steps, for he questioned the value of a revised constitution as a check on unsound legislation in the absence of a healthy public opinion. Not so Kotze. He held that a revised written constitution was essential to the safety of the State. He was set upon the speedy introduction of the promised legislation entrenching the Courts and the Grondwet. He was moreover annoyed at articles which had appeared in the Press from the pen of Hofmeyr animadverting on his claim to exercise the testing right and he wrongly suspected that de Villiers had inspired them.³ He therefore talked of publishing the letters which had passed between de Villiers and the judges at Pretoria and, only when de Villiers pointed out that the letters must be taken in the context of conversations with the judges of which no record had been kept, did he agree to consult his colleagues before doing so. So Kotze departed to attend the opening of the Volksraad on May 3rd and, *à propos* the President's reference to the coming reforms in his opening speech, reminded Kruger that the essence of the "arrangement" was the inclusion in the Grondwet of guarantees for the independence of the Bench and against the hasty alteration of the constitution.⁴ He sent de Villiers a copy of this letter intimating that he would shortly

¹ J. Bryce to de V., July 29, 1897.

² de V. to Kruger, April 24, 1897 (*vide* p. 304).

³ Kotze to de V., April 26, 1897.

⁴ Kotze to Kruger, May 6, 1897.

return to Cape Town and that, meanwhile, the judges reserved the right to publish the correspondence.¹

Kotze returned to Cape Town immediately to finish his holiday but he did not renew his discussions with de Villiers. On the other hand, he had a long conversation with Rhodes, who explained that he had stationed Jameson on the border in 1895 to prevent the creation of an Uitlander republic and generally convinced him that he was not so black as he had been painted. De Villiers meanwhile, still under the impression that Kotze was in Pretoria, decided to withdraw his objection to the publication of the March letters provided they were published side by side with his conversation with Kruger.² He therefore sent a copy of his notes to the Governor to receive his *imprimatur*. It was only on May 29th that a chance meeting with Kotze, on the Pretoria train between Salt River and the Paarl, gave him an opportunity of withdrawing his objections to publication. He then promised to send him a copy of the Kruger interview, and this he despatched on May 31.

On the same day, in response to a letter from the Executive Council, the Volksraad resolved to appoint a commission to help the Government draft proposals for a revision of the Grondwet and the safeguarding of that instrument against hasty alteration, and to arrange, amplify and define the existing laws of the Republic. Kotze was furious. If this comprehensive programme were to be carried out first, the legislation which he desired would hardly be speedily forthcoming. Besides, he held that the arrangement had been that the President was to submit the necessary measure to the Volksraad during the session of 1897 and he was now doing nothing of the sort. Two days later he telegraphed to that effect to de Villiers, warning him that he was about to discuss with his colleagues the withdrawal of their promises given to the President not to exercise the *toetsingsrecht*; in other words, to return to the position as it had been before de Villiers' intervention.³ The message reached de Villiers at the ship's side just in time to alarm him. He held that Kruger would still be keeping his word if he introduced the legislation in 1898—and Kotze himself was willing to wait for definite

¹ Kotze to de V., May 7, 1897.

² de V. to Kotze, May 24, 1897 (Draft).

³ Kotze to de V., June 2, 1897 (Telegram).

legislation till 1898¹—that he was within his rights in referring the matter to a commission before introducing it to the Volksraad and that there was no reason why that introduction should be delayed till the more ambitious portion of the commission's programme were completed. All he could do was to counsel Kotze not to force the pace. "Just leaving," he wired, "would it not be well to see what alteration Committee makes. Read notes of my interview."²

He sailed for England agitated by doubts as to the intentions of the High Commissioner and Rhodes, and now of Kruger and Kotze. During the next few weeks, however, he had other and more pleasant thoughts with which to occupy his mind. The mail-boats were full of South Africans going to see the pageant of Empire with which the sixty years of Queen Victoria's reign was to be celebrated. London was so full of visitors that he and his wife were glad to accept the hospitality of friends till they could get their "usual rooms" at the Hotel Windsor. For them, the event of the year came after the public celebrations were over. On July 7th de Villiers travelled down to Windsor to take the stately oath of a Privy Councillor at the hands of the Queen herself—"You shall not know or understand of any manner of thing to be attempted, done or spoken against Her Majesty's Person, Honour, Crown, or Dignity Royal: but you shall lett and withstand the same to the uttermost of your Power. . . . And generally in all things you shall do as a faithful and true Servant ought to do to Her Majesty." He took the oath and he kept it.

He was then called upon to take his seat and to deliver judgment on behalf of the Judicial Committee.³ It was an honour which he had long coveted; but he was the first Colonial judge to enter the charmed circle and, as he told his wife, he felt like a schoolboy going to a master's meeting. He set out in trepidation and returned in triumph. He had met with nothing but cordiality from his fellow councillors. He was known to all of them by reputation; the confirmation of his Sigcau judgment was fresh in their memories and his. Some were already his personal friends. Lord Hobhouse had delivered judgment, long

¹ Kotze to Kruger, Feb. 5, 1898, and *Cape Times*, Feb. 14, 1898.

² de V. to Kotze, June 2, 1897 (Telegram).

³ *Gauder v. Dassenaiké*, a Cingalese appeal (July 31).

ago, upholding his decision in *Merriman v. Williams*; as an advanced Liberal he had had much to discuss with him on his previous visits to London. Above all, there was Lord Davey, twice Solicitor-General under Gladstone, whose extremely judicial mind had proved him such a poor seeker after votes that he had been obliged to abandon politics—a fate which de Villiers could well understand. On the legal side, Davey was a man after de Villiers' own heart, widely read in the Scottish law which has so much in common with the Roman-Dutch, the true successor of Lord Selborne as the champion of equity. With two such friends to support him, de Villiers soon found himself at home among the group of elderly gentlemen who sat round a plain table to decide, without pomps or ceremonies, the judicial affairs of an Empire on which, as the world has been repeatedly informed during the past few days, the sun never set.

The flow of party-coloured news from South Africa to London slackened off in the middle of the year. De Villiers seized the opportunity to fill the gap with information of a more wholesome character. He was now a Privy Councillor and as such entitled to give advice to his Sovereign Lady and to the Sovereign People, if either cared to listen. Hence, immediately after his swearing in, he gave his famous "Go Slow" interviews to the *Daily News*, a Liberal paper whose readers did not perhaps stand in much need of a quiet statement of the facts of the South African situation as he saw them, and to *South Africa*, a financial weekly, many of whose readers most emphatically did. His statement was a political confession of faith:

The present animosities will gradually heal, and even the extreme men on either side will not be able to keep things ever wrong. . . . This one point emphasize: there is not a thought of disloyalty in the hearts of the Dutch of Cape Colony. . . . The Cape people look forward to the time, which is surely coming, when all South Africa shall be harmoniously united under the British flag. But such an end can only come gradually. The Dutch are a slow-moving race, and it is useless to attempt to rush them. The future of South Africa belongs, I believe, to the moderate men of both parties. Some extremists may be trying to make war, but what would be the result if they had their way? The Transvaal Government might be wiped out, but a South African Ireland would be created, to be ever a thorn in the side of England. Better wait, and let time bring re-union with peace.¹

¹ *Daily News*, July 7, 1897.

The weeks went by and his hopes rose as he travelled with his wife to Scotland and thence to Paris and back again to London. No news, good or bad, reached him from Kotze. Presumably he was satisfied with his explanation of his doings during the judges' crisis ; at any rate, his differences with Kruger had not widened into a breach. Such Transvaal news as there was was good ; gold shares were booming and, to celebrate the Diamond Jubilee, the President had released the two remaining Reform prisoners and sent his congratulations to the " Kwaaje vrouw " at Windsor.

Nor did the High Commissioner seem to be in any haste. True, in May, he had shown that he took a high view of the position of Great Britain in South Africa and had alarmed Steyn with talk of the paramount power ; but otherwise he had shown himself conciliatory, learning Dutch and travelling through the Colony expressing himself satisfied with what he saw. " I never had any doubt," commented de Villiers to Loch, " that this would be his verdict after mixing with the people. The Jubilee festivities may have contributed to strengthen that loyalty but they were not, even in part, as Sir Alfred Milner seems to think, the cause of it." ¹ Thence the High Commissioner passed through the Free State, where he had reassuring conversations with Steyn ; and so, prudently omitting a visit to the Transvaal for fear of " Loch demonstrations " he journeyed on to Basutoland.

Rhodes also was proceeding cautiously. So far he had not committed himself to any definite course of political action. For a year past, he had been developing the new De Beers dynamite factory at Somerset West and his fruit farms in the Drakenstein Valley near de Villiers' own newly acquired farm of " Rust en Vrede " ; now, he was interested in the sugar of Natal and De Beers was helping to exploit the Natal coal-fields. In Southern Rhodesia, he was encouraging land settlement and setting a good example by himself taking up two large blocks as cattle-ranches. As soon as he could he went north, in the middle of June, to his Rhodesians.

At the close of July, however, the political sky was once more overcast. The Committee of No Inquiry issued its inconclusive report, Chamberlain " whitewashed " Rhodes in the Commons, and Kruger indulged in a furious outburst against the Raiders

¹ de V. to Loch, Oct. 2, 1897.

and the Colonial Secretary. Then came the report of the Transvaal Industrial Commission. It was an honest and courageous declaration that, as touching the dynamite and railway monopolies, high import duties, maladministration and corruption, the complaints of hostile critics and candid friends were justified. Unfortunately, certain organs of the Uitlander Press hinted strongly that, whatever action was taken on it, the agitation against the Government would continue. Worse still, in October, Chamberlain, in reply to van Boeschoten's "independence" despatch of April, imported the vague and gratuitous word "Suzerainty" into an otherwise unimpeachable statement that Great Britain retained a hold upon the Transvaal's foreign policy. The High Commissioner vainly sought to explain away the indiscretion of his chief. The word redoubled the suspicions to which his own talk of paramountcy had given rise in both Republics.

De Villiers thus returned at the end of October to a South Africa in which a storm was once more rising. In face of the suzerainty despatch, the Uitlander clamour and the industrial commission's attack on his cherished dynamite monopoly, Kruger retired into his shell. He secured the appointment of a Volksraad committee which seriously modified the report. Nevertheless, railway rates and the price of dynamite were reduced, the weight of the customs duties was better adjusted to the various classes of the community, and a gradual improvement was begun in the administration of the illicit gold law. On the other hand, a new tax of 5% on mining profits gave the final impetus which drove J. B. Robinson and the Association of Mines into the arms of the Chamber. From the end of 1897, the industry presented a united and potentially hostile front to the Transvaal Government.

In November the High Commissioner visited Rhodesia, for, like Loch before him, he wished to find out what Rhodes's plans might be. Rhodes was at first inclined to be chilly towards the representative of the Imperial factor, but he soon thawed. Presently he gave a public indication of the direction in which his mind was working. He had already talked of a permissive federation act to be passed by the Cape Parliament after the elections of 1898, and was arranging with his ally, Escombe, to pilot a similar measure through the legislature of Natal. The

opposition to his plan would come, as in the past, not only from the Kruger party but from the Uitlanders, those "cosmopolitan and untrustworthy" folk, as he called them, who would be loth to relinquish the power to play off Delagoa Bay against Durban and both against the Cape ports. Rhodesia must hold the balance. The arrival of the railway at Bulawayo and the hectic prosperity which he saw in his province induced him to make his famous declaration at Salisbury, that the future of federation lay with the "Dominant North." That speech could only mean that the centre of his hopes and ambitions was shifting from the Cape Colony. It might mean also that he was looking to an alliance with the Uitlanders, who, with all their shortcomings, were necessary for the maintenance of the new rôle he had marked out for the north.

Rhodes was evidently despairing of the old Colony. Hofmeyr was rallying the energies and enthusiasms of the Bond in response to the Progressive propoganda of the South African League. Rhodes's would-be followers were calling on him to come and lead them, for de Villiers' hint in London of a possible moderate party had aroused their fears; but Jameson, back once more in South Africa, and Garrett had cause to lament the immobility of their champion. Rhodes knew in his heart of hearts that reliance on one section only of the European population would lead nowhere. Some of the principal Bondsmen were still well disposed towards him; time and Kruger's tariffs might yet dispel the suspicions of the rank and file. He did indeed authorize large election expenditure, but it was only in January, 1898, that he returned to the Cape, where a trial of strength between the Progressives and the Bond was about to take place for control of the Legislative Council.

Another and still more important election was already taking place. Kruger was standing for re-election as President for the fourth term. His candidature had been accompanied, not only by the controversy over the report of the industrial commission and the suzerainty issue, but by increasing friction with his Chief Justice. After his warning telegram to de Villiers in June that the judges might have to recall their promise given in March owing to Kruger's method of giving effect to de Villiers' "arrangement," Kotze had vainly tried to persuade his brother judges to help him bring pressure on Kruger. They refused and he there-

fore went forward alone, protesting that the President had broken the agreement, in that he had not submitted a draft law but had relegated the task to a Volksraad Committee.¹ The President replied that he was putting a strained interpretation on the agreement and that the changes in the Grondwet specially desired by him could be carried out before the remainder of the report of the Grondwet commission.² The chairman of that commission, indeed, asked for the help of the judges.³ The three who had made no claim to the *toetsingsrecht* agreed to give it; two others avoided the issue; Kotze offered to give advice in writing on the points covered by the agreement but declined to meet any advisory members who had helped to pass the *in terrorem* Law No. 1 of 1897.⁴

In September Kotze protested once more.⁵ The Volksraad session was running on; the Grondwet commission, hampered by the prior claims of the industrial commission, was making slow progress; ⁶ he began to suspect that nothing would be done or ever had been intended to entrench the court and the constitution. In November the Volksraad dispersed. No draft had been submitted to it by the President and Kotze held that the March agreement was irretrievably broken. Worse still, from de Villiers' personal point of view, he conceived that de Villiers had come to Pretoria in March with ulterior motives; that he had been supporting the President against him; that he had misled him in March as to the time limit fixed for the introduction of the necessary legislation. A garbled account of what de Villiers had said in one of his newspaper interviews in London added fuel to the flames and, on de Villiers' return from England, he publicly attacked him for his views on the constitutional issue. But his immediate quarrel was with the President. He wrote once more in protest in December and received no reply.⁷ At last, early in February 1898, after Kruger had been re-elected by an overwhelming majority, he frankly told him that he regarded the March agreement as lapsed.⁸

¹ Kotze to Kruger, July 8, 1897.

² Van Boeschoten to Kotze, July 16, 1897.

³ A. D. Wolmarans to Kotze, July 14, 1897 (Telegram).

⁴ Kotze to Wolmarans, July 27, 1897.

⁵ Kotze to Kruger, Sept. 10, 1897.

⁶ Gregorowski to de V., March 3, 1898.

⁷ Kotze to Kruger, Dec. 15, 1897.

⁸ Kotze to Kruger, Feb. 5, 1898.

The President made no move for some days. De Villiers, however, heard of the struggle that was going on in Pretoria. In view of Kotze's unexpected statement in November and the attacks which were again being made upon him in the Progressive Press in the Colony and in London—had he not hinted at the formation of a moderate party?—he published the notes of his interview with Kruger.¹ "The best way," he wrote to Kotze, "of meeting these attacks was to let the world know what did pass between the President and myself at Pretoria. . . . All this relates to the past. As to the future I am still in hopes that better counsels may prevail on both sides. Of this you may be quite sure that however much you may have misjudged me I shall stand by you and your colleagues if the President does not fulfil his promise."² But it was precisely on the interpretation of that promise that he and Kotze differed; and, now that the Kruger conversation had been published, Kotze replied by accusing de Villiers of having misled him in March, and publishing the correspondence which had passed while de Villiers had actually been in Pretoria, but omitting his letter of invitation on the ground that it had not reached de Villiers before his departure for the north. On the very day that de Villiers wrote, Kruger abruptly dismissed Kotze. "This, your declaration of March 19th, 1897, cannot and may not be considered as a contract. No agreement can be entered into by a judge with regard to the laws which he shall or shall not apply. The declaration required by the law must be absolute."³ In other words Kruger had at last put Law No. 1 into force and dismissed his Chief Justice. Kotze, amazed at the President's denial that there ever had been any bargain, protested once more that Law No. 1 was invalid and then stepped down from the bench which he had adorned for twenty-one years, declaring the High Court adjourned *sine die* and appealing once more to the sovereign people.⁴ Judge Ameshoff voluntarily followed him into the wilderness and Judge Gregorowski was appointed Chief Justice in his room.

It was well for the stability of the Republic that Kotze's adjournment of the Court was disregarded. As it was his dismissal and the appointment of the hanging judge of the Reformers'

¹ *Cape Times*, Feb. 12, 1898.

² de V. to Kotze, Feb. 16, 1898.

³ Kruger to Kotze, Feb. 16, 1898.

⁴ Kotze to Kruger, Feb. 17, 1898.

trial in his stead were received with a cry of dismay by the Uitlanders. To them the order of his going was the last move in a long-continued assault by an unsympathetic Executive upon the bench, the bulwark of voteless subjects. The Johannesburg bar and side bar resolved that the State was shaken by his dismissal and that no member of either body ought to accept office as a judge so long as Law No. 1 disgraced the Statute book. In the Colony, the dismissal was greeted with a roar of anger mingled with jubilation by the South African Leaguers; there was talk of an appeal to Great Britain and a crowded meeting at Cape Town passed a truculent vote of sympathy with the dismissed Chief Justice.

The news of the disaster reached de Villiers in a hurried note from Garrett of the *Cape Times*. "Kotze dismissed; Gregorowski chief justice! Here's a pretty kettle of fish. . . . They say (rumour says) you left for Pretoria yesterday. Do you really think of going? . . . I conceive . . . you greatly regret the precipitate act of the Exec. Council. . . . Would you care to say anything in any form?"¹ Garrett loved to pull the legs of the mighty without any real malice; besides, de Villiers on Law No. 1 was first-class copy. His attempt to draw the Chief Justice failed for the moment. De Villiers had said all he could say and, as for going to Pretoria, what was the use? The storm which he had averted in March had burst after all. Owing to what he considered precipitancy on Kotze's part (and Garrett was at one with him on that score), Law No. 1 had been set in motion and, to add to his troubles, he and Kotze had quarrelled. He was however soon forced to break silence. News reached him that the President apparently regarded the March agreement as no agreement. He replied in an open letter:

. . . I can only say that the declaration made by the Judges was subject to an understanding which was equivalent to a condition. . . . I induced (the Judges) to surrender the doubtful testing power, as to which the Judges did not agree among themselves, in consideration of the certain advantages which the country would derive from a measure guaranteeing the independence of the Bench, and providing a proper Constitution. . . . There was no contract, in the legal sense of the term, but the promises made were in honour binding on both sides. . . .²

¹ F. E. Garrett to de V. (Feb. 16, 1898). ² *Cape Times*, Feb. 22, 1898.

He also wrote in protest to the new Transvaal Chief Justice. Gregorowski's reply was reassuring :

R. Gregorowski to de V.

March 3, 1898.

. . . Many thanks for your kind letter. Under the circumstances the advancement is hardly a matter for congratulation. . . . The President's interpretation of the letter of the Judges is that they unconditionally undertook to observe the requirements of Law No. 1, 1897, while he on his part incurred a separate obligation to which he is still bound. . . .

De Villiers might still hope that something would be saved from the wreck but in the event, whatever Kruger's intentions may have been, the courts and the constitution remained unentrenched. Meanwhile Kotze, having accepted a purse subscribed mainly by Uitlanders as a token of esteem for his past services as a dispenser of impartial justice, returned to the Colony. In the vitiated political atmosphere of the times enemies declared that they smelt the gold of the Chartered Company in the purse ; but, as South Africans were developing a keen scent for either the gold of Rhodes or of the Transvaal Secret Service in the pockets of opponents, the suspicion may go for what it is worth. In Kotze the Transvaal lost a good judge and de Villiers a friend. He and Kotze were reconciled in after years but, at the time, Kotze resumed his old practice at the Eastern Districts Court rather than at de Villiers' Court at Cape Town. So in Grahams-town he remained till August 1900, when he became Attorney-General of Southern Rhodesia.

CHAPTER XIX

THE BLOEMFONTEIN CONFERENCE

THE Kotze incident served to inflame the struggle between the Bond and the Progressives for the control of the Legislative Council. Much depended on the result. If the Progressives were successful, one great obstacle would be removed from the path of the bill they hoped to carry in the coming session redistributing the seats in the Assembly in such a way as to reduce the advantage which the predominantly Bond rural constituencies enjoyed as against the Progressive towns. Redistribution, followed by a general election, would then probably give both Houses to the Progressives and ensure the official support of the Cape Colony for Rhodes's permissive federation bill and for any pressure which the High Commissioner might propose to put upon the Transvaal.

In the last resort, the success or failure of any federal scheme lay with Kruger's Republic. De Villiers and his friends were painfully conscious of that fact. They were equally aware that that Republic laid itself open, almost wantonly, to attack and thereby made the task of its would-be friends and defenders almost impossible. Merriman as usual put their words most clearly. "I do not attach," he wrote to Steyn, "so much importance to the Kotze incident. It has very little sympathy outside the Jingo Press; but the radical fault is the utter incapacity of the body that affects to issue its mandates to the Courts. It is a narrow oligarchy."¹ It was hard to reply to Rhodes when, stung by Steyn's warning to his burghers to beware of the capitalists who were now ultra-Imperialists but who would turn Republican if it suited their purpose, he launched forth against the Transvaal franchise laws and the subordination of the bench to

¹ Merriman to Steyn, March 11, 1898.

the Executive. It was easier to deny his accusation that the Bond was against unity, equality, and progress, especially as Garrett had hailed the speech as a proof that Rhodes was at last a Progressive. But the Mahdi disappointed his Khalifa by sailing forthwith for England on Chartered Company business.

Rhodes had, however, broken silence. Then, in the first week of March, Milner gave the first unmistakable public indication of what his policy was to be. He had been nearly a year in South Africa and the bitter knowledge had been borne in upon him that he was suspect of the Bond and had failed to gain the confidence of those others, English and Dutch, from whom he had expected support. He was determined to secure such a general settlement of South Africa's affairs as would recognize Great Britain's paramountcy and exclude foreign intervention. And he must be quick. If he made no move, others might take the task out of his hands. Moreover, the European states regarded England's splendid isolation with unconcealed ill-will. Russia on the North-west Frontier and in China, and France in the lands bordering the Nile, furious at British sympathy with Dreyfus, viewed British activities with the indignation bred of jealousy. Germany was ousting her as protector of the Turk and was passing her first Naval Law through the Reichstag. In South Africa, Kruger, heavily armed, was entrenched for another five years of office and Leyds, fresh from the Continent, was urging on the Volksraad the maintenance of a consular service becoming to the dignity of an independent State.

At Graaff Reinet, Milner delivered his famous speech to the Bond. It was a general and more explicit version of the letter which he had written to de Villiers in May 1897, a summons to Cape Afrikanders to urge Kruger to bring the franchise and administration of his Republic into line with those of other South African states. For a flash, too, he showed the iron gauntlet beneath the velvet glove when he declared that Great Britain was not to be frightened from retaining the minimum of control which she had for so long exercised in South Africa. The speech acted as a precipitant. It was essentially a warning that all who are not for us are against us. Men began to choose sides rapidly. In the Colony, the Progressives hailed it as an intimation that they might count on the support of the High Commissioner; the

Bond, the group in which Sauer formed the link between Merriman and de Villiers, and the watchful Republicans beyond the border read it as a declaration that the Imperial policy was now one with that of Rhodes.

The identification of the two policies was a disaster for the High Commissioner. The political aims of the Imperial Government might be distasteful to many South Africans; a flavour of financial exploitation rendered those of Rhodes infinitely more so. "I understand your distinction between Capital and Capitalism," wrote Merriman to Steyn. "We are engaged in a desperate struggle with Capitalism at the Cape. The elections are being run on capital and political debauchery."¹ Those elections resulted in a narrow victory for the Progressives. In the coming session de Villiers would have to preside over a House wherein the majority regarded him as an opponent.

In spite of his talk of the dominant north, Rhodes still hoped to win over the Cape to the side of federation. Fortune seemed to smile on his efforts. In April, the Free State, allied though it was with the Transvaal, renewed the customs union with the Cape and its offshoots; Natal joined at last; and the Rhodes customs clause was included in the new Order-in-Council regulating the future government of Southern Rhodesia, fixing, as he hoped, the standard of rates for the coming general economic union. Already he had talked of a political federation of the Cape, Natal and Southern Rhodesia; and he now told his shareholders that Southern Rhodesia, with her new and partially elective Legislature, would soon acquire self-government and would then refund the company its administrative outlay.

On May 20th the Cape Parliament met and, throughout the session, fought the issue of redistribution with all the bitterness of an eighteenth-century election petition. The second reading of the bill was narrowly carried; but a vote of no confidence was passed and, at the end of June, Sprigg, strong in the possession of supply, appealed to the country. Rhodes now thrust him aside and came out as a Progressive. He appealed to the electorate on the supremacy issue, the Union Jack against the Vierkleur. Even so, once he was before an audience, his inveterate habit of thinking aloud made him a very poor Progressive. Jameson lamented that "he has done absolutely nothing since he came

¹ Merriman to Steyn, March 11, 1898.

out but go backward," and Garrett, the single-minded enthusiast, was reduced to following him round the country explaining away his ambiguities. For Rhodes was not "always word perfect"—the phrase is Garrett's—and was still haunted by the hope of the Dutch support which du Toit, the whilom father of the Bond, was endeavouring to win for him through the new Colonial Union and *Het Dagblad*. At the end of the campaign, when he saw that neither party could hope for a working majority, he confided to one Bond member that there must be a coalition.¹

The campaign was waged with a fierceness and an expenditure of money hitherto unparalleled in the records of the staid old Colony. The returns were awaited with breathless excitement not only in South Africa, but in London. At last, on October 7th, the new Assembly met. Three days later a motion of no confidence was carried by two votes, Sprigg resigned, and Schreiner, leader of the Bond in Parliament, took his place.

The new cabinet included three Bondsmen, the Premier himself, Herholdt and te Water, and three of de Villiers' friends, Merriman, Sauer and Richard Solomon. De Villiers was thus once more in close and sympathetic touch with the centre of the Cape political world, for Sauer and Solomon came every Sunday to Wynberg House to discuss the political news. The carrying of the vote of no confidence had meant that, as in 1875, the dominant party in the Colony had rejected the policy of federation, for the time being. They, like de Villiers, were anxious to "Go slow." It remained to be seen whether the historical parallel would be reflected by an attempt to hasten federation from the north. All three had little doubt that the attempt would be made.

Early in November, the High Commissioner sailed for England. His place was taken by Sir William Butler, a soldier who had seen the results of a forward Colonial policy in South Africa during the late 'seventies and was actually engaged in writing the "Life" of his unhappy friend, Pomeroy Colley, a task in which de Villiers and General Joubert were able to help him. He had no love for the new Imperialism, especially on its financial side, and he soon learnt from Milner's secretary that Rhodes's fighting tail had, at times, made the High Commissioner's task of governing well-

¹ J. Molteno, *Dominion of Afrikanerdom*, p. 141.

nigh impossible. For the next three months, he preached that South Africa needed a rest cure rather than an operation.

There was little hope that his prescription would be tried. The October session of the Cape Parliament was extraordinarily bitter. The whole Assembly supported the Ministry in voting an annual contribution to the navy, but there unanimity ended. The main business of the session was redistribution. Rhodes, on the first day of public business, set the pace and incidentally insulted the Chief Justice by boasting that he had compelled the police to arrest Sigcau without evidence and had tamed him in gaol in spite of the courts. It is arguable that the knowledge that he could obtain justice in those courts had contributed to the taming of Sigcau; but the meaning of Rhodes's speech was not lost upon his opponents or even his moderate supporters. As in 1895, he was appealing to lawless force as a political weapon. On the redistribution issue, the parties were so evenly divided that no solution was possible till one of the Bond members went over to the Progressives. Sixteen new seats were then created, but in such a way as to give the Bond a fair chance of increasing its majority. Just before Christmas, Parliament adjourned, and Rhodes followed the High Commissioner to London.

If the Bond hoped for but a slight majority as a result of the miniature general election, it was agreeably disappointed. Sixteen new seats had to be filled in any case, but election petitions were pouring in so fast that twenty sitting members were unsteady in their seats. At Vryburg, both Progressive members resigned rather than face the music; in other cases, charges were withdrawn, but many were carried through to the bitter end. De Villiers and two judges heard those petitions which came forward during November and December 1898. One, in which Rhodes was concerned, they postponed for a time; but another case of considerable importance they settled in favour of the successful candidate, on the ground that the test of a man's right to vote was the presence of his name on the voters' roll at the time of an election.¹ Nor would they permit the petitioner to carry an appeal to the Privy Council. In January 1899, however, the old Cape Appeal Court was practically revived by the addition of the Judge President of the Grahamstown and Kimberley courts to the bench of three at Cape Town. Two Progressives of Stellen-

¹ *Crewe v. Botha* (Buchanan, xv. 412).

bosch were unseated, one of whom was Sir James Sivewright.¹ At Barkly West Rhodes and his colleague were in jeopardy, thanks to the folly of an election agent and the excessive ingenuity of one of Rhodes's doctor friends, Rutherford Harris. The two members retained their seats, but had to pay their own costs.² The case, however, which caused most excitement concerned de Villiers' friend Sauer, the elect of Aliwal North. Sauer, with incredible thoughtlessness, had given blankets to half-a-dozen Kaffirs at the close of a public meeting. If Sivewright was to be unseated for the act of an agent, was Sauer to retain his seat after such an act? De Villiers was in a difficulty. He felt that the House of Assembly would survive the loss of the "stainless knight" of Stellenbosch, but that the House without Sauer would be unthinkable. On the other hand, Sivewright's agent had clearly meant to influence a voter; while Sauer had given blankets to men who were either not voters at all or who were known to have voted for him for many years past; his opponents admitted that the natives were solidly for him; above all, he had given his presents openly in a shop belonging to the agent of his opponent and, having no cash at the moment, had cheerfully entered his purchases on the books of the firm. The decision of that case, de Villiers used to say, cost him more anxiety than almost any other in his whole career; but he made up his mind at last that all the circumstances must be taken into account and that it was the intention which decided the nature of the act. Therefore, with the concurrence of the other four judges, some of whom by no means shared his political views, he declared in favour of Sauer, but saddled him with the payment of his costs.³ Those blankets cost Sauer dear in cash; but they also cost de Villiers much. For some time to come, "blankets" became a useful weapon in the armoury of the Progressives, which they could use against the Bond with the pleasurable knowledge that they were also striking at the Chief Justice.

The election petitions were decided at last, and the Bond-Moderate Ministry entrenched at Cape Town amid the clamour of a furious agitation among the Uitlanders on the Rand. Ostensibly, the relations between the Transvaal Government and

¹ De Waal v. Sivewright (Buch. xvi. 30).

² Burton v. Rhodes and Hill (Buch. xvi.).

³ Harding v. Sauer (Buch. xvi. 90).

the Colonial Office were no worse than they had been for some time past. The two authorities still bombarded each other, *longo intervallo*, with despatches on the true interpretation of the London Convention and the existence of suzerainty. That blessed word now assumed more than the merely etymological significance which the High Commissioner had attributed to it.

Since the Raid, the agitation on the Rand had been directed against economic grievances and administrative abuses. It had been conducted mainly by the heads of mining houses, men of all nationalities, frequently supported by French and German newspapers which lamented the inactivity of Great Britain in view of the financial interests at stake. Now, at the close of 1898, just after the failure of the Progressives to capture the government of the Cape Colony, the agitation became once more political. The rank and file of the Uitlanders came to the front, as in the days before the Raid, and this time they were undoubtedly stirred up by outside influences. The Progressive South African League extended its activities from the Colony to Johannesburg and the widespread *Argus* group of newspapers, reinforced by the *Daily News*, which Rhodes's friends had recently acquired in London, began a fierce attack on Kruger's Government, drowning the replies of the pro-Government journals, even of the *Rand Post*, which declared that all critics of the Government ought to be shot.

The attack was concentrated on the maladministration of the laws and the oppression of British subjects in the Republic. The Transvaal had a deservedly evil reputation on the score of administration which its armaments and franchise laws served to emphasize; but, as a matter of fact, the tide had turned. From June 1898 onwards, Kruger had begun to import good officials and to entrust power to good men who were already burghers of the Republic. Ex-President Reitz became State Secretary; J. C. Smuts, a brilliant young Cape lawyer, State Attorney; Piet Grobler, Foreign Secretary; and Kleynhams, a popular and efficient Hollander, Minister of Mines. Not only did these officials strengthen the hands of Schalk Burger and the liberal Boers, but the appointment of men who were South African born, marked the weakening of the "Continental" party at Pretoria, a process immeasurably hastened by the departure of Middelburg, manager of the Netherlands Railway Company. "Farewell," wrote his

successor, "to the hope of a great Hollander Republic in South Africa."

The most dangerous moment in the career of a State with a bad record is when it begins to reform. So it was with the Transvaal. Fiscal reforms, new laws and better administration of old laws began to bring the Republic up to the level of the Colony and the Free State. It was a slow process, for the Augean stables could not be cleaned at a stroke. The question was, would time be given for the process to take its full effect? In November 1898, the South African League and its Uitlander supporters developed a sudden zeal for the interests of Cape coloured folk and British Indians. They ignored the courts and placed the grievances, real and alleged, of the Cape "boys" in the hands of the embarrassed acting-British Agent. As for the Indians, from time to time Johannesburgers had petitioned for their segregation in locations as insanitary neighbours and unfair competitors. Now, when the Government proposed to segregate some of them, the League took up the cudgels on behalf of these dusky Don Pacificos. Then, in the middle of December one, Edgar, man-slaughtered a fellow workman in Johannesburg, struck at a policeman, Jones, who entered his house to arrest him *in flagrante delicto*, and was shot dead. Jones was arrested; but before the trial, the League called a mass meeting of protest in the Market Square. The act was illegal, and the meeting was prohibited. Nevertheless, two Leaguers addressed the crowd, were arrested and discharged. Jones was proved, on police and Uitlander evidence, to have fired in self-defence and was acquitted.

The League laid the Edgar case before the acting-High Commissioner. Butler declined to take it seriously. It then petitioned the Queen, published the petition in advance and was duly wroth when the British Agent, with Butler's approval, declined to forward such a document. Butler, acting on a minute from the Schreiner Ministry, warned the Colonial Secretary not to pay too much heed to the ebullitions of the League and received a testy reply for his pains demanding the proofs of his assertions, while the League organized another monster petition which soon bore 21,000 signatures.

Meantime, Rhodes was busy in London and *The Times* was once more booming federation and the Cape-to-Cairo railway. Kitchener had "smashed the Mahdi," the French had withdrawn

from Fashoda and, as Rhodes had told James Molteno, one of the Bond members, the Imperial Government (or did he mean the Colonial Secretary ?) had promised him that, once the Mahdi was disposed of, it would deal with the other prophet at Pretoria.¹ Rhodes had failed to get the Imperial guarantee for his railway, for Chamberlain was as good a man of business as he ; but a new issue of Chartered shares had been over-subscribed, and he had told his shareholders that the Uitlanders must have their rights.

" I do not know," wrote a London correspondent to de Villiers, " what Mr. Rhodes's plans are, nobody seems to know. He is strong and wonderfully popular here." From de Villiers' point of view that news was bad. Rhodes's speeches meant that he was still cherishing his dreams, tarnished now and hazy at the edges as ever, and that he meant to push hard for the realization of those dreams, relying on friends in London and on the Uitlanders and the Progressives. During the railway negotiations with Chamberlain he had thrown the Cape overboard altogether, since the Schreiner Ministry was still apparently prepared to " allow Kruger to humbug them." Federation must come now from the dominant north, Rhodesia and the Transvaal together, and the Cape might do what it liked. He was relying on force, or rather a show of force, for he was telling the British Government that Kruger would climb down without firing a shot. Had he not told Willoughby, when he had sent him long ago to trail his coat in Beira harbour, that the Portuguese would only shoot him in the leg ?

The question that agitated de Villiers and his friends was, how far did Chamberlain and Milner share Rhodes's opinion ? All three were together in London, and Rhodes would hardly speak so confidently unless he had something to go upon. De Villiers strongly suspected, what was indeed the fact, that the Colonial Secretary and High Commissioner had come to the conclusion that Kruger's more complaisant attitude was due to a display of force and that further force would render him still more complaisant. Not that the force would ever need to be used ; the demonstration would be sufficient. Neither was anxious for a war which would bring no glory and little credit ; for, said Chamberlain, the Transvaal must in any case enter a South

¹ Molteno, *Dominion of Afrikanerdom*, p. 142.

African federation;¹ but, already in August 1898, Milner had asked for more troops and, though these were not forthcoming, the Progressive newspapers in the Colony hailed the usual drafts as the expected reinforcements.

Fair warning reached the Republic from the Cape of the storm which everyone felt rather than knew was beating up. Liberal friends in London urged de Villiers to induce Kruger to make concessions betimes; and, since his visit to Pretoria early in 1897, he had lost no opportunity of seconding Steyn's efforts to achieve that end. Similar appeals reached Merriman and he too begged Steyn to persevere. The position was by no means hopeless; reforms were being made gradually in the Transvaal, and Merriman discovered from Edouard Lippert and other leading business men from the Rand that a very moderate measure of reform would satisfy all, except those who did not want to be satisfied. Kruger was even said to be in favour of a South African Appeal Court and, though this was almost too good to be true, to be willing to listen to a discussion of a customs union. On the other hand, Lippert told Merriman that Kruger was "more dogged and bigoted than ever and . . . so inflated as to have the crazy belief that he (Kruger) is born to bring about peace between Germany and France!" Merriman once more asked Steyn to act as honest broker between the Colony and the Transvaal and,² towards the close of January, followed up his letter by a flying trip to Bloemfontein, Pretoria and Pietermaritzburg. Everywhere he found support for his scheme of an inter-state round-table conference to settle the affairs of South Africa without the intervention of the Imperial factor.

On February 14th, the Imperial factor suddenly reappeared in the person of Milner. Merriman did not, however, despair of his conference, especially as Schreiner's departure for the Transkei a few days later left him acting Prime Minister. His visit to Pretoria, the pressure of Steyn, of the liberal Boers and of friendly Rand capitalists, the warnings of Leyds from Europe that no help need be expected from that quarter till the Transvaal's house had been put in order, and the knowledge that the High Commissioner had received the petition detailing the *Centum Gravamina* of the Uitlanders induced Kruger to consider the grievances of the gold industry and the possibility of a reform of

¹ Gardiner, *Harcourt*, ii. p. 463.

² Merriman to Steyn, Jan. 1899.

the franchise. Early in March, he and some of his leading officials, with Lippert as go-between, discussed both matters with a small committee of mine-owners and two leading Uitlanders. The committee referred the Government's proposals to their friends in London. Most of the points presented few difficulties, but the London friends asked that the price of dynamite be reduced and the monopoly expropriated at the end of its term, and that a financier, appointed by an "independent" firm such as Rothschild's, be given a seat on the Executive Council, there to draw up and approve of any future scheme of taxation. In return, the capitalists would support any loan recommended by this official. The committee and its friends then asked that the bench be entrenched and promised that, if their terms were granted, they would discourage organized Press agitation and malicious political organizations hostile to the Government. But on the franchise, "the vital point," they said that they must consult the main body of the Uitlanders.

Leading Uitlanders hastened to declare that Kruger's franchise proposals were by no means satisfactory; for, as the negotiations proceeded, the President toured the State hotly defending the dynamite monopoly and, at Heidelberg and again, on April 1st of all days, at Johannesburg, outlining his scheme of a nine years' instead of a fourteen years' franchise. True, he foreshadowed future reductions in the term of residence till the usual European standard of five years was attained, but the path to the proposed franchise was so honeycombed with pitfalls that it could be trodden only by the most wary and determined, and the franchise at the end of it would not include the all-important vote for the Presidency.

On the other hand, Kruger knew that he had to carry his stubborn burghers with him. Here, at least, was a beginning which might prove the basis of a bargain. But, hardly had he made the tentative offer, than the negotiations with the mine-owners broke down. Their comments on the Government scheme had been published prematurely in the London and South African Presses; the demand that the finances of the Republic should be put in the hands of the broker's man could in nowise be entertained; though Chamberlain had snubbed a member in the Commons who had tried to discuss the Uitlander's grievances, he had none the less, on March 17th, reasserted the claim to

suzerainty with the comment that, if the preamble of the Pretoria Convention of 1881 had been abolished, all explicit mention of independence had gone with it. Kruger, therefore, drew back and the last state of his Government was worse than the first to this extent, that the Rand capitalists as a body stood committed to the franchise policy of the Uitlanders and those who stood behind them.

What Sauer had told de Villiers of Merriman's proposed South African conference filled him with hope up to a point, but he felt that Merriman was going too far in attempting to exclude the Imperial factor. He himself hoped for more solid results from a conference between the heads of States, as in the days of Robinson and Loch, and he knew that Schreiner held the same views. He had already arranged to take part in the eastern circuit. From the east, he passed on to join Schreiner in the Transkei and then, while the Prime Minister returned to Cape Town to veto Merriman's scheme, he went on by way of Natal to Pretoria to pave the way for a conference between the High Commissioner and the Presidents of the two Republics.

He arrived in Pretoria on April 26th and was urged to call upon Kruger. He did not do so. In any case he had small hopes of making any impression on him, least of all if he went uninvited. "If I go," he said, "everyone of my steps will be watched and a wrong construction put upon it. . . . If the President wants my advice he will ask for it." As it was, the clamour which had attended his last visit to Pretoria was rising against him once more as *fons et origo mali* for his share in the Pretoria Convention, a political failure in his unauthorized intervention in the judges' crisis of 1897, and a partizan of the Bond by virtue of his decision in the "blanket case." Kruger did not ask to see him, but Reitz, Schalk Burger and Smuts talked freely to him. He warned them that as far as he could see the British Government was determined to remove all causes of unrest in South Africa, that Chamberlain was not the man to do things by halves, and that the Transvaal would do well to meet him more than half-way. Could not the President be induced to propose drastic reforms and a five years' franchise at the approaching opening of the Volksraad? Five years was the British practice; Ripon had suggested it to Loch in 1894; Lippert had spoken of it to the mine-magnates, and even Chamberlain must accept it.

Besides, reforms made voluntarily would have more effect than any other in rallying the Uitlanders to the side of the Government. If reforms were withheld, the Uitlanders would still increase in strength, and much more would then have to be given them. "Do not," he begged, "make them beholden to Rhodes or to anyone else."¹

At first he made little headway. Other observers, like Hofmeyr and Schreiner and Dormer, presently found that the young burghers were full of confidence and were ready to fight, if it came to the worst, counting at the very least on the neutrality of the Cape Afrikanders. Kruger himself seemed, for a long time, to have thought that Chamberlain was bluffing and that, in any case, neither the Queen, for whom his respect was great, nor the Liberal party, that broken reed, would allow him to make war. He and his followers by no means appreciated the fact that the death of Gladstone and the feud between the pacific Liberals led by Harcourt and the Liberal Imperialists led by Rosebery had put the Opposition at Westminster out of action; still less, that the growing age and weakness of the Queen and the immersion of Salisbury in foreign politics left the Colonial Secretary free to send off his despatches with little of the salutary control hitherto exercised by Her Majesty and the Prime Minister. It was the old story of Disraeli and Carnarvon over again, with this difference, that Chamberlain belonged to a later and less courtly generation than the noble Earl. It was less easy to determine how far the leaders reckoned on help from Europe. Leyds had not been encouraging and, presently, on his return to Europe cabled that none need be expected from Germany at least. Germany had known since the Raid that intervention in South Africa would mean war with Great Britain and probably also with France, the ally of Russia. Rhodes found the Kaiser and his advisers friendly in his railway and telegraph negotiations at Berlin; an Anglo-German agreement defining mutual rights on the Indian Ocean was in train which Germany would hesitate to interrupt. The most the responsible Boer leaders expected was that, once Great Britain was involved in a serious war in South Africa she would be attacked by France and Russia, if not in Europe then in Asia. And Kruger knew that the war would be serious. Besides, he

¹ de V. to Steyn, May 21, 1899; de V. to Melius de V., May 31, 1899; de V. to A. Fischer, July 31, 1899. (All partially published in Cd. 369.)

said naïvely, the British had often been defeated, but the Boers never.

De Villiers therefore found to his dismay that even his liberal Transvaal friends did not seem to realize the gravity of the situation. They insisted, moreover, that the unrest came from the British side. Smuts, young and enthusiastic, would hear of no shortcomings in the Republic. Was not he, as State Attorney, waging successful war against the "Peruvian"¹ liquor industry? Schalk Burger, too, muttered "We have given England enough already. We can give no more. It is no use talking any more. We must look after ourselves." At last, however, de Villiers was satisfied that all three would be prepared to advise Kruger to make large concessions, notably on the score of the franchise and the dynamite, on one condition. They must be assured that, once the points raised were settled, no further demands would be made; for, if demand were piled on demand, the burghers would refuse to follow their President. He found them, however, well disposed to the idea of a friendly conference between the High Commissioner and the two Presidents; and, with this assurance, he returned with all speed to Cape Town, where the Ministry was anxiously awaiting his report.

The Schreiner cabinet had cause for anxiety. The Uitlander petition had reached London on April 14th, hard on the heels of the news of the breakdown of the Leyds-Lippert negotiations and the Uitlander rejection of the impossible nine years' franchise proposal. The crisis was, however, more serious than they knew. On May 4th, the very day on which de Villiers arrived in Cape Town, the High Commissioner cabled his famous "helot despatch" to the Colonial Secretary declaring that the Uitlander agitation was once more a popular movement, that it was useless and dangerous to attempt to remedy "the hundred and one wrongs, springing from a hopeless system . . . seriatim and that the true remedy is to strike at the root of all these injuries—the political impotence of the injured. . . . The case for intervention is overwhelming." Milner had made up his mind that nothing but "some striking proof of the intention of Her Majesty's Government not to be ousted from its position in South Africa could check the spread of the idea of a South African Republic, and that no more striking proof of the power and

¹ The South African name for low-class Jews.

justice of that Government could be given than the obtaining of a share in the government of the Transvaal for the Uitlanders."¹

The Colonial Secretary, however, approved of the idea of a conference and delayed the publication of the "helot" despatch; the High Commissioner presently assured Hofmeyr that, given a good settlement of the franchise and dynamite questions, the other points at issue could be more easily disposed of "in a less thunder-charged atmosphere"; and arrangements for the conference were carried forward by Schreiner and Steyn. Their progress was marked by deep suspicion on both sides. A thunder-charged atmosphere is a natural phenomenon; the atmosphere in which the Bloemfontein Conference would have to meet had been artificially heated. Had it not been so a settlement might have been effected, for Kruger himself was willing to go far to meet the British demands and the High Commissioner told Butler that he was sure he could make a settlement if only he were given a free hand; for, however much the Boers might dislike him, he thought they would believe what he said. De Villiers, for one, was convinced that Milner went to Bloemfontein anxious to make his mission a success.² But neither Kruger nor Milner had a free hand. The Transvaal burghers were being goaded into a state of sullen fury. They were firmly convinced that Rhodes and his friends meant to have their Republic, to amalgamate the gold mines in Kimberley fashion and to organize droves of "Peruvians" and their own employés to carry the elections. On the other hand, the South African League was clamouring for reforms which would give the Uitlanders a majority in the Volksraad immediately, and others were whispering that the Union Jack would reduce working costs on the mines by five shillings per ton. Many Uitlanders honestly believed that they could become Transvaal burghers and yet retain their British citizenship; and the furious outburst in the League Press, when Chamberlain declared the dual allegiance to be a myth, gave the measure of the annoyance of the Uitlander organizers at this indiscretion of the Colonial Secretary. Yet, on the eve of the conference, the Volksraad saw fit to tamper with the burgher rights given to Uitlanders who had served the Republic well during the Raid. Such folly gave point to the taunt that the franchise was given by favouritism and retained by servility.

¹ C. 9345, p. 211.

² de V. to Steyn, May 21, 1899 (Cd. 369).

Two despatches seriously hampered the progress of negotiations. Reitz indiscreetly claimed that the existing right of the Republic to absolute self-government rested, not on the Convention, but on its inherent rights as "a sovereign independent State," a declaration which led Milner to speak to Butler of a one in ten chance of war. Then came the cabled summary of Chamberlain's despatch replying to the Uitlander petition and to Milner's despatch of May 4th. Chamberlain gave his blessing to the conference, but Milner knew that the Boers would give more heed to his curses. But other and more helpful letters were passing to and fro. Schreiner, Merriman and Hofmeyr lavished good advice on Steyn and his counsellors and on the liberal leaders at Pretoria. De Villiers added his quota.

*De Villiers to President Steyn.*¹

Cape Town, May 21, 1899.

(Private)

MY DEAR PRESIDENT,

I must heartily congratulate you on having succeeded so far as to induce the Governor and President Kruger to arrange for a meeting at Bloemfontein. I do hope that you will also succeed in inducing them to come to an amicable settlement of all questions in dispute. I sometimes despair of peace in South Africa when I see how irritating and unjust the press is on the one side, and how stubborn the Transvaal Government is on the other. . . . The franchise proposal made by the President seems to be simply ridiculous.

I am quite certain that if in 1881 it had been known to my fellow commissioners that the President would adopt his retrogressive policy, neither President Brand nor I would ever have induced them to consent to sign the Convention. They would have advised the Secretary of State to let matters revert to the condition in which they were before peace was concluded; in other words, to recommence the war.

[It was suggested to me by Sir Evelyn Wood that the Transvaal might show its hatred of the Britisher by subsequently making the franchise almost prohibitive, but I indignantly scouted the idea. He reminded me of the remark the year before last, and I felt that I had been in the wrong.] . . .

I have always been a wellwisher to the Republic, and if I had any influence with the President I would advise him no longer to sit on the boiler to prevent it from bursting. Some safety valves are

¹ Cd. 369. The sections in brackets were omitted from the text as published by Chamberlain in 1900, by arrangement with de Villiers.

required for the activities of the new population. In their irritation they abuse the Government, often unjustly, in the press, and send Petitions to the Queen, but that was only to be expected. Let the Transvaal Legislature give them a liberal franchise and allow them local self-government for their towns and some portion of the discontent will be allayed. The enemies of the Transvaal will not be satisfied; on the contrary, the worst service that can be done to them is the redress of the grievance, but it is the friends of the country who should be considered. These I am sure will be found to be far greater in number than is suspected.

I should like to have said a word about the dynamite monopoly, but I fear I have already exhausted your patience. My sole object in writing is to preserve the peace of South Africa [and to prevent the further increase of Mr. Rhodes' power in England and South Africa. There can be no doubt that his power is immensely strengthened by President Kruger's unwillingness to yield to the reasonable demands of the Uitlanders]. There are of course many unreasonable demands also; but the President's position will be strengthened and at all events his conscience will be clear, in case of war, if he has done everything that can be reasonably expected from him. I feel sure that, having used your influence to bring him and Sir Alfred together, you will also do your best to make your efforts in favour of peace successful. I feel sure also that Sir Alfred is anxious to make his mission a success, but there can be no success unless the arrangement arrived at is a permanent one and not merely to tide over immediate difficulties.—Very sincerely yours,
J. H. DE VILLIERS.

The replies reflected the uneasiness of Bloemfontein and the nervous irritation of Pretoria.

M. T. Steyn to de Villiers.

Bloemfontein, *May 25, 1899.*

. . . I need hardly assure you that I will bear your views in mind in discussing the matter with President Kruger. I will of course not be a party to the Conference and will consequently have no influence in the formal discussions. I trust, however, that Sir Alfred Milner will understand that much more will be effected by friendly advice than by threats and demands. I do not like the spirit at present displayed by the Volksraad of the Z.A.R., yet I trust and sincerely hope that "alles zal recht komen. . ."

Melius de Villiers to de Villiers.

Bloemfontein, *May 25, 1899.*

MY DEAR HENRY,

I thought it best to hand your letter over to Steyn. . . .
What seems to me to be forgotten at the Cape is that President

Kruger has himself only a very limited power ; that he has to deal with a Volksraad which is far more unyielding than he is ; and that the Volksraad again has to do with "Het Volk," which is probably more unyielding still. Men like Mr. Hofmeyr also to some extent forget that the S.A.R. like the Free State has a certain measure of self-respect, and cannot always yield in everything simply because they are threatened with evil consequences if they do not yield. I think the great majority of the inhabitants of the republics would rather not that the republics existed than that they should exist under such conditions. . . . I myself have all along looked upon this conference as a great mistake, but I hope I may prove to have been wrong. Chamberlain's right to interfere is now virtually admitted, and the thin edge of the wedge having been admitted, when the conference is over we shall only be at the beginning of our troubles, so long as Chamberlain has the conduct of colonial affairs in his hands.—Yours affectionately,

MELIUS DE VILLIERS.

F. W. Reitz to de Villiers.

Pretoria, May 26, 1899.

MY DEAR SIR HENRY,

. . . You know, I think that I myself have always been a liberal (not to say radical) in politics and as regards the franchise, but I think you underestimate the difficulties the President has to contend with in having to deal with a people and legislature like ours.

The President told us (Leyds, Smuts and myself) that he himself would favour a seven and even (later on) a five years' franchise, and the granting of burgher rights to people who have been already residents for some time past, but (as he expressed it) "it was no use taking more hay upon his fork than he could carry and that he would have his work cut out to carry even the limited extension of the franchise that he had undertaken to propose."

And the result has proved that he was right ; for in spite of all his arguments in the Raad, that body has quietly shelved the matter for a year by referring it to the people.

The fact of the matter is that the unwarranted interference of Mr. Chamberlain (at the instigation of our avowed enemy Rhodes) with matters of *internal* economy of this Republic and the rascally conduct of Rhodes' reptile press at Johannesburg, have had just the result which Mr. Kruger warned the people would follow if instead of strengthening his hands with the burghers by friendly co-operation, they adopted the tricks which the *Star*, the *Leader*, and the jingo league have adopted.

Argument is one thing, but treason within our borders and threats from without are quite a different thing. We (under which I in-

clude the President) might have hoped, in a comparatively short time, to have brought about a turn in the conservatism of our people as regards the new inhabitants; but if such changes are made at the "point of the bayonet" by a bullying set of would-be "Paramounters" (for we are not unmindful of the massing of troops around our borders) and by a lot of people who are the tools of that arch-plotter Rhodes, then I fear you will see some serious things happen in South Africa. . . .

If I have written strongly, excuse me, because I feel strongly the injustice which, in the name of a great nation, that can boast of better traditions and nobler aims, is being perpetrated against us.

My regard and esteem for you and for the good work you have done for your country remains unaltered.—Yours truly,

F. W. REITZ.

The replies were not calculated to inspire de Villiers with extravagant hopes. The Bloemfontein Conference ended on June 5th in a deadlock. The High Commissioner would accept nothing less than a five years' retrospective franchise. Steyn, Fischer and Smuts urged the President to grant it, but they got no help from Schalk Burger and Wolmarans, and presently Kruger received a burgher petition protesting against any extension of the franchise. The most he would offer was a seven years' qualification which was hedged round with "ifs and ans," added no new voters to the roll for two years to come, obliged an applicant to cease to be a subject of his old State for five years before he could acquire burgher rights, and gave no guarantee that the law would not be altered hastily by *besluit*. Steyn made a desperate attempt to save something from the wreck by urging Milner to take up "Policy No. 2," the settlement of grievances in detail; but Milner, as the long vista of "ineffectual nagging" opened up before him, refused. And going out quickly, Steyn despatched a large order to Germany for mausers and cartridges.¹

¹ Van der Merwe, *Steyn*, i. p. 191.

CHAPTER XX

THE COMING OF WAR

" Far I hear the steady drummer
Drumming like a noise in dreams.
Far and near and low and louder
On the roads of earth go by.
Dear to friends and food for powder
Soldiers marching . . ."

" The Shropshire Lad."

THE failure of the Bloemfontein Conference brought the cartridge stage visibly nearer. Even before the conference had met, Natal had called for troops to guard the northern border and Milner had replied that, if the Garden Colony were attacked, it would be defended by the full force of the Empire. Now, the Colonial Secretary told the Commons that a new situation had arisen and published the "helot" and "grievance" despatches of May 4th and 10th. Thereafter there was no turning back. The Transvaal must either bend or be broken. From sections of the London and South African Press, the cry went up, "Remember Majuba"; at Kimberley, De Beers prepared for war; from Southern Rhodesia, came a demand for arms.

Even to appear to threaten the Transvaal with armed force was dangerous. The Republic could reckon on 30,000 fighting men, apart from Free Staters and other possible allies; the British troops numbered only 7000 and, for months past, Butler had received no instructions other than orders to cut down expenses. If the Colonial Office had thoughts of war, the War Office dreamt of peace. If pressure was to be brought to bear on the Transvaal, reinforcements must be sent and their coming might provoke hostilities. Meanwhile, Milner's defence of his policy had gained him the support of many moderate men in the Colony who considered Kruger's seven years' franchise scheme illusory. The

Schreiner Ministry was, however, prepared to accept it provided some changes were made, and Fischer, who had come from Bloemfontein to consult with the Cape leaders, set out to urge their views on Kruger. He found the Transvaalers in a more accommodating frame of mind than they had been early in June. The claim to sovereign independent status had been tacitly dropped, and they had learnt that Milner was willing to extend the application of the principle of non-foreign arbitration. True, the Free State Volksraad had approved of the seven years scheme which had already been laid before the Transvaal Legislature; but Fischer, with the aid of Steyn, Smuts and Grobler, induced Kruger to accept some of the suggestions made by the Schreiner Ministry.

The Cape politicians came to Fischer's help by bringing direct pressure on the Pretoria Government. Poor Fischer needed their aid. Schalk Burger had already taunted the Free Staters with desiring to back out of their treaty obligations, and Joubert and Cronje had delivered inflammatory speeches at a burgher meeting at Paardekraal. Hofmeyr and Herholdt came north to Pretoria and broke the news to the Volksraad that no armed help would be forthcoming from the Colony and that concessions must be made in the matter of the franchise. Concessions were promised and, with them, the Cape Ministry declared itself satisfied.

The Cape Parliament met on July 14th. In the Speech from the Throne, the Governor studiously avoided all mention of the Transvaal. Evidently this was now to be regarded as a matter of high policy, outside the sphere of the Colonial Legislature. This did not prevent the Opposition from attacking Schreiner for not stopping the passage of arms through the Colony to the Free State. Meanwhile, a few British staff officers arrived accompanied by rifle ammunition, to be loudly welcomed by a section of the Press as the first of the long-awaited reinforcements; Queensland offered a contingent, and Natal announced its intention of standing by the Mother Country. The Free Staters, on the other hand, urged the Cape Ministry to declare its mind. The recent elections had given Schreiner a working majority of ten, and Sauer and Merriman tried hard to persuade him to introduce a motion calculated to open the eyes of the British public to the facts of the situation. But Hofmeyr was

against it and Schreiner refused to move. De Villiers was also opposed to Merriman's proposal :

De Villiers to Melius de Villiers.

Government House, Capetown, July 31, 1899.

MY DEAR MELIUS,

... At the present time I think it is better for the Cape ministry not to move any resolution in regard to the Transvaal question. [If they did so a counter resolution might be moved and carried in the Council.]

Besides, while negotiations are pending between the British and Transvaal Governments, it is not advisable to have heated discussions in the two Houses of Parliament. When I was in the Transvaal three months ago, I found that Reitz and others had the most extraordinary notions of the powers and duties of a Cape ministry in case of war. They are Ministers of the Crown, and it will be their duty to afford every possible assistance to the British Government. Under normal conditions a responsible Ministry is perfectly independent in matters of internal concern, but in case of war they are bound to place all the resources of the Colony at the disposal of the British Crown ; at least, if they did not do so, they would be liable to dismissal.¹ . . .

At the end of July the prospects of peace were better than they had been since the drumming of the steady drummer had first sounded in South Africa six months before. Chamberlain had dropped his untenable claim to suzerainty in exchange for the vaguer claim of paramountcy, and had asked for details of the seven years' franchise. That scheme had been adopted by the Volksraad and the *London Times*, on July 19th, had declared the crisis at an end. At once a roar of anger and dismay had arisen from the war-party, and Rhodes, newly restored to Cape Town, had delivered the first of a series of speeches proclaiming not, as hitherto, " equal rights for every white man " but " for every civilized man south of the Zambesi." To the Republicans, this could only mean that the coloured and native voters, actual and prospective, were to be flung into the scale against them, especially as Rhodes went on to talk of federation and the settlement of the Transvaal business within two months without firing a shot, if only the Imperial Government stood firm and " assuming moderation, on both sides." However, the Volksraad carried the seven years' scheme in a somewhat improved form ; the

¹ Cd. 369.

Executive Council resolved to recommend ten seats for the gold-fields in each Raad instead of the five offered at Bloemfontein; and a committee was appointed to investigate the dynamite monopoly. Then, on July 27th, Chamberlain proposed non-foreign arbitration on disputed points in the London Convention and a joint inquiry into the franchise law. Next day in the Commons, with his fellow Ministers sitting by to watch him read his speech, he declared that, though Great Britain must see the undoubted grievances of the Uitlanders redressed, there must be no force.

Apparently the British Ministry as a whole were at last awake to what had been going on and were determined to stop it. The joint inquiry would gain time and allow the Colonial Secretary to escape gracefully from a dangerous position. "We think things much brighter on the peace side," wrote de Villiers' son-in-law at Pretoria. ". . . I am not so certain that I shall have any compunction in fighting against England should the Jingos force a war on us now as I am convinced they don't want a franchise, but the country . . . and if Mr. Chamberlain wishes to drag the fair name of England in the mire on account of these fellows, he may do so."¹ But the danger of war seemed to be receding, and de Villiers urged his friends at Bloemfontein to be diligent in their efforts to induce Kruger to accept the joint inquiry and to meet Chamberlain more than half-way with an unequivocal offer of reform:

De Villiers to Melius de Villiers.

Government House, Cape Town, July 31, 1899.

. . . The debate which took place in the House of Commons since I last wrote to you satisfies me that the British nation is determined to settle the Transvaal business in a manner satisfactory to themselves.

From an intimate acquaintance of what was going on, I foresaw three months ago that if President Kruger did not voluntarily yield he would be made to do so, or else be prepared to meet the whole power of England.

I accordingly begged of Kruger's friends to put the matter to him in this way: On the one side is war with England, on the other side there are concessions which will avoid war or occupation of the country. Now decide at once how far you will go; adopt the

¹ P. A. M. Cloete to de V., July 28, 1899.

English five years' franchise, offer it voluntarily to the Uitlanders, make them your friends [and do not make them beholden to Rhodes or to any one else], be a farsighted statesman, and you will have a majority of the Uitlanders with you when they become Burghers. The answer I got was : We have done too much already and cannot do more. Yet afterwards they did a great deal more. The same policy of doing nothing except under pressure is still being pursued. The longer the delay the more they will have to yield.

I see that Mr. Chamberlain again holds out an olive branch by proposing a joint enquiry into the Franchise Bill. If the President is wise, he will even now at the eleventh hour show a conciliatory spirit, and, if he cannot prevent a partial loss of independence, he will at all events prevent a total loss. If he appoints irreconcilables on the Commission, and does the whole thing in a haggling spirit, no good will come out of the enquiry. I have never been able to understand why Kruger never attempted to take the Uitlanders into his confidence. He has always kept them at arm's length, with the result that he has entirely alienated them. It is said that there are 21,000 Uitlanders who support him, and yet no meeting has been held at Johannesburg to compare with the meetings held by his opponents.

What I fear is that Kruger may object to the Uitlanders being in any way represented at the joint enquiry, if one should take place, and yet it is impossible to see how a satisfactory settlement can be made without their concurrence. Why should he not appoint as one of his nominees an Uitlander of position whose integrity and judgment he has confidence in? If none such exists, it would only be a proof of his want of tact and statesmanship in not rallying such people to his side. You must pardon these random thoughts. I am so busy as not even to have time to read what I have written. I wrote to Mr. Fischer to-day in somewhat the same strain as I have written to you in.

The Pretoria people do not seem to realize the position. When I was there Reitz seemed to treat the whole matter as a big joke. Judging by his conduct in suppressing private telegrams (paid for) because they contained lies, he must still be treating the matter as a joke. Other incidents show that he is a danger in the present situation.—Yours affectionately,
J. H. DE VILLIERS.¹

De Villiers to A. Fischer.

Legislative Council, Capetown, July 31, 1899.

DEAR MR. FISCHER,

Is there nothing to be done to bring this Transvaal business to a speedy settlement? With the position which I occupy I can

¹ Cd. 369.

offer no assistance and must content myself with making a few suggestions here and there in the hope that they may bear some fruit. Hitherto my suggestions to President Kruger's friends in the Transvaal have certainly not been of much avail. . . .

Mr. Chamberlain's speech was more moderate than I expected it would be, and as he holds out an olive branch in the form of a joint enquiry into the franchise proposals, would it not be well to meet him in this matter? I know that it might be regarded as a partial surrender of independence, but would that not be better than a possible total loss of independence? The British public is determined to see the matter through, and, if a contest is begun, will not rest until the Transvaal have completely submitted. Of course, I am only giving you my individual views in strict confidence. I may be mistaken in taking such a serious view of the situation, and perhaps you may have information which satisfies you that there are other ways of settling the difficulty. I confess that I dread the prospect of a war of races in South Africa. If you can see your way to bring about a settlement satisfactory to all concerned you will be a benefactor to South Africa. I don't think that President Kruger and his friends realize the gravity of the situation. . . .

Then there is the Franchise Bill, which is so obscure that the State Attorney had to issue an explanatory memorandum to remove the obscurities. But surely a law should be clear enough to speak for itself, and no Government or Court of Law will be bound by the State Attorney's explanations. I do not know what those explanations are, but the very fact that they are required condemns the Bill. That Bill certainly does not seem quite to carry out the promises made to you, Mr. Hofmeyr and Mr. Herholdt.

The time really has come when the friends of the Transvaal must induce President Kruger to become perfectly frank and take the newcomers into his confidence. It may be a bitter pill to have to swallow in yielding to further demands, but it is quite clear to the world that he would not have done as much as he has done if pressure had not been applied. . . .

As one who signed the Convention in 1881 I can assure you that my fellow Commissioners would not have signed it if they had not been led to believe that President Kruger's policy towards the Uitlanders would have been very different from what it has been. —In great haste, yours very sincerely, J. H. DE VILLIERS.¹

Melius forwarded his brother's letter to the long-suffering Fischer with the advice to "impress on Oom Paul . . . that the present Ministry in England will not always last. By giving

¹ Cd. 369.

way now, we do not do so in perpetuity ; but I feel assured that a Liberal Ministry will be willing to reconsider the relation of the South African Republic to England, and even to revoke the Convention of London. From what I have seen in the *Star* on the subject, I think even the Uitlanders will consent to this. . . ."¹

Fischer did his best. Friends in South Africa and in London combined to bring pressure on Kruger to induce him to accept the joint inquiry. De Villiers wrote direct to the old President and, through Melius, to Reitz, suggesting the Judicial Committee of the Privy Council as the body best suited to enquire into the franchise law. With himself and the Liberals, Hobhouse and Davey, on the board, he felt that a fair hearing on the Republican side of the question would be assured.

De Villiers to President Kruger.

August 5, 1899.

MY DEAR PRESIDENT,

At the risk of being considered meddling (indringend) I should like, as your friend and as a well-wisher of South Africa, to advise you most earnestly to do everything in your power to ward off war from the country. I know the strong views which you hold as to your duty to preserve the independence of your republic, but a patriot should also be prudent and he should even be prepared to surrender part of his independence if by that means alone he can prevent the loss of the whole. I am perfectly convinced that, without the Transvaal Government yielding more than it has shown signs of doing, peace will not be maintained. . . . I do not now wish to enter into the merits of the British demands (eischen), for the question no longer is what right has the British Government to make its demands, but what concessions on your part will preserve the peace. Whether a war should become a war of races or not it can only end in a destruction of your republic. The issue of war or peace is in your hands and I earnestly trust that, like a prudent and practical statesman, you will decide in favour of peace.—Believe me, my dear President, your sincere friend and well-wisher,

J. H. DE VILLIERS.²

The replies confirmed his fears :

President Kruger to de Villiers.

Pretoria, August, 1899.

MY DEAR CHIEF JUSTICE,

Believe me when I say that I fully appreciate your motives in writing to me, but I would ask you to place yourself in my

¹ M. de Villiers to Fischer, Aug. 4, 1899 (Cd. 369). ² De Villiers' translation.

position for a moment. I am sworn to uphold the independence of my country, and I have the very best reasons for believing that Chamberlain and Milner are determined to rob me of that independence. Can you give me the assurance that if I yield all their present demands others will not be sprung upon me which no self-respecting President could for a moment entertain? If we are to lose our independence let it be taken from us by force, but do not ask me to be a consenting party (deelnemer). I have always been and still am willing to do everything reasonable to settle disputes amicably but you must remember that there is a limit to our burghers' forbearance. They cannot understand what right the British Government has to interfere in our affairs when we have done nothing to endanger British rule in the British Colonies or to interfere with the rights of British subjects in the Transvaal. On the contrary British subjects have grown fat in the land, they are richer than our own people and we have done everything possible to protect them in their rights and liberty while many of them are doing everything possible to provoke us. The demand for the franchise is but a pretence (voorwendsel). They do not want any franchise under a republic, but they want to substitute the rule of the High Commissioner for that of the lawful President.

I am sorry that you think war can only end in the destruction of the Republic, but do you not believe that there is a power above greater even than that of England which will see that right and justice prevail?

If you can prevail upon the High Commissioner to moderate his demands or at all events to let us know everything that will be required of us you may be the means of preserving the peace, and I for my part will do everything I honourably can do towards the same object. Even now negotiations are going on which, if the British Government would only be fair and just, may lead to a settlement of our disputes. It is our interest to keep the peace, but if our independence is to go it must be taken from us by force.
—With esteem, your obedient servant,

S. J. P. KRUGER, State President of Z.A.R.¹

F. W. Reitz to de Villiers.

Gouvernements Kantoor, Pretoria, August 14, 1899.

DEAR SIR HENRY,

... I am still in hopes that matters may be settled without bloodshed or warfare by some other way—in fact I believe that just at present there is some negotiation going on which may solve the problem. As to the Privy Council I have no doubt that that

¹ De Villiers' translation.

body is everything that you describe it—in the way of impartiality—but, all the same, the fact that a law made for regulating *our* franchise should be submitted to such a board, sitting not *here* in South Africa but in England would be simply acknowledging the fact we are unable to arrange such matters for ourselves. That may also be the case—in the opinion of at least some of our “candid friends”—but if it be so, then the sooner we ask Mr. Chamberlain to send us a new Shepstone or Lanyon the better. . . .

The proposal to revise our law (No. 3-1899) by means of a mixed commission was and is, to my mind, simply a piece of impertinence, in keeping with the tone that has been adopted towards us ever since the Jameson Raid.

However, let me abstain from using strong language, and try to keep cool. I know I am no diplomat, and never shall be because I am apt to get indignant (and show it) at what appears to me as rascally and bullying conduct. . . .

If those letters were indeed the last word of the Pretoria officials then the situation was hopeless. But the mere mention of negotiations suggested that it was not. Steyn was urging his fellow President to offer a five years' franchise in lieu of accepting the inquiry. De Villiers, therefore, determined to make one more appeal to Kruger :

De Villiers to President Kruger.

Capetown, August 16, 1899.

MY DEAR PRESIDENT,

I thank you for your letter and am glad that you appreciate my motives in writing to you. If you are firmly convinced that it is the object of Mr. Chamberlain and Sir Alfred Milner to rob you of your independence is that not an additional reason why, as the Transvaal is the weaker of the two States, you should not give them the shadow of an excuse for carrying out their design? The British people, at all events, would be fairminded enough to recognize your desire to prevent war and would not allow their rulers to attack you without any justification whatever. As to your burghers they have sufficient confidence in you to know that you would not sacrifice any portion of their hardly-earned independence unless you had the gravest reasons for knowing that, without such sacrifice, they will ultimately lose the whole of their independence.

You say that in case of war a Higher Power will see that right and justice prevail but there are many instances in history where what we would consider wrong and injustice have prevailed. . . . I shall do what I can for you, but as Sir Alfred Milner never consults

me I would not like to thrust my unsolicited advice on him. Should an opportunity offer I shall ask him to let you know clearly everything that is required of you.

De Villiers soon found an opportunity to state his case to the High Commissioner. He has left on record¹ his impressions of what cannot have been a pleasant interview for either party. He may have been unduly sensitive; his nerves were ragged from want of sleep; but Butler had already noted that Sir Alfred looked as if he too suffered from sleeplessness. De Villiers urged Milner to formulate all his demands at once; "but he said that it would be better to settle each question as it arose. I informed him of my conversations . . . in the Transvaal and that if they knew the limit of the British demands there would be a much better chance of a general settlement, but he said that the franchise question should first be settled. . . ." Milner thought that the Imperial Government would accept the Judicial Committee as arbitrator; but, as for the serious nature of a war with the Transvaal, "he did not," wrote de Villiers, "seem to think much of these difficulties and was of opinion that Kruger would yield rather than go to war." Finally, de Villiers tried to dispel the suspicions which the High Commissioner had expressed about some of the Cape Dutch in his helot despatch. "His answer was that he had received his information from persons whose word he had no reason to doubt. I pointed out that it was not a question of veracity but of opinion, . . . but I felt that any advice from me would not have much weight with him."

Apparently, then, neither the President nor the High Commissioner would listen to him. All now depended on the issue of the negotiations between Smuts and the British Agent, Conyngham Greene, of which Reitz had spoken. The first definite news which reached de Villiers was a letter from Reitz, breathless and well-nigh incoherent with hope and relief:

F. W. Reitz to de Villiers.

Gouvernements Kantoor, Pretoria, August 21, 1899.

(Strictly Private and Confidential.)

DEAR SIR HENRY,

I have good hopes now that a *modus vivendi* will be found at last, and I hasten to inform you how the matter stands (confiden-

¹ De Villiers' Memorandum.

tially—because until we hear what the British Government replies *definitely* the matter is supposed to be strictly private). About a week ago a *pourparler* took place with the British Agent here, in which it was suggested that if we could obtain an assurance that in case we undertook to induce our Volksraad and People to adopt a 5 years franchise, and $\frac{1}{4}$ th representation in the Raad of the New Population, together with a friendly revision of the Franchise Law (No. 3-1899) in such a manner that suggestions should be made through the British Agent here which suggestions we would be willing to adopt if found to be useful and an improvement of the Law (and I for one admit there is room for improvement especially in details)—if (I say) we undertook the above would it be likely the British Government would agree to the following three points? viz :

1st. To arbitration on all present and future points of dispute it being understood that no foreign element (this exclusion not to apply to the O.F. State) was to be admitted on such board of arbitrators.

2ndly. The assertion of suzerainty to be dropped.

3rd. This intervention in our internal affairs not to form a precedent and that the British Government would never again intervene or interfere in such internal affairs.

These suggestions were wired by Mr. Green either to Sir Alfred Milner or direct to the British Ministry (I don't know which)—but after a couple of days came the following cablegram which Mr. Green informs us is from the Ministry (not from Chamberlain I fancy) " If the Government of the S.A.R. were to reply to the invitation of a joint enquiry by formally putting forward the proposal described in your telegram H.M. Government would not regard such a course as a refusal to their offer but would be prepared to consider the reply of the Government of the S.A.R. upon its merits." We have accordingly sent a dispatch on Saturday proposing as an alternative to the joint Commission—what I have stated above—and we are now hoping that this may prove the first step in the direction of a final settlement. If we could eventually get a board of arbitrators consisting of say two Englishmen, two of our own people, with you or your brother Melius as super-arbiter then there would be a chance of this vexed question (arbitration) being arranged to the satisfaction of all.

I am sending this first to Melius for his perusal and information with request to forward to you.—Yours truly,

F. W. REITZ.

It is also understood that new burghers shall have same right as old ones in electing President and Comm. General.

Melius's covering letter was much less cheerful :

Melius de Villiers to de Villiers.

Bloemfontein, August 22, 1899.

MY DEAR HENRY,

At the request of Reitz I forward you the enclosed. I have been aware of the new proposals for some days ; but I deeply distrust both Chamberlain and Milner, and it seems to me pretty certain new claims will be started by these gentlemen and that they are fooling the Transvaal. You will note the terms of Chamberlain's cablegram, which might mean several very different things. Unfortunately the Transvaal has no trained diplomat, and Smuts one might almost call an inexperienced youth. Accordingly their reply now sent is very loosely, and to my mind, to some extent, unfortunately, worded. Instead of sending a copy here before handing it to Green, they did the opposite, so that there was no opportunity for this government to suggest alterations. However one can only trust all will come right. . . .

The Smuts-Greene proposals were far and away the most hopeful step in the long negotiations. They were practically what de Villiers had begged for at Pretoria four months previously ; but it was better late than never. Possibly the Transvaal authorities had been confirmed in their mood of concession by a message from Leyds that both he and the German Government considered any approach to one of the great Powers fruitless and dangerous at the moment ; but, from whatever cause, the offer was made. The British Agent had forwarded the proposals to the High Commissioner in a telegram which Smuts had seen, and, after consultation with his Government, initialed.¹ Greene, however, also sent a private telegram explaining what he had gathered to be the intentions of the Transvaal Government ; *inter alia*, the simplification of the new franchise law and permission to use English in the Volksraad. Milner forwarded the two telegrams to the Colonial Secretary, who evidently read them both as integral parts of one set of proposals, and on that basis, sent the reply of which Reitz had told de Villiers. Milner had accompanied the telegrams with the remark that the proposals were " as liberal as anything I was prepared to suggest " ; but he added the warning that " a particular proposal put forward by me . . . with regard to a single question has been treated as

¹ Melius de V. to de V., Sept. 28, 1899.

if it were by itself not only a panacea for the grievances of the Uitlanders, but a settlement of all questions at issue." In other words, even if the franchise issue were disposed of, Policy No. 2, the redress of specific grievances, would still remain.

Meanwhile, on August 21st, Reitz had written a note to Greene which went far to spoil the whole negotiation. He declared that the franchise reforms were expressly conditional on the acceptance by H.M. Government of the three provisos and that the Republican Government would only consult the Volksraad after these had been accepted. The letter was prompted by the profound suspicion the Pretoria authorities entertained of the Colonial Secretary. Unfortunately, Chamberlain was equally suspicious of Kruger, who was now apparently proposing, not to pledge himself to have the franchise law carried, but merely to introduce it after the British Government had bound itself in advance to abstain from further intervention. What if Smuts were thrown overboard as Lippert had been in 1899 and de Villiers in 1898?

The Transvaal, to Steyn's alarm, had also dragged suzerainty once more into the limelight. Steyn knew that, though the British people could not be made to fight for the difference between a seven and a five years' franchise, they could be made to fight for the substance of suzerainty. And there were men who were determined that they should at least be made to show their teeth. The Uitlander Council and the League declared the five years' proposals inadequate and their Press expanded the list of further demands to include the disarming of the Transvaal. Pandemonium reigned in the Cape Parliament, Rhodes against Merriman; while, in London, Chamberlain publicly declared that the crisis was not yet over, since Kruger was giving reforms "like water from a squeezed sponge" and, he added, "the sands are running down." Thereafter he penned his famous "acceptance-refusal" despatch signifying his approval of the five years' franchise but refusing to part with any Convention rights, reiterating his objection to the tacitly abandoned claims to sovereign status, and proposing an inquiry by the British Agent into the details of the five years' scheme and a discussion at Cape Town between the President and the High Commissioner on the proposed arbitration court. Kruger read the reply, not unnaturally, as a refusal and fell back on the seven years' scheme and the joint inquiry into its details.

The situation now changed infinitely for the worse. Business at Johannesburg came to a standstill, the exodus from the Rand began and the trading centres in the Colony began to suffer. On the last day of August Milner appealed to Chamberlain for a speedy settlement. On the other hand, Kruger told Steyn that, if the troops near the border were intended for use against the Transvaal, "we must begin." Next day Leyds telegraphed that friends in Europe wondered why the Boers were losing time. Leyds's tone had indeed changed since his cautious messages of a few weeks previously. De Villiers suspected that this may have had something to do with the breakdown of the recent pour-parlers. "The despatch of the 21st August," he presently wrote to Fischer, "seems to me to have been wholly unnecessary, unless something happened between the 19th and 21st which led the Transvaal Government to think they had yielded too much. I have heard it said that between those dates a cablegram from Dr. Leyds gave hopes of European intervention, and the return of Wolmarans from the Orange Free State gave hopes of assistance from that quarter; but that may be mere rumour."¹

Steyn counselled patience, as he did to the bitter end in spite of Transvaal jeers that he was backing out of the alliance. He succeeded more than once in modifying Transvaal replies which would otherwise have read too much like ultimata. On the other side, Chamberlain, under pressure from his fellow Ministers, went forward with the negotiations.² On September 8th he replied that he would accept the five years' franchise proposals "taken by themselves"—that is, apparently, without the provisos—and would then arrange for arbitration; otherwise the British Government would "formulate their own proposals for a final settlement." The reply was hailed by English Liberals as a great step forward, and even John Morley held that Kruger could not go back to the seven years' scheme since he had tacitly admitted that it was unsatisfactory by making the five years' proposals. But the Transvaalers saw the matter in quite another light. They decided to stand by the seven years and the joint inquiry, and accused Chamberlain of putting forward new terms. They and their Free State friends believed that they had been

¹ De V. to Fischer, Sept. 28, 1899 (Cd. 369).

² Gardiner, *Harcourt*, ii. p. 502.

swindled. Melius, ordinarily the mildest of men, presently expressed his anger and suspicion unreservedly :

Melius de Villiers to de Villiers.

Bloemfontein, Sept. 28, 1899.

... My own firm belief however is that there never existed any intention to give the Transvaal a chance to accept anything. . . . You may remember (for one thing) Reitz's jubilant letter about the offer . . . of a 5 years franchise conditional upon the withdrawal of the British claim of Suzerainty. . . . Yet now Greene repudiates the whole thing, alleges that Smuts made some further offers (which of course he had no power to do) and the British Government pretends that a wholly unconditional offer was made because the conditions were put in the form: *it is assumed* that the British Government will agree to this and that if these proposals are made? . . .

De Villiers did not share his brother's opinion. "I am afraid," he wrote to Fischer, "that neither Reitz nor Smuts is the man for the present crisis. I have carefully read the latest correspondence, and I am by no means satisfied that the British Resident was guilty of a breach of faith. The utmost I would say is that there was a misunderstanding."¹ But the situation was rapidly passing out of the correspondence stage. On the very day on which Chamberlain wrote accepting the five years' proposals "taken by themselves," the British Ministry decided to draft troops from England and India to South Africa, the Transvaal Volksraad expressed its fears of the small bodies of troops near the Republican border, and Milner, in response to appeals for help, sent officers to Kimberley to organize the Town Guard. On the 22nd the mobilization of an army corps for service in South Africa was announced; but on the same day the Cabinet decided to take up Policy No. 2, and Chamberlain wrote an interim despatch promising a detailed list of demands. On receipt of the despatch the Transvaal vouchsafed a belated reply to the "grievance" despatch of May and urged their Free State allies to go to war with all speed. On the 26th the Republican ultimatum was drawn up.

The sword was leaping in its scabbard, but there was still a chance for the pen. The Schreiner Ministry had already appealed

¹ de V. to Fischer, Sept. 28, 1899 (Cd. 369).

to H.M. Government for consideration and compromise; the Natal Ministry, though highly nervous, was pacific enough; and Steyn now urged Kruger to appeal to the Queen herself. On September 27th fifty-eight members of the Cape Parliament petitioned Her Majesty for peace, and, on the same day, Steyn warned the High Commissioner that he must fulfil his treaty obligations to his ally, begged that all further movement of troops be stopped till after the arrival of Chamberlain's promised list of demands, and offered his mediation if only he might know the full requirements of the Imperial Government. Like many of the Cape leaders de Villiers maintained a friendly pressure indirectly on the Pretoria officials. The approaching war filled him with horror. Chamberlain's diplomacy might be exasperating, the Jingo Press was lamentable, but what was to be said of the Kruger oligarchy masquerading as a republic? That which had to be defended was, in spite of tentative reforms, still so indefensible. He wrote once more to his brother, Melius, and to the patient Fischer:

De Villiers to A. Fischer.

Cape Town, *September 28, 1899.*

MY DEAR MR. FISCHER,

Before it is too late, I venture to make a final appeal to you, and through you, to others in the Orange Free State who have any influence with President Kruger and his Raad. I do not, of course, know what the contents of the next British despatch will be, but if they be such as can be accepted without actual dishonour, I hope they will be accepted. The South African Republic cannot go to war if your Government should consider the despatch one which ought not to be rejected. . . .

Judging from the forecasts given of the intended despatch, it will, at all events formulate all the British demands. If that be so, there will not be the danger of further demands being sprung upon the South African Republic. It will surely be for the interest of South Africa that a full and final settlement should now be arrived at.

What I feel in the matter is that, however badly the Transvaal may have been treated from a diplomatic point of view, there is at bottom good ground for the irritation against its Government.

Throughout the negotiations they have always been wriggling to prevent a clear and precise decision and have subsequently regretted that they did not accept proposals after they were withdrawn.

The very best friends of the Transvaal feel that the Bill providing for the seven years' franchise is not a fair or workable measure. It is this manœuvring to escape an unpleasant decision which has more than anything else driven the British Government into its present attitude.

My fear is that the fresh proposals will be summarily rejected, but that the day will come when everybody who has had any hand in such rejection will bitterly regret his action. I am assuming, of course, that the proposals are such as can be accepted without dishonour.

The manner in which the latest proposals were rejected does not give me much ground for hope. Take such a reasonable proposal as that members should be allowed to address the Volksraad in the English language. Surely it ought not to have been rejected in in such a summary, I might almost say, contemptuous manner.

I confess I look with horror on a war to be fought by Afrikaners to bolster up President Kruger's régime. I could understand a war in defence of the South African Republic after it has made reasonable concessions to the demands of the newcomers, and after it has displayed the same desire to secure good government as is seen in the Orange Free State; but of such a desire I have not seen the faintest trace. . . .¹

The replies were uncompromising. "It is *absolutely* of no use," wrote Melius, "to try to get the Transvaal to accept the five years unconditional franchise, not so much that the Government is against it as that they don't want the thing forced down their throats. Public opinion in this State is to the same effect; and there is no longer any doubt the Free State will go with the Transvaal."² Fischer's reply was the old story. There was a limit to possible concessions and that limit had been reached. If only Butler were at Government House a settlement could easily be made³; but Butler had sailed for England pursued by the white feathers of Jingo enthusiasts. Crowded British transports were already rolling down the Atlantic and Indian oceans, and little groups of burghers, some in their best clothes ready for the triumphal march, were jogging along the dusty Transvaal roads that led to Kimberley, Mafeking and the Natal border. On September 29th the Transvaal Government took over the railways, the Free State formally announced that it would stand by its ally and Leyds cabled the advice to strike before Great Britain was ready. From September 30th onwards the Trans-

¹ Cd. 369. ² Melius de V. to de V., Sept. 28, 1899. ³ De Villiers' Memo.

vaal pressed the Free State to allow it to issue the ultimatum ; but Steyn steadily refused to allow it to do so before the afternoon of October 9th. Surely Chamberlain's complete list of demands must be forthcoming before that day.

The High Commissioner had bidden Reitz expect the list in a few days. It was indeed being drawn up in London and the Colonial Secretary was even considering the personnel of the arbitration court. That court presented difficulties, for, in reply to a suggestion by a Liberal member of the Commons that it should consist of the Lord Chief Justice and the four South African Chief Justices, he objected that three of the latter would be against him and that Lord Russell of Killowen was a pro-Boer. So, in face of armed and arming men, the chance of successful negotiations faded. On October 2nd Kruger told his Volksraad that war must come : next day Steyn called out his men ; on the 4th the Kimberley volunteers were mobilized.

The drumming of the steady drummer was sounding loud and louder, the tramp of soldiers marching rattled the windows of Wynberg House. De Villiers had friends with or behind both armies. His brother at Bloemfontein declined the proffered shelter of Wynberg House, declaring that he must stand by his Republic¹ ; his son-in-law was on commando in the Transvaal ; a nephew was under arms at Kimberley ; another relative was with the Imperial forces in Natal. The dream of his life was being shattered. His hopes of federation going down in blood to be shed in the name of federation. The League was boasting that three months and an army corps would usher in a federal South Africa, and Rhodes, now president of the League, was stoutly maintaining that there would be no war at all.

There was still a faint glimmer of hope. De Villiers discovered that the High Commissioner at least was now under no illusions about the nature of the war. On October 4th Milner gave the reply of the Queen's Ministers to a pacific petition of the Cape ministerialists. His conversation with one of them, James Molteno, gave birth to the much disputed phrase, "breaking the dominion of Afrikanderdom" ;² but the main point, in de Villiers' eyes, was that, whereas Molteno and many of his friends feared that the war would be short in duration but lasting in its

¹ Melius de Villiers to de V., Oct. 4, 1899.

² Molteno, *Dominion of Afrikanderdom*, p. 184.

evil effects, Milner believed that though it might be long its evil effects could be speedily wiped away by a just settlement. De Villiers feared that it might be both long and permanently evil, and therefore made a last desperate appeal to Milner to avert it altogether :

De Villiers to Sir A. Milner.

Legislative Council, Cape Town, *October 4, 1899.*

DEAR SIR ALFRED MILNER,

Is there no hope of averting the terrible catastrophe which seems impending over poor South Africa? As one who is proud of being a British subject and of having received the greatest honour a British subject can aspire to, I still love this the country of my birth and I look with dismay on the days that are coming. From the very beginning of the negotiations I have done everything in my power to induce persons of influence whom I know in the South African Republic and the Orange Free State to yield to the successive demands of the British Government. The answer has generally been "we fear there will be other demands after this has been acceded to." The last demand of a joint enquiry was, however reluctantly, acceded to. If there was a misunderstanding, as there seems to have been, would it not be right that, as in the ordinary concerns of life, the parties should revert to the position in which they were before the misunderstanding arose?

I sometimes upbraid myself with not having oftener called on Your Excellency for the purpose of tendering friendly advice, but I have never felt sure that your Excellency would give me your full confidence. On one or two occasions you will remember I did venture to give you my views and everything that has since happened has fully confirmed those views. . . .

It has been the dream of my life to see a peaceful federation of South African Colonies and States under the British Crown and at one time I thought it was about to be realized when unfortunate events prevented it. War may ultimately lead to federation but at what a cost in the interval and with what a legacy of hatred for the future! There is hardly a Cape family which will not have members or relatives fighting on both sides.

If war should unfortunately break out may I beg of you to use your influence to confine it as much as possible to the Imperial forces. I have seen it said in the papers that, as the Australian Colonies have sent their contingents, the Cape ought to do the same, but the cases are so very different. This Colony has shown by its naval contributions that where other enemies are concerned it is willing to contribute its share, but it will be difficult for the most loyal

subject to volunteer to fight against his near relatives, and there may even be unruly men who would resent their neighbours so volunteering and thus a kind of civil war might arise.

At this supreme crisis in the history of South Africa I would beg of your Excellency not to lose sight of the purely South African point of view. I quite understand of course that your first duty is to look after the great Imperial interests which you represent but if those interests can in any way be reconciled with the views of those who are labouring for a peaceful solution may Your Excellency be the reconciler!

Even now it may not be too late to tell the Transvaal frankly everything that will be expected of it. In the British Parliament, if I remember aright, it was stated that the seven years franchise would be accepted if a joint Commission of inquiry should find that it would give adequate representation to the uitlanders. Is it too late to revert to the joint inquiry which was shelved by reason of a misunderstanding?

Forgive me for writing thus freely and frankly. It is only my devotion to the Empire and my love of this country which have induced me to intrude my views upon Your Excellency.—Believe me, dear Sir Alfred Milner, Yours faithfully,

J. H. DE VILLIERS.

Milner's reply was sympathetic but held out no hope. Even under the conditions of 1899, mobilization meant war:

Sir A. Milner to de Villiers.

Government House, Capetown, October 4, 1899.

(Private and Confidential.)

DEAR SIR HENRY DE VILLIERS,

I feel the deepest sympathy with you and others in your position, compelled by ties of race and tradition to sympathise with the Transvaal, though the Government of that State, which has so often benefited by your services, has shown so slight a regard for the difficulties of your position.

The impending struggle is, as you say, one of the most repulsive kind. Great Britain has nothing to gain by it, and South Africa will, for the time at least, suffer severely.

I should most willingly support any efforts to find even now a solution, which would prevent the recurrence of such a frightful state of things in the future. But I feel that after all that has happened, a Joint Inquiry into the present Franchise scheme (which was what H.M.'s Government proposed on August 2nd) is now a hopelessly inadequate solution. The precipitate arming of the whole

burgher population of the two Republics, and the wholesale expulsion of British subjects, involving many thousands of helpless and innocuous people in suffering and ruin,—and contrasting so strongly with the tolerance still shown, even to active enemies, on British soil—have wholly altered the situation. The solution now must be on broader lines though I still see no reason why it should infringe the internal independence of the Republics.

Meanwhile the burning question is, whether the Republics will assume the aggressive. Numerous indications exist that they have resolved to do so.

Should this be so, I agree entirely with you in desiring to limit the fighting to Imperial forces, except where the Colony is actually attacked. If the enemy were to attack, say Vryburg, Mafeking, or Kimberley, I could not expect the inhabitants of these towns not to defend their own homes. But I am averse to sending any Colonial troops across the border, if it can possibly be helped, much more to compelling Colonial Afrikanders to take part in such operations. This tolerance is, however, I must observe, very one-sided. The Free State appears to have no compunction in calling upon men of British birth and sympathies to take up arms, and inflicting cruel penalties upon them if they shrink from doing so.—Believe me, dear Sir Henry de Villiers, Yours very truly,

A. MILNER.

Plainly it was a race against time. Would Chamberlain's list of demands arrive before the guns went off of themselves? Steyn was playing for time, bidding his allies keep cool as the troops were not near enough to the border to do any harm. He might have added that neither were they sufficiently numerous and that they were actually falling back in northern Natal. Wait, said Steyn, the Privy Council has just met, the demands must soon be forthcoming; and he wrote to Milner begging that no more troops be sent towards the border.

Hard on the arrival of Steyn's message, de Villiers wrote his last letter to the High Commissioner. It was not so much an appeal as an *apologia pro vita sua* during the past four years:

De Villiers to Sir A. Milner.

Legislative Council, Cape Town, October 6, 1899.

DEAR SIR ALFRED MILNER,

I have to thank you sincerely for your letter of the 4th inst. You observe that I have been compelled by ties of race and tradition to sympathise with the Transvaal, but this is not strictly correct.

In race I am French and not Dutch, and therefore the ties of race would not be very strong with people the majority of whom are of purely Dutch descent. As to tradition our family has for several generations been British, and therefore all my sympathies are with the Empire within the folds of which we enjoy liberty, peace and free government. As to the Transvaal, I have never been able to approve of President Kruger's régime. I consider that, after the retrocession, he ought not to have made the Franchise laws more stringent and that he did not display the gratitude towards Great Britain which was to be expected from him. His excuse that British subjects refused to fight for the country is not sufficient, although one must admit that the tone of contempt for him and his people which was adopted from the very outset was very galling. Gradually, however, a progressive element was making headway and if that element had had a fair chance I believe constitutional reform would have come from within. And if even now an honest seven years franchise were adopted, free from unnecessary conditions and restrictions, I see no reason why the progressive element by that means introduced should not lead to a speedy and salutary reform of the whole administration. I cannot forget that real reform is always of slow growth and that, even in this Colony, Parliament had been in existence for nearly twenty years before Responsible Government was introduced and for over twenty years before Dutch was allowed to be spoken in either House.

I fear I cannot take the credit you give me for great services to the Transvaal. When I was appointed one of the Royal Commissioners in 1881 peace had already been made through the intervention of President Brand and my only services were to take part in the negotiations on the basis of the terms of peace. I was one of those who insisted on the suzerainty being expressly mentioned in the Convention of 1881 and it is greatly to be regretted that it was not introduced into the Convention of 1884. President Kruger was certainly led into the belief that the suzerainty had been abolished.¹

The only other little service I could do for the Transvaal was to mediate in the dispute with the Chief Justice. For the rest I have never lost an opportunity to urge reforms upon President Kruger until the strain between the two countries became so great that I could not well give any further advice to those in authority in the States. My object always was to make them see what could be said on the British side. If in my communications with Your Excellency I may have appeared to have sympathised with the Transvaal, it is because I wished to impress upon you what could be said on that side.

¹ *Vide* p. 180, note.

Unfortunately, perhaps, with my judicial training, I cannot help seeing both sides of every question. Take the precipitate arming of the burgher population which you mention as altering the situation. While negotiations were going on British troops had been moved to the border. When the British Government finally refused to revert to the joint inquiry and stated that demands would now be formulated and sent in a few days, the Transvaal might fairly have supposed that an ultimatum would be sent forthwith. You also mention the expulsion of British subjects, but is not the word "expulsion" a very strong one to use? I have seen several persons who have come and they tell me the exodus was voluntary and that they could have remained if they would. They add that the Government was afraid there would not be provisions enough and that there might be danger to the people from riots or other disorders, and advised them to leave or apply for permits to remain in case martial law should be proclaimed.

I was extremely sorry to hear from your letter that tolerance is shown even to active enemies on British soil. Surely every such case ought to be promptly brought to the notice of the Attorney-General, who as an Englishman and a sound lawyer and devoted subject, would know how to do his duty.

In regard to the employment of volunteers my remarks were of course not intended to apply to the defence of places within the Colony against the Queen's enemies.

I was sorry to hear that the Orange Free State had called upon men of British birth and sympathies to take up arms. I suppose they were burghers for, if not, they could have claimed exemption. Even if they were burghers their position is certainly a lamentable one, and one can only hope that the humanity of the authorities will induce them to employ such burghers in keeping order or doing some other duty short of fighting against the Queen's troops.— Believe me, etc., Yours faithfully,

J. H. DE VILLIERS.

War was plainly coming, but there might be some way of limiting its scope. De Villiers sent a message through Melius to President Steyn begging him not to invade the Colony and wrote to the Prime Minister urging him to devise some scheme by which invasion might be averted. Melius returned the only possible answer assuring him that the Colony would be respected provided its territory and railways were not used by the Imperial troops as a base of attack on the Republics.¹ Schreiner's reply was equally definite and hopeless.

¹ Melius de V. to de V., Oct. 12, 1899.

W. P. Schreiner to de V.

Capetown, Oct. 10, 1899.

. . . I have just read your letter, and so has Merriman. I think you will see that such a communication as you suggest should, if it goes, go from the Governor to the State President. I am really not constitutionally in a position to send such a message because the issue of peace and war *for us* is in the hands of the Imperial Government, and not in our hands. An invasion would be an attack upon British Territory, and of course our position would necessarily be that we must repel it, but the labouring oar must be that of the Imperial Government whose war it is. We are not equal to the task of taking up such a quarrel. . . .

Before the outbreak of war Schreiner had, indeed, publicly expressed the hope that the Colony would remain as a haven of refuge; but, when Steyn asked him if this meant that it would not be used as a base of operations, he had to reply that he and his colleagues must render every assistance to the Imperial Government. It was the definition of the powers and limitations of Colonial Ministers which de Villiers himself had given his brother in July before dismay had overwhelmed his logic.

Hopes of peace faded away completely. On the fatal Monday, October 9th, Steyn held his allies back till the evening and telegraphed to Milner proposing the mutual withdrawal of troops from the frontiers. It was in vain. Steyn's own men were becoming restive; Downing Street made no sign; the sands ran out; and at last, as de Villiers presently wrote to Sir Wilfrid Laurier, "in a fit of frenzy, which I, for my part, would not wish to excuse, Kruger issued his arrogant ultimatum. But can anyone doubt that the issue was forced upon the Transvaal Government?"¹

¹ de V. to Laurier, May 13, 1900.

CHAPTER XXI

THE WAR

THE ultimatum expired on October 11th. On that day the Republican forces, in greatly superior numbers, poured into Natal and the Colony north of the Orange. At first the Free Staters hesitated to come south of the river but, as the original British plan hinged on an advance across the middle Orange, Steyn sent his commandoes southward to hold off the attack. By the middle of November, Mafeking and Kimberley were invested and Colesberg Junction occupied. Within three weeks of that occupation six Border districts had gone over more or less completely to the side of their Free State neighbours. In Natal, Ladysmith was surrounded.

Two special fears haunted de Villiers: the participation of the natives in the struggle and the suppression of the Bond, which would leave the unorganized mass of Cape Afrikaners free to drift into rebellion. At first the news from the Transkei was disquieting. The magistrate of Kokstad wrote that he and other officials had their hands full keeping white and black alike out of the struggle. The Imperial Government, however, restrained the neighbouring Basuto, and the excitement in the Cape native territories gradually died down. In the Colony itself the Schreiner Ministry and other leaders of the Bond counselled their followers to avoid giving the authorities an excuse for suppressing their organization, and to hold themselves in readiness to influence the peace settlement as in 1881. Even so, the meeting of the Bond Congress in Cape Town and the holding of another Bond meeting at Malmesbury alarmed de Villiers, who wrote to Hofmeyr urging caution. Hofmeyr replied somewhat tartly that the congress had been summoned to pacify the people.¹ In any case the mass of the Cape Afri-

¹ Hofmeyr to de V., Oct. 24, 1899.

kanders, outside the districts occupied by the Republicans, sat still and waited on events.

During November British reinforcements poured in, some into the Colony but most into Natal, whither the centre of operations was steadily shifting. The British advanced slowly along the main railway lines towards the Orange and Tugela rivers. Then, in the second week of December, the left wing of the advance was checked sternly at Magersfontein, the centre at Stormberg and the right at Colenso. The Black Week convinced the British public that the war was to be no matter of three months and an army corps. Further troops were despatched; Colonial forces raised; Lord Kitchener arrived to organize victory and Lord Roberts to take command. In the middle of February 1900, in spite of Buller's defeats in Natal, Roberts struck heavily northwards towards Kimberley and forced Cronje to surrender at Paardeberg.

It was the turning-point of the war. Kimberley was relieved, the siege of Ladysmith was raised, the Free Staters hurried back from the northern Colony and dispersed, and on March 13th Roberts entered Bloemfontein. Meanwhile after Paardeberg, Kitchener had turned back to deal with the rebels and Transvaalers who had "annexed" Prieska, Kenhardt and Upington to the Republics. The work was accomplished early in April but already, in the wake of the victorious British columns, courts-martial presided over by judges had appeared to deal with rebels accused of high treason. "It is surely not necessary," wrote one president to de Villiers, "to pass the death sentence in such cases, though I believe Gregorowski laid down the contrary in the Reform Trials"—a pretty Roland for an Oliver. But the law of the Transvaal was one thing, the law of the Colony, even martial law, another, and the death sentence was rarely pronounced.

Everything pointed to the speedy conclusion of the war. The High Commissioner announced the desire of the Imperial Government to secure the fullest liberty and self-government to all in South Africa; Roberts at Bloemfontein offered to allow all Free Staters other than the leaders to return home, provided they would take an oath to fight no more; Rhodes, in newly-relieved Kimberley, was once more proclaiming "equal rights for every civilized man" and assuring his foreign shareholders

that the Union Jack was the best commercial asset in the world. Even before the fall of the Free State capital, the Transvaal Government had offered to negotiate peace on the basis of independence, and had sent up S.O.S. signals to France, Russia, Germany and the United States of America ; but Great Britain refused to hear of independence, and a Boer deputation found that the Continent was anti-British rather than pro-Boer.

One small indication of popular feeling in Europe reached de Villiers. John Öreg, his Hungarian friend of Utrecht days, wrote that the Magyar Government, remembering England's sympathy in 1848, was still well-disposed towards Great Britain, but that the people felt for the Boers the sympathy of one small and liberty-loving people for another.¹ De Villiers may have wondered what the Slavs and Roumanians in Hungary felt ; but it is rarely wise to carry historical parallels too far. More immediately to the purpose was the fact that the war was by no means over. Roberts at Bloemfontein and Buller in Natal were unable to move till early in May. The respite gave the Boers time to rally and, when the British at last advanced with overwhelming forces, the Republicans were ready to harass them at every step.

The news of Roberts's grand attack reached de Villiers in London, whither he had sailed in the middle of April. He had many reasons for going. He wished to attend the Judicial Committee, where an important appeal from Natal was to be decided ; he hoped that the sea-voyage would rally his failing health ; South Africa, moreover, was a misery to him. At home his hands were tied by the fact that he was Chief Justice, and, even had they not been, there was nothing that he could do to check the tide of war. In England, on the other hand, his Privy Councillorship was a reality ; there he might be able to do something to hasten the coming of peace. During the first week of the war he had vainly urged Dr. Andrew Murray, the patriarch of the Reformed Church of the Colony, to lead a mission to England to open the eyes of the British public ;² but Murray had replied that such an errand was useless. Sufficient, he wrote, if they could keep their own people from rising.³

¹ J. Öreg to de V., March 7, 1900.

² de V. to A. Murray, Oct. 16, 1899.

³ A. Murray to de V., Oct. 18, 1899.

De Villiers knew that, in the opinion of the mass of the British people, the war was being waged to overthrow a corrupt oligarchy which stood in the way of unity and prosperity, and to defeat a Pan-Afrikander conspiracy designed to sweep away British institutions to make room for a republic. He knew how false the latter idea was, and how much falsehood had been mixed with the essential truth of the former. He had therefore done his best to keep Liberal friends in London informed of his interpretation of the facts of the case. Some of them, notably Lord Hobhouse and Frederick Mackarness, had formed the Conciliation Committee to counteract the war-spirit, and Mackarness had eagerly seized at the mere rumour that he was coming to England. "Your great influence and high character," he wrote, "might get better terms from the Government than would otherwise be the case."¹ Mackarness had written thus hopefully during the Black Week; now, the sudden turn of the tide had immensely strengthened the hopes and enthusiasm of the war-party. The Liberal parliamentary opposition was helpless; their newspapers had been so weakened by defections that criticism of the war policy was practically killed in London and to a large extent in the provinces. Liberal friends all told the same tale; the public clamour was dead against the continued independence of both Republics. Nevertheless, they appealed to the Cape politicians for a lead in view of the coming settlement, and Mackarness added one piece of information which suggested to de Villiers that a compromise might still be possible. Party feeling was so bitter, he wrote, that he and Frederic Harrison feared the outbreak of civil war in England if the war went on much longer.² Since his friends in the Cape Ministry were unable to leave their posts, de Villiers determined to gauge the strength of the peace-party in England himself.

So he travelled to London and his wife with him. Sad news awaited them. Their old friend, Lord Loch, lay dying. De Villiers was the last person, other than members of the family, to see him; and Loch, in spite of growing weakness, would not let him go. For two hours they talked of the war which had come to end their dreams. Once upon a time it would all have been so easy, given time and patience; since then—but what

¹ Mackarness to de V., Dec. 8, 1899.

² Mackarness to J. X. Merriman, Feb. 23, 1900.

was the use of talking? One man in a hurry had tangled the skein; another was straightening it out—at a price. And de Villiers, remembering the rocks of Simons Bay and the orange tree at Wynberg House, lamented that a Pharaoh had arisen which knew not Joseph.

He eagerly discussed the coming settlement with his London friends, Lords Ripon, Hobhouse and Davey, James Bryce, Mackarness and Mrs. Stopford Green, widow of the historian of that English people which, he felt, had been cozened into such strange courses. He had already tried to call in the New World to redress the balance of the Old. He had met Sir Wilfrid Laurier in London in 1897. Sir Wilfrid, as Premier of Canada, might be able to influence the post-war settlement. A Colonial Conference was already overdue, and Canada's voice, even if it spoke with a French accent, must command attention in such a meeting. Laurier's reply was not encouraging:

Sir Wilfrid Laurier to de Villiers.

Ottawa, *March 14, 1900.*

DEAR SIR HENRY DE VILLIERS,

. . . I deprecate war at all times, and this war above all others. I may be perfectly frank with you; though there is in all contests a natural tendency to side with the weaker party, my sympathy in this case is strongly with the British, on the mere abstract view of inherent justice. I fully recognize the force of the motives which actuate President Kruger and the people of the Transvaal. He naturally supposed that if he were to give the franchise to the Uitlanders, he and his fellow countrymen would be virtually outlanded from the practical government of their own country. That argument with me would be paramount, if President Kruger had not himself admitted the Uitlanders to the Transvaal. . . The policy of admitting settlers simply to make helots of them is intolerable. . . .

I do not think it is now possible to obtain peace except by the absolute and unconditional surrender of the two republics . . . that is the unavoidable solution.

Great as the existing difficulties now are, greater yet will be the difficulties that will then have to be faced.

My view of the solution would be a confederation of all the states of South Africa, on the exact pattern of the Canadian Confederation. This would assure to the Dutch population in all the states absolute equality of rights with the British people.

It may yet not be too late to obtain this solution, but this would mean an immediate cessation of hostilities. If war is continued it will degenerate into guerilla and partisan warfare. . . . It is rather for you now, dear Sir Henry de Villiers, to try to influence the leaders of the Transvaal and of the Orange State. In their hands is now the problem of a useless war, or of a dignified peace.

It is perhaps possible that when the war is over, my poor voice may have some effect in advising moderation and generosity. I have already spoken in that sense, whenever I have had the opportunity. . . .

This was too much for de Villiers. He determined that if Laurier was to continue to wander from what he conceived to be the strait path, it should be with his eyes open. Here was no question of putting the Boer case as tactfully as possible to a High Commissioner or the British point of view to a Republican State Secretary. He gave Laurier his unvarnished opinion of the diplomacy, official and still more unofficial, which had preceded the war:

De Villiers to Laurier.

London, May 13, 1900.

. . . I quite agree with you that President Kruger ought to have displayed more liberality towards the newcomers but I fear that the exaggerated and distorted accounts which had been sent over of Boer oppression have affected your judgment in the same way as they have affected the judgment of the great majority of the British people. "The policy," you say, "of admitting settlers simply to make 'helots' of them is intolerable." I have travelled a good deal over the world and have nowhere seen a more flourishing people than these so-called "helots" were before the war. They looked with utter contempt upon the President and his people, and I quite agree with Lionel Phillips that the great majority of them did not "care a fig" for the franchise. . . . Chamberlain of course did not wish for war if he could attain his objects without war, but those objects were utterly inconsistent with the continued independence of the state. No British Colony enjoying responsible government would have borne with the interference with its internal affairs to which this nominally independent state was being subjected. The negotiations should be read by the light of the historical events which preceded them, and if so read I cannot understand how any impartial person, with any sense of justice or fairness, can support Chamberlain's action. The chief argument that I now find adduced on the British side is that the unpreparedness of Great

Britain shows how little its rulers wished for war. The real fact, however, is that the government believed itself to be prepared and never expected that it would require more than 20 or 30 thousand men to promenade to Pretoria and reduce the Boers to subjection. Believe me, dear Sir Wilfrid, that a supreme tragedy is being enacted in South Africa. The British people, who deplored the fate of Dreyfus, are unjustly accusing and punishing a whole people. Their minds have been poisoned by a venal press and by lies which have been sown broadcast over the land at the bidding of a capitalist clique which owes all its wealth to the liberal gold-mining laws of the republic. . . .

You suggest in your letter that I should try to influence the leaders of the republics to put an end to a needless war. Even if I were in South Africa there would of course be no means of communicating with the enemy. Knowing, myself, the benefits of British rule, I should be very glad if I could induce the Boers to submit and cordially accept such rule. But with these people the preservation of their independence is a sacred mission. It may be a foolish sentiment but I cannot help respecting it. To us it may seem foolish and indeed wicked to prolong a war which can have only one issue, but to them submission, especially after the declarations of the British government, probably appears to be nothing short of a crime. . . .

Laurier's biographer has recorded that this letter profoundly modified the opinions of the Canadian Premier and of the Governor-General, Lord Minto.¹ There came a time when Laurier's "poor voice" spoke with decisive effect at the Prime Ministers' Conference of 1902 which destroyed the last attempt to federate South Africa officially from above by suspending the Cape constitution.

De Villiers soon found that little could be done at the moment to moderate the tone and actions of the Colonial Secretary and an admiring public. Roberts's thrust to the north had been brilliantly successful. On May 17th Mafeking had been relieved and a new word added to the English language; the Free State had been annexed, Johannesburg and Pretoria occupied and, a few days later, the main British column had been joined by Buller's forces from Natal. The two Presidents had discussed the possibility of making peace even before the fall of Pretoria; a little later, Prinsloo had been captured with 4000 men in the Brandwater basin; and though, after some hesitation, Kruger

¹ Skelton, *Sir Wilfrid Laurier*, p. 110.

and the remains of his Government had retired down the Delagoa Bay line, most people believed that the end was near. De Villiers and his Liberal allies thus saw their hopes of a moderate settlement fade away. They were robbed of a powerful supporter by the death of the Lord Chief Justice, Russell of Killowen; they knew that the peace-party was a minority; but they still hoped much from a conciliatory policy carried out by the right man once hostilities were over, even though the actual terms of the peace settlement might not meet their wishes. Some of them were already doing what they could to keep open the path to conciliation. Mrs. Green asked de Villiers whether it would be advisable for her to go to St. Helena to nurse the Boer prisoners. Her friend, Miss Kingsley, had recently died on a similar errand of mercy at Simonstown; but she feared death less than the possibility that the Boers might reject her as an Englishwoman. De Villiers was doubtful; nevertheless, "it is so important," he wrote, "that kindly relations between the English and Dutch in South Africa should be re-established that I would not dissuade you."¹ But Mrs. Green had already departed.

In his report de Villiers bade the Schreiner Ministry fasten their hopes on the reaction which must follow the war-fever in Great Britain:

De Villiers to Merriman.

London, June 2, 1900.

... I have nothing cheering to report from this side. The dissemination of falsehoods has had its intended effects and the mass of the British nation is honestly convinced that a good work has been done to civilization. . . . There is no reasoning with people in this matter, and I feel convinced that if the British Ministry should dissolve Parliament in the next couple of months it will sweep away whatever there is of opposition left. What the feeling will be 12 or even 6 months hence is another matter. The tension is so great that a reaction is sure to come, but in the meantime much mischief will be done. One can only hope that if annexation is carried out the burghers will be induced to accept the inevitable. A policy of conciliation will do a great deal, but everything depends upon the men employed to carry out that policy.

Before the letter reached Cape Town, the Schreiner Ministry had broken up. Merriman, Sauer and te Water held out for an

¹ de V. to Mrs. S. Green, Aug. 1900 (Draft).

amnesty to the Cape rebels ; the Premier, Herholdt and Solomon were unwillingly prepared to support a modification of the policy of disfranchisement demanded by the Imperial authorities. In the middle of June the bulk of the Bond party refused to support Schreiner, who thereupon made way for the ever-ready Sprigg. In de Villiers' eyes one of the few virtues the new Ministry possessed was that it included Rose-Innes and had to rely on the support of Schreiner and his Adullamites. It was thus independent of the "Clear Grit" Progressives, whose ranks had just been strengthened by the return of Jameson to political life ; but, compared with the late Cabinet, he feared it would prove a weak defender of such South African liberties as might survive the blast of war.

During June de Villiers turned with relief from politics to the law and, at the close of the session of the Judicial Committee, departed for a well-earned holiday in Switzerland. He returned to London in the middle of August to find the air full of rumours of an impending dissolution of Parliament. As he had foreseen, Chamberlain was preparing to make the most of the opportunity which Lord Roberts had presented to him. Lord Roberts had also furnished him with some tangible electioneering material. Among the papers captured at Bloemfontein were a batch of letters written by Merriman, de Water and de Villiers himself to various Free State leaders before the outbreak of the war. Taken by themselves they gave a good answer to foreign critics and doubting friends, like Laurier, for they contained many of the hard truths which had given solidity to the attacks by the *Uitlander Press* and the Colonial Secretary on the Kruger régime. Chamberlain, therefore, asked permission to publish de Villiers' four letters. "If I may venture to say so," he wrote, "they are most honourable to your foresight and judgment as well as to your patriotism and loyalty."¹

De Villiers hesitated. His wife made up her mind at once and urged him to agree only on condition that the replies and the correspondence with the High Commissioner were published as well. But at last he decided to permit the publication, subject to the omission of a few passages referring to persons who had had nothing to do with the negotiations. For, said he, war being war, the Colonial Secretary would probably publish

¹ J. Chamberlain to de V., Aug. 9, 1900.

the letters even without his leave as, indeed, he did publish the letters written by Merriman and te Water :

De Villiers to Chamberlain.

Hotel Windsor, Westminster, S.W., August 15, 1900.

... You will understand that the four letters ... of which you kindly sent me copies formed a part only of correspondence which I was carrying on. ... In writing to the leaders in the Republics I naturally put the British case in the most favourable light, just as in writing to Sir Alfred Milner I would point out what could be said on behalf of the Republics. The question now is whether I should object to the publication of a part of the correspondence. On the whole I have come to the conclusion that ... I ought not to object, although it would have been better that the whole correspondence should be published. Any objection on my part would certainly be misconstrued in South Africa. ... Before concluding I would venture to make a general request. You at all events do not doubt my perfect loyalty and would not look upon advice coming from me with suspicion. There are many of us in South Africa who still hope, in spite of everything that has happened, to bring about a reconciliation of the two races and assist in the establishment of a South African Commonwealth under the British Crown. My earnest request is that the British Government would do nothing to add to the difficulties of this task. If it be clearly understood that the Imperial Government stands above local parties and holds the scales evenly between them bright prospects may still be in store for South Africa.—Believe me, Yours very faithfully,

J. H. DE VILLIERS.

Chamberlain replied cordially promising to welcome and to consider favourably any advice which de Villiers might give him on the best means of hastening a reconciliation of the two white races, and forthwith published the letters.¹ The publication caused a storm in Liberal circles, as well it might. Even the restrained and judicious Bryce could not contain himself. "I do not believe," he wrote, "that any minister of the Crown except Chamberlain would have been guilty of such a breach of good feeling and constitutional usage."² He moderated his anger when he learnt that de Villiers, at least, had given his consent to the publication; meanwhile the *Manchester Guardian*

¹ Chamberlain to de V., Aug. 16, 1900.

² Bryce to de V., Aug. 28, 1900.

pressed for the production of other captured letters to disprove the legend of the Pan-Afrikander conspiracy.

While the storm raged de Villiers was on the high seas. He and his wife arrived home early in September just in time to bid good-bye to their son-in-law, Philip Cloete, who was on his way to Ceylon as a prisoner of war. There were many prisoners on his transport, for the Boer armies were apparently crumbling. Olivier had just surrendered with a large force; De Wet had been chased into the Magaliesburg; on August 26th the last pitched battle of the war had been fought at Dalmanutha on the road to Delagoa Bay; Roberts had annexed the Transvaal and telegraphed to Downing Street that the war was over; and Kruger, who had thus outlived the Republic at whose birth he had assisted, had passed over into Portuguese territory and thence sailed for Europe.

On receipt of Roberts's telegram, the Imperial Parliament was dissolved, and the Tories went to the country with the cry "every vote given to a Liberal is a vote given to the Boers." "It is amazing," wrote Bryce, "that even political perversity should not see how completely the evidence disproves the fiction of a 'Dutch Conspiracy.' It is however still diligently propagated here and told heavily in the recent election. The vulgarity and mendacity of Chamberlain in his recent electioneering campaign surpasses anything we have had in England during this century."¹ The Khaki election gave the Tories a great majority over all other parties. Humanly speaking the post-war settlement would be in Chamberlain's hands. He lost no time in repeating that the Imperial Government was anxious to give self-government to the ex-Republics provided the inhabitants would co-operate with it to restore peace, and issued dormant commissions appointing Milner administrator of the Transvaal and Orange River Colony, attaching the office of High Commissioner to him personally, and empowering him to summon inter-colonial conferences; in other words to set in motion the machinery which would produce federation. Meanwhile, a commission was appointed to rout out the concessions of the Kruger régime and an expert arrived to overhaul the finances of the two new Colonies.

Federation, then, was coming; but it would be a federation

¹ Bryce to de V., Oct. 25, 1900.

in which the dominant or rather the dominated North would be cast for the leading rôle. The part which the Cape Colony would be called upon to play was problematical. The parliamentary session had begun on July 20th. Rhodes had taken no part in it. "You can trust Milner," he said. Hofmeyr, too, had remained inactive and had sailed for Europe early in September to be seen no more in South Africa for two years to come. Even so, feeling ran high and the debates on the Indemnity and Special Tribunal Bill were long and bitter. A peripatetic special court of two judges and a barrister was empowered to try rebel ringleaders and others, whether rebels or troops, accused of violence, theft and looting; other courts of three members, one at least of whom must be a resident magistrate or a barrister, were to deal with the rebel rank and file. Both types of court could impose a maximum penalty of five years' disfranchisement on convicted rebels.

De Villiers heartily disliked the measure. The special court superseded all other courts in the matters entrusted to it; only in case of disagreement did an appeal lie to the Supreme Court from any of these new courts; worse still, a new principle in criminal procedure was embodied in the bill. "Surrendered rebels," that is those who surrendered after a certain date, were to be held guilty if they failed to appear in response to a summons posted up in the office of the field cornet of their ward. In view of the scattered nature of the population, this procedure was intelligible but it was none the less a dangerous innovation. However, the bill became law at the end of the session and on October 12th Parliament was prorogued. It did not meet again for nearly two years.

In October, the air was once more full of talk of the coming settlement. Some of the mining magnates were already hopefully hinting at the virtues of Chinese as labourers, and Rhodes was discussing a redistribution of seats in the Cape Parliament. But Rhodes was still a very poor Progressive. He still persisted in thinking and, what was even worse, thinking aloud in public. In this very month of October he delivered a presidential address to a jubilant and mainly feminine meeting of the South African League in Cape Town. "You think you have beaten the Dutch!" he told them. "But it is not so. The Dutch are not beaten; what is beaten is Krugerism. . . . The Dutch are as

vigorous and unconquered to-day as they have ever been . . . and you will have to live and work with them hereafter as in the past." ¹ It was the old Rhodes. He had used devious methods to achieve his ends and, now that those ends were surely in sight at last, it might be possible to work once more with the Dutch and the moderate English "as in the past." But it was too late. Watchful onlookers noted the puffy face and gasping breath which told them that Rhodes's course was nearly run. And the war was by no means over. It was merely changing its character for the worse.

Loch and Laurier had both foretold that the real difficulties would begin for the army on the day after the fall of Pretoria. They were right. The Boers, riding light, began a guerilla warfare and carried it into the British Colonies. With the coming of that kind of fighting, the spirit of the combatants hardened and the brunt of the war inevitably fell more and more on the non-combatants. Railway bridges and culverts were blown up at night; troops were fired on from farm-houses; the burning of farms became much more common and, in places, systematic; and, on the Boer side, burghers found themselves forced to take the field again under threat of seeing their stock confiscated and their families left upon the veld.

Martial law had long since prevailed in northern Natal, in the Colony north of the Orange and in the Republics. It had not yet been extended to the main body of the Colony but there were signs that it was coming. De Villiers dreaded it, partly as the negation of all that he stood for as a judge and as a parliamentarian, partly as a system which lent itself readily to abuse not so much by those in high office as by the local officials, too often temporary officers and gentlemen dressed in a little brief authority, unchecked by the ordinary law of the land and egged on by spiteful neighbours, commercial rivals and professional delators. "I cannot trust myself," he wrote to Merriman, "to write about the doings of the military authorities. They are beginning to disgust the ultra-loyalists, but that is an evil that can be borne. My fear is that the misdeeds of the present day may hereafter make a reconciliation between the races utterly impossible." ²

¹ Basil Williams, *Cecil Rhodes*, p. 319.

² de V. to Merriman, Nov. 21, 1900.

He wrote at greater length to Mrs. Stopford Green :

De Villiers to Mrs. Stopford Green.

Wynberg, *November 21, 1900.*

. . . The indignation with which you write about what you saw and heard at St. Helena would I fear be increased tenfold if you were in South Africa at the present time. Women and children are now being deported wholesale from the devastated farms, and the sufferings of some of them have been beyond description. The sad feature of the business is that thousands of Dutch people in this Colony who have been hitherto devotedly loyal to the great nation to whom we owe so much have been completely alienated, and many of them openly admit that they are loyal only because they cannot help themselves. Eighteen months ago the Dutch man or the Dutch woman who ventured to make such an admission would have had a very unpleasant time with his or her Dutch neighbours. You are quite right in thinking that it is a great strain on the Colonial Dutch to provide for so many of their suffering kinsmen and kinswomen. To crown all their troubles their crops have been destroyed by rust and by locusts, and in other parts drought has led to the death of a great proportion of their flocks. It is marvellous, however, what large sums are being collected for the different funds. . . .

De Villiers was in close touch with Merriman as well as Sauer. The two friends were preparing to go on a mission to England to strengthen the hand of the peace party. De Villiers had shrewdly forecasted a sudden change of opinion there; news from Liberal correspondents was on the whole more hopeful than it had been. The general election had proved the existence of a strong minority opposed to the war; it was easy to overestimate the strength of active Jingoism; disgust at the protraction of the struggle was growing. It was, however, useless to expect the Sprigg Ministry to act as mediators. Sprigg, indeed, had narrowly escaped defeat more than once during the preceding session and only by the barest majority had he secured the rejection of Sauer's motion in favour of the qualified independence of the two ex-Republics. Schreiner had voted for that motion and Merriman had supported it with all his force declaring that, after recent experiences of Transvaal armaments, foreign legations and the general burlesque of a first-class power, full independence was out of the question, but that the ex-Republics

must at least retain their identity as protected States if South Africa was to find rest.

Merriman and Sauer desired to make their mission to England as representative of parliamentary opinion as possible. They therefore fell back on the Opposition, which comprised nearly half the members of both Houses and represented fully half the electorate. The Bond members were summoned to meet early in the New Year. There was pressing need for action. Already some Cape Town enthusiasts had arranged to hold a Volks Congress at Worcester on December 6th to express sympathy with the struggling Republicans. The leaders of the Bond looked forward to the congress with dismay. The two sections of the European population were drifting further and further apart; a chance act at a mass-meeting might bring them together with a crash. De Villiers found that his brother Jacob, magistrate at Worcester, was to take the chair. He tried in vain to dissuade him. "I must keep my promise," Jacob replied. "If anything were required to make me persevere in this determination it is the display of military force which is being made to overawe us."

Colonial troops were indeed being sent to mount guard with maxims over the town which de Villiers had represented in Parliament and in which he had found his bride. He resolved that, if a collision were to take place, the Colonial Secretary should know what he believed to be the truth. He, therefore, wrote to Chamberlain on the eve of the meeting.

De V. to F. Chamberlain.

Wynberg, December 5, 1900.

DEAR MR. CHAMBERLAIN,

In concluding your letter of the 16th of August last you were kind enough to say that you would at all times be glad to have and favourably consider any suggestions from me as to the policy most likely to promote the reconciliation of the two races in South Africa. I thank you for this permission because I am not certain that Sir Alfred Milner has the same confidence in my absolute sincerity and disinterestedness which you have and which previous Governors have had. After his despatch as to the disaffection of the Dutch population had been published last year I took the liberty of assuring him, from my personal and intimate knowledge of our people, that he had misjudged them and that such signs of racial animosity

as he had observed were the result, slowly vanishing, of the Jameson Raid. His answer was that he had received his information from persons whose word he had no reason to doubt. The publication of the dispatch produced a somewhat unfortunate effect. The so-called Dutch of the Cape Colony are in reality Britishers for they are born subjects of the Queen of Great Britain, but being of a different race and in many cases speaking a different language they do not entertain the same feeling of personal devotion to the Mother Country that is felt by their fellow-subjects of English or Scotch origin. They were perfectly loyal, but they also had feelings of kinship towards their relations in the Transvaal and Orange Free State. They had no aspirations for themselves beyond retaining their share of self-government under the benign rule of Great Britain, and they would have gladly welcomed the voluntary union of the two States with the Colony under the same salutary rule. But it was a voluntary union they wanted, and they resented whatever they believed to be an injustice in the treatment of the Republics. Unfortunately there was a difference of opinion between the two political parties of the Cape as to what that treatment should be and it became a political cry of one party that its opponents were disloyal. So long as this cry was confined to party politicians it could not do very much harm, but its apparent adoption by the Governor was greatly resented by the Dutch speaking population. A suggestion of disaffection made by a Governor in regard to a people of a different race is apt to rankle in their minds and prove true in the result, although it may have been baseless at the time when it was made. There may of course have been a few irresponsible persons or unimportant newspapers which uttered seditious sentiments, but the bulk of the people, whose representatives had just by their unanimous naval contribution set an example to the rest of the Empire, were perfectly loyal and free from serious disaffection. During the crisis which ended in the war the great majority of the Dutch people rightly or wrongly believed that the Transvaal Republic had yielded as much as it could consistently with the retention of its independence. They may have been mistaken in their belief but it was honestly held. You know from my published letters, what my own opinion on the matter is, and I need not therefore repeat it. When the Republican forces overran portions of this Colony, the loyalty of a great many living in those portions was not proof against the strain occasioned by their sympathy for their brothers and cousins and friends from across the borders. For their rebellion they are being prosecuted and punished, and I do not wish to say a word in condonation of their offence. I may however say this that I am satisfied that the number would have been far less if these misguided people had not been previously exasperated by the

charges levelled against them in the days of their undoubted loyalty. As the war proceeds a still greater strain is being placed upon the loyalty of the rest of the Dutch population by the manner in which it is being conducted. I know nothing about the laws of war, but assuming that they justify the wholesale burning of homesteads, the devastation of the country and the deportation of women and children, might not their severity be somewhat mitigated under the special circumstances in which this calamitous war is being carried on? I am not referring to the horrors which are witnessed to by several writers in the press from the British side but to official accounts of burnings, devastations and deportations. There are hundreds of Afrikanders who have hitherto been steadfast in their loyalty in word and deed but may begin to waver in consequence of what is taking place. I cannot express their views in better language than was done in a remarkable letter signed by "ten border loyalists" which appeared in the *Cape Times* a few days ago. The *Cape Times* is a perfectly loyal paper and would not, I am sure, have published the letter if unconvinced as to its perfect genuineness. I enclose a cutting which will speak for itself.

"But the height of tactlessness, not to use a stronger term, was attained when a few days ago a body of Colonial troops was sent to Worcester with the avowed object of being prepared for any emergency which might arise out of a Congress about to be held there. . . . The number of troops sent is too small to overawe or frighten the people, but it is quite large enough to indicate to them the profound distrust with which they are regarded by the authorities. Believe me that this is not the way to deal with the Dutchmen of this Colony. No people are more easily led by kindness and trustfulness but no people are with greater difficulty driven or overawed. . . ."

The Worcester Congress met and dispersed quietly; but there had been more cause for the anxiety displayed by the authorities than de Villiers could have known. Early in December de Wet made a determined effort to cross the Orange into the Colony. Floods and troops headed him off but he left subordinates to carry out his work. In the middle of the month one Boer force was within striking distance of Mossel Bay in the south and another threatened Malmesbury in the west. Thereupon martial law was extended over the whole Colony except the ports and the native territories, where Sprigg refused to have it. So the war spread to Colonial soil while, in the north, the Boers were active in the Magaliesburg and Vryheid, and Kitchener swept the Eastern Transvaal to draw them away from Natal.

Kitchener's blockhouses, too, were being strung out along the railway lines and more and more of the Boers with their families were being sent to the much criticized concentration camps.

Under these circumstances Chamberlain's reply was friendly but decisive :

J. Chamberlain to de Villiers.

Colonial Office, *January 7, 1901.*

(Private.)

DEAR SIR HENRY DE VILLIERS,

I have received with great pleasure your letter of December 5. I am glad that you should be willing to write me so frankly, and I assure you that I shall always value any communications from you and any suggestions which your experience may lead you to make. I may not always be able to accept them or to agree with them, but I shall cordially appreciate your confidence, believing, as I do most sincerely, in your absolute loyalty and patriotic desire to bring about a reconciliation between the two white races in South Africa at the earliest possible period after the conclusion of the war.

I gladly receive your assurance that the majority of the Dutch colonists recognise their responsibilities as subjects of the Queen, and I have always been willing to make allowances for such differences of opinion in regard to policy as naturally follow their close relations with the people of the Transvaal and Orange River Colony. Although we cannot agree with them on these points, and must require that they should accept the inevitable in the shape of the annexation of the two Republics, they may yet, I think, consistently serve with the greatest advantage as a medium of reconciliation between the conquered States and the British Government. They know, by their own experience, what British Government means, and they are therefore in a position to impress upon their friends in the two Colonies the fact that, although they will lose their political independence as separate States, they will ultimately obtain the same personal rights and liberties which are now enjoyed by our fellow subjects in the Cape Colony.

It should be, I think, the earnest desire of every loyalist of whatever nationality to hasten this period, and it must be evident that the time at which we can attain the consummation of our wishes depends on the behaviour of the burghers and on their frank acceptance of their altered position.

Meanwhile I think that most of the points referred to in your letter have been dealt with. The burning of farms is at best an odious military necessity, and I believe that with the instructions

now given it will be reduced to the smallest possible limits. The arrangements announced by Lord Kitchener seem to preclude the further deportation of women and children, although I believe that this action was taken in the past with a view to their protection; and the recent speech of the Commander-in-Chief to the burghers in Pretoria is a proof of the spirit in which he is anxious to approach the difficult problems which are still requiring solution.

I am sure that you will believe me when I repeat that the British Government and people are not animated by any vindictive feeling towards those who have fought against them in this war. At the same time I ought to impress upon you the difficulties which are interposed in the way of a conciliatory policy by the writings and speeches of some of the leaders of the Afrikander Party. I might refer to the language of some of the speakers at the Worcester Congress with the strongest reprobation, and still more perhaps to the articles and correspondence in some of the Bond newspapers. The worst enemies of South Africa are those who represent the efforts of the British Government to lessen the horrors of war and to be conciliatory in act and language as proofs of weakness and an encouragement to the Boers to persevere. Not less wicked are the constant calumnies, published without the slightest proof, against the British soldier and those who are entrusted with authority. Such libels are doubly mischievous. They naturally rouse the passions of the Boers and of the Dutch in the Cape Colony who are only too willing to believe them, and, on the other hand, they provoke the strongest indignation on the part of the loyalists in South Africa and of the British people. I am sure that you will do all in your power to moderate this kind of agitation which has already produced the worst results. Only the other day a gentleman who had been distinguished among the loyalists of South Africa for his moderate tone and his desire that nothing should be done unnecessarily to offend the sentiments of the Dutch, came to me in despair, and said that, in view of the language of certain members of the Bond and of *Ons Land* and other papers, he felt that every act of magnanimity was certain to be misconstrued and tended rather to a prolongation of the war than to its satisfactory termination. There is much to a similar effect in my correspondence, and although I do not take a pessimist view myself, I dread the effect upon opinion here of the brutal language of some of the representatives of Dutch opinion.

It is impossible to reconcile it with the loyalty which you believe is really felt by the Dutch in South Africa, and you must take this into account when you complain of accusations of disaffection. We have to deal with the hard fact that many thousands of Dutch colonists, to whom every privilege of self-government has been conceded, have nevertheless joined our enemies in arms, and that

even now they are encouraging the invaders of a British Colony by information, supplies, and, in some cases, active assistance. Nothing that they can do or say will alter the final result in favour of the Boers, but it does make much more difficult the course of policy which the Government have marked out for themselves and which looks to the earliest possible reconciliation as soon as the actual fighting is over.—Believe me, my dear Sir Henry, Yours very truly,
J. CHAMBERLAIN.

De Villiers did not deny the truth of much that Chamberlain had written mainly because it was beside the point. These evils were the result of the pre-war diplomacy and of the war itself; they were not the causes of the war. He contented himself with noting that ". . . when once a civil war which is also a war of races is kindled in a country every evil passion is aroused . . . and the only wonder is that the number of rebels was not greater."

The friendly tone of his correspondence with Chamberlain proves that de Villiers took a more lenient view of the shortcomings of the Colonial Secretary than did some of his friends. All his hostility—and here he was less than just to Sir Alfred Milner—was reserved for the High Commissioner. Even so, he had small hopes that Chamberlain would moderate his tone and thus help to end the war which was desolating the Republics and threatened to waste the Colony. Mediation from within South Africa was hopeless. Kitchener had indeed formed a Burgher Peace Committee at Pretoria which extended its activities to the Free State; for he, like Buller, believed that the war would only be ended when the mass of the burghers had thrown off the control of the few outstanding leaders who were keeping the war alive. Appeals reached de Villiers, chiefly from the mid-land districts of the Colony, begging him to take the lead in a movement to induce the Boers to submit. Apart from the cramping effects of martial law and of his judicial office, he felt that such a step on his part would be useless. The British Government demanded unconditional surrender; Steyn and Kruger would accept nothing less than independence, for they still looked to Russia or France for help, if only indirect help in the form of complications in China.

de Villiers to Rev. C. Murray.

Wynberg, January 19, 1901.

. . . The only way towards immediate peace lies between those two extremes. If the British Government could be induced to

propose terms which would in some way recognize the separate national existence of the two States with guarantees against future trouble there might be some hope of inducing the Boer leaders to submit . . . but no advice from myself or any other outsider would induce them to make a voluntary submission. As to the Dutch people of this Colony . . . it is hopeless to expect that they will either assist in repelling the invaders or in urging upon the Republics to submit. . . . If I were to address an appeal to them I should have to admit that there have been faults on both sides. Such an admission might be fatal to the object we have in view.

The best hope of immediate peace lay in bringing pressure on the Imperial Government as a whole and, if possible, on the British public. News from London was more hopeful. The Liberals had recaptured the *Daily News*; Mrs. Stopford Green had returned from St. Helena and published some of her experiences but, as she told de Villiers, she had put what she really wanted to say in confidential reports to the War and Colonial Offices.

Mrs. Stopford Green to de Villiers.

December 14 (1900).

. . . I saw Lord Raglan, Sir John Ardagh, and Mr. Chamberlain, and they all agreed to what I said and promised to support my suggestions which they said were just and right. But I have a sense of despair. The two Offices are in a way at feud. . . . Meanwhile, we have no Prime Minister, for as far as I can see Lord Salisbury is waiting on chances. . . . Mr. Chamberlain gives me the impression of a worried man. Not one of them indeed that does not feel that this awful problem is too great for them and they drift on waiting for luck. . . .

Bryce told the same tale and asked de Villiers for his advice.¹ Evidently the Imperial Government was sorely perplexed. It might be willing to offer terms to the Boers if it received encouragement from South Africa.

The Bond members of Parliament therefore met at Beaufort West on January 7th, 1901, and drew up a Grand Remonstrance against Milner's policy, the conduct of the war and the proposal to institute Crown Colony rule in the Republics. Merriman and Sauer undertook to go to London, get into touch with Hofmeyr who was undergoing a cure in South Germany, present the

¹ Bryce to de V., Dec. 21, 1900.

remonstrance, and ask to be heard at the bar of the House of Commons. So they set forth with all speed and, in February, de Villiers followed them.

He was anxious to go to London. Philip Cloete, his son-in-law, had been released on parole and, since he might not return to South Africa, was joining his wife in England; his own health was breaking down; he could not sleep without having recourse to drugs; his wife and his doctor were anxious to get him away from South Africa for a time. He himself desired to help Merriman and Sauer if possible, for he had a shot in his locker which might be used with effect in London. His wife, throughout, had urged him to publish his correspondence with Milner and others as an offset to the "Bloemfontein letters" published by Chamberlain. Bryce was more cautious but inclined to believe that their publication might have a beneficial effect on public opinion.¹ If one section of a correspondence could be used to help win a general election, surely the other might be used to unseat a High Commissioner. So de Villiers collected his papers and sailed for London with his wife and Dr. Claude Wright, prepared to publish the letters if his Liberal friends deemed such a course prudent and necessary.

The main burden of the attempt fell on Merriman and Sauer. They failed to persuade Hofmeyr out of his retirement at Munich, for the burden of his replies was "It is no good." He was, moreover, sceptical of the interpretation likely to be put upon the formula of equal rights by Chamberlain and Milner, and preferred direct rule from Downing Street rather than to be "sucked dry by a brummagem President and Volksraad."² Chamberlain was courteous but determined to have Crown Colony rule for a season; and, though the grand remonstrance was presented by Sir Robert Reid (Lord Loreburn) to the Commons, the House declined to hear the Cape delegates at the bar. Nor did de Villiers spring his mine beneath the throne of Sir Alfred Milner. Early in the voyage he collapsed. Dr. Wright had to sit up with him sixteen of the eighteen nights at sea, and it was well that Cloete was at Southampton to help carry him ashore. For six weeks he lay in a nursing home cut off from books and intercourse with friends. Once only was his wife

¹ Bryce to de V., Oct. 25, 1900.

² J. H. Hofmeyr to Merriman, Feb. 17, 1901.

allowed to see him to tell him of the birth of a grandson. In April he was well enough to receive letters and in May he travelled slowly with his family towards the Riviera. There he met with disaster. In passing through the customs, the despatch case containing his precious papers was stolen and, though Cloete subsequently recovered the bag, the letters were gone beyond recall.

As he recovered de Villiers began to pick up the threads of South African politics. The visit of the peace delegates to England had coincided with negotiations between Kitchener and Botha at Middelburg. At the end of a fortnight the negotiations broke down but they formed the basis of the Peace of Vereeniging which ended the war a year later. The war therefore smouldered on; the block-house lines crept forward; British columns swept the country; more and more of the Boer fighting men found their way to the prison camps in the Cape Peninsula or St. Helena, the Bermudas or Ceylon; the concentration camps increased in number and in size. At the close of May the Boers began to run short of ammunition and once more there was talk of peace; but Kruger in Europe bade his men go on with the war and Steyn induced the other leaders to hold out for independence.

The condition of the Boers was by no means hopeless. Thanks to their ceaseless activity, the effective control exercised by the British authorities in the ex-Republics in the middle of 1901 was less than it had been six months previously when Roberts and his veterans had sailed home. The High Commissioner had gone north to Pretoria in February but as yet he had not been able to establish Crown Colony rule north of the Orange, still less set in motion the machinery which was to produce the federation which he and the Ministries of Natal and the Cape Colony desired. All he could do was to set up something like a civil administration in those areas under his control and appoint a municipal council in Johannesburg. Then, having had the satisfaction of seeing the Uitlanders beginning to return and three of the mines reopened, he set out in May for London. Rhodes, meanwhile, was prophesying the near approach of federation, a federation dictated by "this great dominant north," the Transvaal and Rhodesia together. "The whole situation," he cried, "lies with the Northern States and nothing can alter it." And the north,

as far as it was ruled at all, was under purely official control. There was, however, as in the days of Carnarvon, one possible obstacle to official federation. The Cape Parliament had not met since October 1900, but it was still in being. Wherefore, to de Villiers' dismay, came resolutions from Graaff Reinet and from the League at Mafeking in favour of the suspension of the Cape Constitution. Early in July Rhodes followed the High Commissioner hot-foot to London.

The war flared up and died down fitfully. Furious quarrels broke out between the remnants of the two Republican Governments. Steyn accused the Transvaalers of using the Free State as a "dummy"; burghers were enrolled on the British side as National Scouts in the Transvaal or Volunteers in the Orange River Colony; but the commandoes still kept the field. De la Rey was active in the Western Transvaal, Botha raided Natal and Smuts began to harry the midlands of the Colony. Hence, early in October, Kitchener overcame Sprigg's scruples and extended martial law to the ports to check the smuggling of arms. It was time. In the middle of the month Maritz was at Malmesbury, three short days' march from Cape Town, and Smuts was raising rebels in the north-western districts.

As de Villiers had foretold, martial law made rebels. He was now called upon to serve on a Privy Council Board which heard an appeal arising out of the administration of that law in the Colony. In August 1901, D. F. Marais, a resident of the Paarl, had been arrested by the military authorities for no breach of martial law regulations but on the ground that his detention was desirable. He applied to the Supreme Court for release but the Acting-Chief Justice held that he could not interfere. The Judicial Committee upheld the Supreme Court on the ground that, where war is actually raging, military acts are not justiciable by the ordinary Courts.¹

It was an open secret at the time that the Judicial Committee had not been unanimous. Minority judgments are not recorded in the Court but it is clear, from the careful wording and rewording of the record which de Villiers kept of the case and from his regretful statement later on that his own Court must "loyally" adhere to the decision, that he opposed the finding. It is equally clear from the use which he made of this judgment in his struggle

¹ Marais v. O.C. Lines of Communications (18 S.C., p. 301).

against the maintenance of martial law in the Colony after the conclusions of peace in 1902, that his objection was that war had not really been raging in that part of the Colony in which Marais had been arrested. So Marais lingered in durance vile, while de Villiers relieved his feelings at the expense of no less a person than Algernon Charles Swinburne.

The pursuit of poesy has often tended to the cult of bellicosity by proxy. Swinburne now essayed to wear the mantle of Tyrtæus. It was a misfit and the poet was only moved sufficiently to give rein to his imagination in prose. In short, he wrote to the *Saturday Review* implicitly justifying the burning of farms as a just retribution on the Boer women who were said to have inflicted needless suffering on Uitlander women and children on the way down to the coast on the eve of the war.¹ De Villiers well knew that it is customary to vituperate the enemy for the period of the war even though he be acclaimed a hero and a good fellow at the end of it. He took the stream of abuse which was flowing from the Continental Presses against Great Britain—charges of cruelty against the British regulars and wild accusations against those who controlled the concentration camps—for what they were, the vapourings of those who had lost all sense of proportion or the malicious propaganda of inveterate Anglophobes. He was willing to admit that even the farm burnings might be a military necessity; at any rate, he would not pass judgment until he knew the facts. All the more did he resent mud-flinging by self-constituted champions of the good name of England. He therefore asked Swinburne for specific details of his alleged atrocity since previous charges had broken down on investigation, and pointed out that his letter was meaningless unless he meant that these particular Boer women were typical of their class. "So long as such slanders were disseminated by anonymous writers in the Press," he added, "we could only hope that the public would by this time know how to take them for what they are worth. But when they are advanced by an English gentleman who justly stands so high as yourself in the estimation of his fellow-countrymen a feeling of despair pervades me."²

Swinburne evaded the point and launched forth into an irre-

¹ *Saturday Review*, Nov. 12, 1901.

² de V. to Swinburne, Nov. 17, 1901.

levant attack on the Boer treatment of native peoples.¹ De Villiers pulled Pegasus back on his haunches :

de Villiers to Swinburne.

Bournemouth, *December 1, 1901.*

. . . You are mistaken in remarking that I had said there were no cruelties towards Englishwomen and children. What I did say was to request you to state when and where the particular atrocity . . . had been committed. The treatment of native races by Europeans is a very wide question, and I fear there are no European nations which can escape the charge of having at times been guilty of inhumanity. My own belief is that the English nation has as a rule displayed greater humanity in its treatment of subject native races than any other, and that is one of the reasons why I in common with so many other South Africans have worked unceasingly in support of the extension of British rule over the whole of South Africa by peaceful and constitutional means. . . . The treatment of the natives by the Boers has of recent years been very much better than in the days of Livingstone, Moffat and Colenso whom you cite. . . . Moreover, whatever may be said of the Transvaal Boers, I have never heard any complaint of the conduct of the Boers of the O.F. State. . . . The fact that a statement against the Boers was published far and wide is not to my mind conclusive. . . . Patriotism no doubt is a noble virtue, but in my humble judgment the virtues of truthfulness and justice are no less necessary to the maintenance of the greatness of a nation.

¹ Swinburne to de V., Nov. 27, 1901.

CHAPTER XXII

SUSPENSION AND MARTIAL LAW

DE VILLIERS returned to a South Africa which was seeking relief from the wasting sickness of the war in an orgy of speculation. The High Commissioner had returned in October 1901 with a peerage and letters patent defining the Crown Colony system which was to be established between the Orange and the Limpopo as soon as the Boers had laid down their arms. He had transferred the seat of his authority to Johannesburg, the financial centre of the South Africa which was, if all went well, so soon to become a single State. Johannesburg looked forward to an immense development, and confidently expected that it would be the administrative capital and the seat of the Supreme Court. All was quiet in the central Transvaal, the railways were uninterrupted, the refugees were pouring back to the Rand. Meanwhile Lord Milner was working night and day to improve the condition of the concentration camps and to put an end to the fighting.

If all was to go well the Rand mines must be re-started and a railway and labour agreement made with the Portuguese. Geography was still geography, Delagoa Bay was still Portuguese, and Milner found that Transvaal Boer and Uitlander alike expected him to follow in Kruger's footsteps in safeguarding their economic interests. Under the Republic the mines had been largely dependent on native labourers from Portuguese East Africa; now, the labour shortage in British South Africa was serious, and Portuguese Shangaans were more than ever necessary to fill the gap. Some of the mineowners in Rhodesia had already asked for Chinese labourers, but the Transvaal had not yet come to that pass. The High Commissioner was therefore obliged to drive as good a bargain as he could with the Mozambique officials. He revived the old treaty of amity and, in the place of the private

arrangements hitherto made by the Chamber of Mines and Netherlands Railway Company, added clauses covering customs, railways and labour recruiting.

The *modus vivendi* of December 1901 did much to restore the economic circulation of all South Africa. It was a feverish restoration. Towards the close of another war long ago when England, as her custom was, had been "fighting the French," Cape Town had earned the title of "Little Paris." Now it was "Little London," Mayfair, Knightsbridge, London Wall and Whitechapel complete with something of Monte Carlo super-added. And so it was all along the chain of ports as far as Durban. Inland, the towns and the very dorps were full of strangers. Real estate boomed; those who had horses, mules, transport, forage, real or imaginary, reaped a golden harvest. War at a distance had its compensations in South Africa early in 1902.

De Villiers returned home in much better health than he had set out, and was welcomed as one raised from the dead by a host of friends headed by the new Governor, Sir Walter Hely-Hutchinson. Apparently the orange tree at Wynberg House was to come into its own again; but it was only a Governor who would now sit under its shade. The High Commissioner was far away on the High Veld. The University of the Cape of Good Hope, on whose council de Villiers had sat for many years, conferred the honorary degree of LL.D. upon him and the Cape bar presented him with his academic robes. His relations with his *alma mater* were not so happy. He had been a member of the council of the South African College from 1874 till 1878 and again from 1885 till 1901 when he had resigned because of his ill-health. In 1886 he had taken the chair at the meeting which established the ex-students' union of which he remained president till the day of his death. Now, however, his friend Sauer, who had been chairman of the council since 1894, was unseated at the council elections. De Villiers regarded his defeat as a political move and a personal affront. Long ago he had bought land on the Olifants River, proposing to bequeath it to the College. This land he now sold. The ultimate loss to the College was greater than either he or the council could know, for the farms were afterwards included in an irrigation scheme which greatly enhanced their value. Altogether "a regrettable incident."

That phrase had become a cliché in the war news of the day, for the war still dragged on up country with the British columns alternately on the defensive or in pursuit. The inconclusive struggle seemed to be never-ending. The Netherlands Government had offered to mediate, but the British authorities would negotiate only with the Boer leaders in the field. Rumour had it that Salisbury, now ageing towards the grave, had said that Rhodes ought to become Prime Minister of the Colony once more; Leyds, it was said, thought that Rhodes might be able to hasten the coming of peace if he would only come forward; a large section of the London Press was insistent that he alone could end the war. But could he, could any one man? Meanwhile he was ill, and busy in London pressing forward a scheme for the settlement of discharged soldiers in South Africa backed by an Imperial guarantee of £3,000,000; then off on a hurried dash to Italy and Egypt, and back once more to London. At last on January 18th he sailed for Cape Town. Forged bills in his name were in circulation; arrests had been made; and he came south to give evidence. De Villiers heard his evidence in the first of the two cases in which the Princess Radziwill played a leading part, but it was evidence taken on commission. Rhodes, the Great Elephant,—poor old Loben had once been proud of that title—had felt his way down to the water's edge to die. De Villiers, like so many others, old animosities forgotten, called at the cottage at Muizenberg. Rhodes was asleep; but Philip Jourdan, Rhodes's private secretary and de Villiers' nephew, afterwards told his uncle that on hearing of his call Rhodes "brightened up and expressed his great pleasure."¹ So, on March 26th, Rhodes died. "So little done, so much to do"; nothing less than the rebuilding of half Africa south of the Zambesi.

Reconstruction had already begun. The way was now cleared for it by the conclusion of peace. Negotiations began towards the end of March. Steyn, last to enter the war, showed himself ready to be the last to leave it; for he believed that time, the time he had striven so hard to gain in October 1899, was now on the side of the Boers. 20,000 veterans were still in the saddle; their families would be well cared for in the concentration camps; food was plentiful in the Colony where he and de Wet held the issue of independence must be decided. But, during May, Ian

¹ de Villiers' Memo.

Hamilton drove the Western Transvaal heavily for the first time ; the commandoes in the Midlands of the Colony were on the run ; and Smuts had to report that all hope of a general rising of the Cape Afrikaners had vanished. On May 15th delegates from both the Republican armies met at Vereeniging. At first the war party was in the ascendant ; but terms similar to those proposed by Kitchener at Middelburg in 1901 were offered to them, Kitchener whispered that Chamberlain and the Tories would not last for ever and, though Steyn resigned his presidency rather than give way, the other Boer leaders yielded. On the night of May 31st the booming of guns told London that peace had been signed at Pretoria.

The Republicans surrendered their independence and faced the prospects of a period of Crown Colony rule, to be followed by representative institutions and thereafter by full responsible government. There were, however, two main differences between the Vereeniging and the Middelburg terms. Colonial rebels were not specifically safeguarded, though the High Commissioner intimated that they would be tried under the laws of their respective colonies ; on the other hand, the financial terms were much more liberal. The ex-Republics were in ruins, and someone must pay for the repairs. It was clear that the cash must be found, in the first instance at all events by the long-suffering British taxpayer.

Peace was declared but martial law still ran throughout the ex-Republics, Northern Natal and the Cape Colony. The two new provinces would soon be under Crown Colony rule ; Southern Rhodesia was still completely controlled by the Chartered Company, robbed now of Rhodes's guidance and in low water financially ; the dominant party in Natal, with its eyes fixed on the Rand traffic and large areas of Transvaal and Free State territory, was in the most exalted mood of expectant Imperialism. The self-governing Cape Colony might prove the sole obstacle to a speedy official federation. If its constitution were suspended South Africa would present a *tabula rasa* on which the Colonial Secretary and High Commissioner might inscribe whatever design they chose.

There was much to be said for suspension if the necessity for immediate federation at all costs were once granted. The war had lasted far longer than anyone had anticipated ; the whole

country was exhausted ; would not one master hand revive it more quickly and more completely than a group of parliaments ? If the colonies all became self-governing before they were federated, would they ever federate ? Would the mere fact that they all flew the Union Jack prevent them from drifting through railway and tariff wars into actual warfare ? The event was to prove how just that fear was. The High Commissioner was a man of far-reaching schemes, great energy and swift decision ; he was already gathering an able body of administrators, his famous "kindergarten," around him in the north. Nor was suspension a novelty. Lord Sydenham had taken advantage of the suspension of the constitution of Quebec in 1840 to unite that province with Ontario ; there had been hints of a suspension of the Cape constitution in 1879 in the interests of federation ; in May 1901 one or two groups of S.A. Leaguers had passed resolutions in favour of it. More recently the High Commissioner had sounded certain of the Cape Ministers on the subject ; Rhodes had publicly advocated it and, shortly before his death, had signed a petition with forty-one other Progressive members of Parliament praying for suspension.

Early in May, before the war was over, this petition was handed to the Governor who forwarded it to the High Commissioner. Lord Milner could not comment openly on a petition destined for the perusal of the Imperial Government, but he did reply to the covering letter signed by the petitioners warmly approving of the proposal.¹ The High Commissioner's letter was unofficial ; nevertheless, it was widely published and hailed by League assemblies as the Imperial policy. Cables from London suggested that the scheme indeed had the support of the British Government.

The petition itself was not very drastic. Even so, five of the signatories withdrew their support. The real meaning of the petition was conveyed to the Colonial Secretary in an enclosure drawn up by one of the promoters of the petition and submitted to the rank and file of the signatories but not formally adopted by them. It avowedly embodied Rhodes's policy. Suspension was to be followed by Crown Colony rule for as short a time as possible ; the Cape was to have an equal voice with self-governing Natal in the settlement of general South African affairs such as

¹ Milner to Hely-Hutchinson, May 19, 1902 (*Cape Times*, May 30, 1902).

railways, customs, education, immigration, native policy and federation; prior to the restoration of responsible government there was to be a redistribution of seats, a new registration of voters, but no change in the boundaries of the Colony; and, finally, the scheme must be carried out by the existing Conservative British Ministry or not at all.

The petition reached Downing Street on June 2nd, two days after the signature of the peace treaty. Meanwhile, a furious agitation against suspension had been set on foot in the Colony. The agitation had the excellent effect of bringing the moderate English section into political alliance with the Bond on this issue. Committees were formed everywhere and two members of the central committee made it their business to call daily on the Prime Minister immediately after breakfast till, by their continual coming, they wearied him. The policy of the Sprigg Ministry was by no means certain. The Premier himself had first come into prominence by advocating the union of British Kaffraria with the Cape Colony on condition that the united Colony received self-government. He was a good parliamentarian; he found the sweets of office very grateful; he did at last condemn suspension in a public speech, but his position was very difficult. He had ruled for many months without parliamentary sanction; if Parliament were to meet he would be dependent on the support of the very members who had signed the petition; Rose-Innes, the ablest and most level-headed of his colleagues, had recently gone north to become Chief Justice of the Transvaal; and now, at the end of May, just after he had sailed for England to take part in the belated Prime Ministers' Conference in London, one of his remaining colleagues, Dr. Smartt, went over to the Progressives.

Suspension touched de Villiers nearly. As a young man he had lived in the England of Palmerston, Gladstone and Disraeli; he had been brought up to reverence British institutions, and the greatest of these was Parliament; his own career in the House of Assembly had been occupied mainly with the struggle for responsible government; he had drafted the act which was now to be abrogated; he had presided over the Legislative Council for nearly thirty years. Worst of all he knew that the more extreme Progressives were aiming at a permanent "English" domination in the Colony as in the Transvaal, a domination which must

mean the accentuation of that mutual distrust between Dutch and British against which he had protested since the Raid.

He wrote to backsliding members of the Legislative Council, but as his custom was he also went to headquarters :

De Villiers to Sir W. Hely-Hutchinson.

Legislative Council, Capetown, *June 3, 1902.*

MAY IT PLEASE YOUR EXCELLENCY,

The newspapers have published a letter purporting to be addressed by His Excellency Lord Milner to yourself in support of a petition for the suppression of the Parliament of this Colony. I have waited for some days to see whether its genuineness is denied, but as no denial has appeared it may be assumed that the letter is genuine and that its publication has been authorised. It is impossible to gather from the petition or from the letter whether it is proposed to put an end to parliament by Imperial or by Colonial Legislation. If it is to be by Colonial Legislation, the Cape Parliament will have full opportunity of making its voice heard, and there would be no necessity for me, as President of the Legislative Council, to express any opinion in regard to the proposal. It is possible, however, that it may be intended to invoke Imperial Legislation, in which case I could not consistently with my duty, allow judgment to go by default.

Lord Milner assumes that the calling of Parliament would produce a furious controversy turning exclusively upon the war, which would be certain to retard the pacification of other parts of South Africa. He bases this assumption upon what happened two years ago, when, he says, heated Parliamentary debates and a violent agitation throughout the country, following immediately upon the first rebellion, were in turn followed by a second rebellion now widespread than the former one. It is not, therefore, heated Parliamentary debates alone which produced these disastrous effects but also a violent agitation throughout the country. To the elements of discord which led to that agitation it is now seriously proposed to add a real and undoubted grievance which will create an agitation tenfold more violent than any that has existed in the past, unless indeed it is intended to suppress free speech as well as a free Constitution. Surely the experience of other countries, notably of the Transvaal, has shown that a safety valve is required for the expression of opinion, and that the best safety valve is free and open discussion by the elected representatives of the people. As the President of one of the Houses of Parliament I may confidently say that there is not a legislative body in His Majesty's wide Empire where debates have been conducted in times past with greater

decorum or with a more sincere regard for the susceptibilities of His Majesty's representatives. The suggestion that the debates two years ago were so heated as to lead to the second rebellion appears to me to be devoid of any foundation. Notwithstanding that the debates were being conducted during the most critical period of the war, they were not more heated than the debates in the Imperial Parliament itself, and even if they had been worse than they really were, they would have afforded no criterion as to what the debates are likely to be in the future after peace shall have been re-established. The second rebellion certainly had no closer connection with the previous Parliamentary debates than it had with the manner in which Martial Law was being administered in some districts of the Colony.

Lord Milner, in the concluding part of his letter, points out the supposed advantages of an interim Colonial Government not based on popular election and he says that it does not follow, because it is not so based, that it would be in any way prejudicial, or that it would not be representative. If the advantages of such a Government would be so great there exists no reason why its place should ever be taken by another form of Government. If upon the essential and all important question as to their future Constitution the people of this country are not to be heard through their elected representatives, why should they be so heard upon the less important questions which will demand the attention of the Legislature after the Constitution has been remodelled?

It is proposed to reduce the population of this Colony to the state of tutelage in which they were a half century ago, and the hope is seriously expressed that such a retrograde step will pacify men's minds, put an end to race hatred, and prepare the people for that undefined measure of self-government which may be hoped for in the near or distant future. As to the appeasement of race hatred, on which Lord Milner lays so much stress, nothing would more conduce towards that desirable end than the feeling of both races that they are trusted by the Imperial Government, and that equal rights are intended for all. A policy which, disguise it as one may, is founded upon a deep-seated distrust of one of the European races in this country will never tend to appease race hatred. At the end of the period of probation the feeling of dissatisfaction will, not without justice, be greater than ever. From my knowledge of the people of this country, I believe, and would respectfully submit, that the surest way of promoting peace is for your Excellency, as the Governor of this Colony, to take the Parliament into your confidence. If His Majesty's Government should agree with Lord Milner as to the desirability of a suspension of the constitution let it submit its propositions to the Legislature of this country. If the Legislature approves the country must and will submit, however

reluctantly. If the Legislature does not agree, it may pass the necessary measures for the pacification and unification of South Africa, in which case the necessity for a change will not arise. If, however, contrary to expectation, Parliament should by its conduct prove that Parliamentary government is impossible or ruinous to the interests of South Africa, then for the first time, the necessity for outside interference would arise, and the people of this country would have to submit to the Legislative decision of the Imperial Parliament.

Until the Legislature of this country shall have had an opportunity of being heard in its own defence, I deem it my duty, as President of one branch thereof, to protest, as I here respectfully do, against the proposal for its suppression. I do so because I believe that a majority of the House would if consulted, pronounce such a measure to be unjust and unnecessary and fraught with the greatest possible danger to the future peace and welfare of South Africa.

In conclusion, I would respectfully request Your Excellency to transmit the full contents of this letter to the Right Honourable the Secretary of State for the Colonies.—I have, etc., etc.,

J. H. DE VILLIERS.

The letter was forwarded to the Colonial Office with a covering letter from de Villiers.

De Villiers to J. Chamberlain.

Capetown, June 11, 1902.

DEAR MR. CHAMBERLAIN,

... It seems most unfortunate that at the very moment when peace is restored and the prospect is opened of returning goodwill among the people of this colony a fresh apple of discord should be thrown in our midst. What offence has the Colony committed that its Parliament should be suddenly suppressed without having an opportunity of showing by word or deed that, in the new order of things, it is prepared to take its place among the loyal and orderly self-governing colonies in the Empire? There have been no doubt many rebels among the Dutch, but they either have been or still are to be deprived of their franchise. Those who have not rebelled must surely be presumed to be loyal until the contrary is proved. . . .

I have the strongest reasons for believing that their only desire is now to bury past animosities notwithstanding what some of them have suffered under the Martial Law régime. . . .

I believe that if Parliament is called together it will astonish its detractors by its patriotism, loyalty and self-restraint. I am so

convinced of this that I am prepared to undertake that if the next session should not have that result I will resign my Chief Justiceship, re-enter political life and as a private member use all the influence I possess in inducing the Dutch members to work harmoniously with the Imperial Government and refrain from all occasions of offence. If life and moderate health are vouchsafed to me I have no doubt whatever that I shall succeed.

I have been told that the military authorities support the movement, but the conditions under which they have observed the people of this country are so abnormal that their opinion as to what the people will do under normal conditions cannot have much weight. As to the public meetings which are being held in favour of the movement, they probably represent the opinion of the majority in the larger towns, but there is an earnest minority in the same towns, representing the best traditions of British public life, which condemns the proposal as wholly unjust and unnecessary. As to the smaller towns and the country generally, the vast majority of the electors would probably be opposed to the movement. Unfortunately under existing conditions their voice has no chance of being immediately heard. . . .

Those who have suffered most from the operation of martial law are not likely to take any active or open steps against the movement.

If the scheme should be carried through, this Colony will be reduced to a condition far worse than that of Ireland. She at all events has more than ample representation in the Imperial Parliament. . . .

An appeal to the Colonial Secretary could be little more than a protest. De Villiers sought to mobilize a united Liberal opposition in London. James Molteno had already gone thither to beat up the Radicals and the old-fashioned Tories; but he was suspicious of the Liberal Imperialists, of whom Asquith was one of the chief. It was Asquith to whom de Villiers now turned:

De Villiers to H. H. Asquith.

(Draft letter.) *June 8, 1902.*

. . . I would not have troubled you with a letter on the subject if the published telegrams from England did not induce the fear that the measure may possibly be passed by the Imperial Parliament. . . . The men who would most cordially hail the passing of the proposed measure, with greater cordiality than even the avowed supporters, are those few enemies of the Empire who are eager to prevent the pacification of South Africa. . . . There is not the slightest reason to fear that any contested election in any part of the country will lead to disturbance. . . . I am convinced that a

contested election in a country district at this moment would be more orderly than any contested election in any portion of Great Britain, not to speak of Ireland. . . . I do not know what your views are on this matter, but I am not without hopes that you will be able to assist in averting a calamity from South Africa.

One section in the draft of this letter de Villiers omitted, for he was not sure enough of Asquith's attitude to risk expressing his inmost hopes to him :

Another argument that has had much weight is that Lord Milner might resign if his proposal is not adopted, but surely this risk should be run. . . . England has great statesmen who could be trusted to complete the work begun by Lord Milner. Without mentioning other names I may safely (say) that men like Lord Rosebery or Lord Cromer would be welcomed by all classes in South Africa.

Even a united Liberal opposition would not be strong enough to check the majority in the Westminster Parliament if the Imperial Government determined to go forward. The best hope lay in the Prime Ministers' Conference. Suspension involved a dangerous principle ; if it were applied to one Colony, why not to others ? De Villiers appealed to Laurier :

De Villiers to W. Laurier.

Wynberg, June 8, 1902.

The fear which I expressed in one of my letters to you now seems likely to be realized. . . . The pretext is so flimsy that I at first doubted whether Lord Milner could have written the letter to the Governor of this Colony, but its genuineness has not been denied. . . . In the country districts . . . no meetings can be held to protest against the measure, whilst in the larger towns . . . public meetings are freely allowed and the . . . results of these meetings are telegraphed to England as being the expression of public opinion, and the British Parliament may be rushed into passing a measure which will be regretted throughout the Empire before many years have passed. Unfortunately one of the Premiers who are to attend the Coronation festivities, in passing rapidly through South Africa, has been induced by the retrogressives to lend his influence to the movement. Mr. Seddon, the Premier of New Zealand, will no doubt devote part of his superabundant energies to aiding and abetting the movement for depriving a sister Colony of her Constitution, but, with my knowledge of your past career, I cannot imagine your lending any assistance to the movement. . . . These people do not understand the real nature of the problem. . . .

One reassuring piece of news reached the opponents of suspension. Sprigg definitely condemned the policy in an address to his constituents; but the campaign in its favour was pressed vigorously in the Colony and the military arm was discreetly called in to assist the civil power. In the middle of June official questionnaires were widely distributed couched in language calculated to suggest that martial law had conferred benefits on society, was conferring benefits, and ought not to be diminished. Recipients were asked to state confidentially to the authorities at the Castle their views on the desirability or otherwise of relaxing martial law restrictions. De Villiers replied by sending the General a copy of the Marais judgment and three-and-a-half foolscap pages of comment to the effect that the decision of the Privy Council was, that "martial law can only be justified by the circumstances of actual hostilities." The gallant officer's reply is not recorded.

It could no longer be pretended that hostilities were raging in any part of South Africa. On the very day de Villiers wrote his letter to General Settle, the last commando laid down its arms. Whereupon the enormous task of repatriation was begun. Kitchener departed and Milner became Governor of the Transvaal and Orange River Colony. Ten days later came the news that the Imperial Government had rejected the policy of suspension. The Colonial Secretary announced that the Cape Parliament was to meet forthwith and, only if the majority refused to assist in the pacification of South Africa, would further action be called for to safeguard Imperial interests. Chamberlain followed up his official cable with a private letter to de Villiers:

J. Chamberlain to de Villiers.

Colonial Office, July 5, 1902.

MY DEAR SIR HENRY DE VILLIERS,

I beg to thank you sincerely for your letter of June 11th conveying your views as to the suspension of the Cape Constitution. Long before my present letter reaches you, you will have heard of the decision of the Government, which will be, I am sure, entirely satisfactory to you. The decision had been arrived at before your letter reached me, but I am glad now, as at all times, to know the opinions and to consider the advice of one like yourself, who has on many occasions shown so great a desire to moderate controversy

in South Africa, and whose efforts in the cause of peace, although they were unfortunately frustrated, were so earnestly pursued.

I am afraid that I am less sanguine than you appear to be of the temper of those who in the recent past have led the Afrikander Bond. I make no accusations against them, but I cannot but feel that the Bond in its later developments has been a curse to South Africa. I would that it were possible that the leaders should have patriotism enough to dissolve this ill-omened Association. I hope that if they took such a step it would be followed by a similar abnegation on the part of the League, and that we might be spared another political agitation conducted upon racial lines. If you should see fit to co-operate with me in securing such a result I believe you would add another, and perhaps the greatest, to the services you have rendered to your country.

Meanwhile, and in any case, I confidently look forward to the fulfilment of your predictions so far as the immediate present is concerned. If the meeting of the Cape Parliament justifies your hope I should rejoice at the prospect of a general sheathing of swords in the political as well as the military arena. There is so much good work to be done in the development of the country, in reconciling hostile interests, and in promoting a really broadminded national education, that occupation would be found for the best energies of the best men which are now too frequently wasted in barren controversy and recrimination.

I note with deep appreciation your patriotic promise that if your expectations are not fulfilled you will re-enter political life and use the influence which you have deservedly obtained to induce the members of the Cape Parliament to work harmoniously with the Imperial Government for common objects. I feel that I cannot over-estimate the assistance which you would in these conditions be able to render.—Believe me, with kind regards, Yours very faithfully,

J. CHAMBERLAIN.

Chamberlain could not, however, tell de Villiers of the rock on which suspension had foundered in sight of port. Whether or no de Villiers' last letter to Laurier reached London in time, his earlier correspondence had reached its mark. At the Premiers' Conference Seddon had moved, and Sir Albert Hime of Natal had seconded a resolution in favour of suspension in the interests of Imperial unity. A long pause had followed, broken at last by the voice of the chairman enquiring whether Canada had any observations to offer. Sir Wilfrid rose and declared that, if the motion were carried, Canada would wash her hands of the

conference. The indignant Sprigg spoke to the same effect and was followed by Barton of the Australian Commonwealth. In face of that opposition there was no more to be said. "This," as Chamberlain was destined to remark in another connection, "is not a matter in which we can compel our colonies against their will."

Thus ended de Villiers' last threat to return to active political life. The agitation for suspension died away at the Cape in spite of the efforts of the Progressives to whip up support sufficient to convince the Colonial Secretary that the majority of the colonists did indeed desire it. The Cape Parliament met on August 20th and presently the majority in the Assembly endorsed the action of the Prime Minister in London. The hostility of the Progressives, however, robbed Sprigg of the bulk of his following. Henceforward he was obliged to rely upon Merriman, Sauer, the Moderate English and the Bond. It was the best thing that could have happened. The Ministry could not, even if it would, pursue a racial policy. The High Commissioner had warned the Boer leaders in May that the opinion of the Cape Ministry was that rebels captured since April 12th, 1901, must suffer disfranchisement for life and ringleaders still heavier penalties short of death. Now, rebels were, in Kipling's phrase, "horribly disfranchised" for five years and the way opened for a probable though by no means certain Progressive victory at the next elections. On the other hand, to de Villiers' wrath and dismay, the Ministry agreed with the Colonial Secretary that martial law must be retained until an indemnity act had been passed. De Villiers begged Lord Davey to protest in the House of Lords against recognizing the step as a precedent; but before the Imperial Parliament met in October the indemnity bill had been passed, an inquiry promised and martial law abolished in the Colony. It did not disappear from Natal until October 4th, nor from the ex-Republics till November 19th, and the precedent remained.

However, sufficient unto the day is the evil thereof. The Cape Parliament, having falsified the gloomy prophecies of the suspensionists by its moderate behaviour, ended its session in November. Martial law was a thing of the past, the constitution safe and the policy of federation *de par le Roi* a reminiscence; but the effects of martial law survived the disappearance of the

system from the Colony. The parliamentary committee of inquiry did little more than reveal something of what had gone on under its shadow. De Villiers expected more substantial results from a commission headed by the Lord Chief Justice, Lord Alverstone, which visited South Africa in October to investigate such martial law sentences as were still taking effect. He and many of his legal friends in London, including Lord Davey, fully believed that the commission would recommend a general remission of sentences and thus rescue the Imperial Government from an invidious situation. The expectation was disappointed by the event. The commission recommended the liberation of about one-sixth of the prisoners; the remainder continued in prison whence the last were not released till March 1903.

All de Villiers could now do in the interests of conciliation was to quench the zeal of some of the inferior courts. He quashed various sentences passed on colonists for the irritating but not illegal habit of flaunting rebel emblems, a practice which the older burghers disapproved and which caused the Governor some anxiety. Nor was his warfare accomplished till he had come into conflict with the Privy Council by reason of his judgments in the cases of Smit and van Reenen.¹ He fought a good rearguard action as he withdrew from the unequal contest; but he silently vowed that his attendance at the board of the Judicial Committee should be more regular than it had been in the past.

¹ *Vide supra*, p. 88.

CHAPTER XXIII

RECONSTRUCTION

DE VILLIERS took little part in politics during the years immediately following the successful struggle against suspension. Federation, he had told Rhodes ten years previously, was the one political object which would tempt him from the bench. Federation from without had been defeated but the time for federation from within had not yet come. Nor could it until the exhausted provinces beyond the Orange had secured self-government.

The High Commissioner successfully pressed on the work of repatriation in the northern Colonies in spite of friction between the military and civil authorities, congestion on the single-track railways, and scarcity of road transport. The farmers returned too often to ruined farms, in November the expected rains did not fall, the first harvest soon proved a failure and at the close of 1902 the repatriation department was obliged to continue its existence as the relief department. The returning Boers were financed by an Imperial grant and a much larger loan and, to save time, Milner gave assistance first and waited for claims to be proved later. The expense was heavy; even so, such was the suspicion of the Die-hard Boers for the "Hands-uppers," the distribution of the funds caused much bitterness.

Side by side with repatriation went new land settlement, for Milner was anxious to increase the British element in the ex-Republics and to break down the unhappy coincidence of racial and economic distinctions between town and country. This well-intentioned but costly undertaking included the introduction of new methods of agriculture, irrigation, water-boring, scientific treatment of cattle diseases, the formation of experimental farms and agricultural shows. In the towns a beginning was made

with municipal councils and a comprehensive educational system. The schools were staffed by teachers from all parts of the Empire ; a step which was almost unavoidable if the work was to be done at all, but which had the effect of directing the educational development far too much along exclusively English lines and thus of calling forth a passionate Afrikaner movement in defence of the home language of the bulk of the people.

There was a risk that the anglicization of the schools might find its counterpart in the law courts. Side by side with the talk of political federation there had naturally been a revival of the idea of a judicial re-organization of South Africa. As far back as June 1900, some of the Eastern lawyers had hailed the actual or impending fall of the Republics as the removal of the obstacle to a South African Court of Appeal.¹ They had looked forward to a permanent court of five judges, one from each of the four Colonies and Southern Rhodesia, none of whom should serve in the provincial courts. De Villiers disliked the scheme. He had no mind to see the choice of judges of appeal limited by local considerations. But the real sting of the proposal had lain in the tail. The scheme was to be carried through piecemeal and, if the Cape Parliament offered resistance, the other provinces were to go forward alone. This judicial counterpart of Carnarvon's and now apparently of Rhodes's and Milner's second policies, federation from the north, had been vigorously canvassed throughout 1901. In de Villiers' eyes it was full of danger. He had striven for many years to form an appeal court ; but the value of such a court naturally depended on its form and spirit. It had been maddening to him, ill as he was in England, to think that it might be formed without his participation and in a manner of which he could not approve. Besides, if all that he feared was actually to take place north of the Orange, the influence of such a court might surprise its Eastern advocates who were avowedly anxious to safeguard the Roman-Dutch law.

Important judicial developments had actually been undertaken in the middle of 1901. The first steps had been reassuring. Judge A. F. S. Maasdorp had gone from Grahamstown to become Judge-President at Bloemfontein ; Sir William Solomon and Judge J. W. Wessels had been appointed from Cape Town to man the new Transvaal bench at Pretoria. At the same time

¹ *Cape Law Journal*, June 1900.

Sir James Rose-Innes, Chief Justice designate of the Transvaal, had been actually with de Villiers in London ready to oppose the reform of the Judicial Committee of the Privy Council on the lines laid down in the King's Speech of February. No drastic statutory changes could be effected in the law of the ex-republics until the Crown Colony system was established. Even so the question still remained, what kind of law would be administered by the new Courts? Would it be the law of the old Republics, would it be Cape law, or would it be English law? De Villiers naturally hoped that it would be the Cape law which he had done so much to mould. He had full confidence in the judges thus far appointed, but they might be followed by others trained overseas. Even if all the judges were to be South African, they would be but human and susceptible to the pressure of their surroundings. English barristers and attorneys were already finding their way to Pretoria and Bloemfontein, accompanied by others from the coast Colonies *ipsis Anglis Angliores*. Judges, lawyers and civil servants alike on the Rand and even in the old Republican capitals found themselves in a society in which to be ultra-English was the fashion and in which everything Dutch was regarded as effete and archaic. Even if an attempt were made to assimilate the Transvaal law to that of the Cape, the attempt might fail in face of other difficulties. The elements of English law embodied in the Transvaal law were comparatively slight; much of the old Republican law was chaotic and could not be retained; there was thus a real danger that English law and procedure might be thrust bodily into the gaps. So far from the law of the North being assimilated to that of the Colony, a new system might arise which would force the Cape to revise its law in conformity with it especially if, as was confidently expected, the Transvaal was soon to become overwhelmingly the richest, most populous and most enlightened portion of a federal South Africa.

The danger had not been imaginary. Some of the Progressive papers at the Cape had advocated the abolition of the Roman-Dutch code in the ex-Republics, assailing that law in general and de Villiers on water-rights in particular as barriers to progress, until it was proved that de Villiers had reversed the findings of Dutch judges like Cloete and Watermeyer, even though these had been based on his beloved Voet, and, most unkindest cut of

all, had shown that the Roman and Roman-Dutch codes agreed in this matter with modern English law. Worse still responsible lawyers in England with some knowledge of South African affairs had taken the same line and urged the codification of the law in the new provinces in the hope that this code would also be adopted by the self-governing Colonies.¹ The proposal had filled de Villiers with alarm in spite of the Colonial Secretary's assurances that the laws of the annexed States would be respected as far as possible. He knew that most South African lawyers of standing agreed with him that the Roman-Dutch law had proved itself vigorous and adaptable; nevertheless, as soon as he was sufficiently recovered, he had sought to confirm them in the faith by counselling *festina lente* until the political sky was clearer. He set his face against any officially made Northern code of laws. "It is reasonably certain," he wrote, "that the Cape of Good Hope, at all events, would not adopt them, unless they are based upon the admirable system of laws which that Colony at present possesses. The proper time for codification will be after the Colonies and States have been federated. In the meantime, the more convenient course would be to assimilate the laws of the newly annexed States to those of the Cape. . . . This is the course adopted in regard to other recently annexed territories in South Africa, including 'Rhodesia,' to the entire satisfaction of the inhabitants of those territories. At its best, codification, by introducing the principle of finality into law and checking its spontaneous growth, is not an unmixed good, but it becomes an unmixed evil if carried out without due care and deliberation and merely for the purpose of stereotyping a body of laws which a certain number of lawyers, having no representative capacity, may consider to be the best adapted for the needs of a particular community."²

His statements had been acidly criticised by some of the Eastern lawyers but his advice had been taken in Pretoria. "We are working along the lines you indicate," wrote the Secretary of the Transvaal Law Department. "We are assimilating our laws to those of the Cape."

De Villiers had thus returned to the Cape early in 1902 with an easy mind. By the middle of that year the new judicial

¹ *Journal of . . . Comparative Legislation*, Aug. 1900.

² *Journal of . . . Comparative Legislation*, June 1901.

machinery in the north was in good working order. The Pretoria Court was receiving appeals from the Orange River Colony and staffing the single-judge Court at Johannesburg, an application of principles which he had fought for in the Colony since 1874. Chief-Justice Rose-Innes and his colleagues, Solomon and Wessels, were more ardent champions of the Roman-Dutch law than even de Villiers himself, and the fourth judge, Sir W. J. Smith, though a newcomer, had served in British Guiana where that code still partially survived. Some, however, did not share his confidence that the danger of anglicization by soakage was gone. Outside the judges' chambers social and official pressure was away from everything Dutch; the bar was being recruited from men whose scanty knowledge of Roman-Dutch law was not likely to be increased by a perusal of Latin and High Dutch authorities. Wessels therefore urged de Villiers to help him persuade the four Colonial Governments to finance a committee which should prepare a good English translation of those law books as the necessary preliminary to a codification of South African law. "There is one man," he wrote, "absolutely created for the post of Chairman, . . . your brother Melius. . . . If you say it must be done, there is no government in South Africa that would hang behind. . . ." ¹ De Villiers would not say the word. He doubted whether the Governments could be persuaded; his faith in brilliant young barristers, even under the leadership of his brother, was less than that of the sanguine Wessels, for he knew by experience that the cares of this legal world and the deceitfulness of refreshers spring up and choke good intentions. A bad translation would be worse than none. But his real objection was to a code as such in a country whose conditions were changing so rapidly as in South Africa. Rather was he prepared to trust the Transvaal judges to mould the law and practice of their Court as he had done in the old Colony. Hence the joint translation was never made and the code is still to seek.

The close connection between the courts of the Transvaal and the Orange River Colony was part of a general policy. The failure of suspension had destroyed the High Commissioner's hopes of effecting a general federation *per saltum*. He therefore pushed on with Policy No. 2, the political federation of the two Crown Colonies and the economic federation of both with the

¹ J. W. Wessels to de V., Nov. 17, 1902.

self-governing coastal Colonies and with Southern Rhodesia. The Police in the ex-Republics were already under his control; at the end of 1902 the Netherlands Railway Company was expropriated and its system united with that of the Orange River Colony; and in May 1903 an intercolonial council was formed to advise the Governor on the administration of police, railways and other matters of common concern.

The full development of this policy was hastened by the arrival of the Colonial Secretary himself. The Boer generals, Botha, de la Rey and de Wet, had visited London in August 1902. They had then realized that the Treaty of Vereeniging formed the framework within which South Africa must be reconstructed; but their complaints taught Chamberlain that there was much in South Africa that he ought to see and hear for himself. Therefore, in spite of the heart searchings which his bold step caused to friends and enemies alike, he set out and landed at Durban at the end of December. Before he left the Transvaal, he had seen the last of the 200,000 men, women and children back on their farms, all but one of the concentration camps closed, and all save a thousand irreconcilables returned from the prisoners' camps. Thence he travelled down to Cape Town where he significantly made much of Hofmeyr, who had recently returned to South Africa; suffered Merriman, at the head of 200 giants like unto himself, to read him a memorial whose asperities Hofmeyr and Schreiner had vainly sought to soften; and pointedly cold-shouldered the Progressives. Jameson, suspecting that he meant to use the imprisoned rebels as a counter for bargaining with the Cape Ministry and its Bond supporters, stole his thunder by supporting the Ministry's policy of a general amnesty.¹

The more obvious signs of war were thus well on the way to removal by the March of 1903. In that month the High Commissioner took a step which he hoped would lead South Africa far along the road to political federation. He summoned representatives of all the British Provinces south of the Zambesi to a Customs Conference at Bloemfontein. The railway and fiscal interests of the Crown Colonies were already united; Natal came demanding a railway conference for, in spite of the avenging of Majuba, the Transvaal persisted in using Delagoa Bay as its port rather than Durban; Southern Rhodesia sent delegates well

¹ Colvin, *Jameson*, ii. p. 217.

knowing that the existence of the port of Beira did not prevent her interests being bound up with those of the South ; the Cape Colony sent her representatives because she must. Her Premier and still more the composite party which supported him looked askance at the High Commissioner's policy, but the old Colony could not suffer the provinces in her hinterland to achieve a common economic policy without her. Thus constrained the conference proved a brilliant success. All four Colonies, Southern Rhodesia, and the Native Protectorates joined a Customs Union giving a preference to British goods and offering reciprocity to all parts of the Empire. The railway question was deferred to a more convenient season ; otherwise, a substantial achievement was placed to the credit of the chairman, Lord Milner. South Africa was federated economically at last ; *rebus sic stantibus*, it is true, but none the less federated. Did Rhodes stir in his grave in the lonely Matoppos ?

The Conference also resolved that a commission should enquire into the condition of the South African natives " in view of the coming federation." An enquiry was eminently necessary if such a federation was to be governed wisely or indeed safely ; but there was one aspect of the native problem uppermost in the minds of the majority of the delegates at Bloemfontein. The natives were the main source of labour, especially for the gold-mines ; and, in spite of the *modus vivendi* with the Portuguese, the supply was less than the demand. Milner was finding—the " Deserted Village " notwithstanding—that it was easier to reconstruct the simple farm life of the veld than the highly artificial industrial life of the Rand. But the Rand must be restarted at full pressure if it was to pour out the golden stream which was to repay loans and provide means for the development of the new South Africa.

In the first flush of victory in the field the Chamber of Mines had reduced wages ; but it had soon been obliged to raise them once more and, at the bidding of the High Commissioner, provide better working conditions for its employees. The Union Jack at Pretoria had failed to bring down working costs ; on the contrary, a callous Government had recently levied a tax on annual profits. Worse still, Chamberlain, that good man of business, was holding the mining-houses to their promise to raise a loan of £30,000,000 as their contribution to the Imperial war expenses. On the mines

of Southern Rhodesia, mines closely connected by bands "soft as silk but strong as links of iron" to many of the Rand houses, the situation was so bad that the Chartered Company was abandoning its claim to vendor's script in exchange for a royalty, in the hope of encouraging the necessary gold production.

Throughout South Africa, during the later part of 1903, the boom in mining shares and real estate died away. The troops and the camp-followers, the eagles and the vultures together, poured out of the country; drought and disease smote the crops and the cattle. South Africa showed signs of economic prostration. Recourse was therefore had to artificial respiration in the form of indentured labour. Cape Progressives had talked of Chinese labour as far back as the session of 1900; in the following year the Salisbury Chamber of Mines had demanded either Indians or Chinese and had actually imported "Arabs" from Aden with very poor success. At the Bloemfontein Customs Conference it was agreed that, though Asiatic settlers were undesirable, their importation as indentured labourers, if absolutely necessary,¹ was permissible. Apparently it was absolutely necessary. As one of the mine-owners had already explained, "the refuse and wastrels of this country (Great Britain) we will not have . . . your good honest workmen we cannot afford"; and, meanwhile, the black man was a "burden to the country" since, in face of a 50% shortage of labour, he would not work at the wages offered. The Indian Government refused to allow either the Transvaal or Southern Rhodesia to recruit Indians even for railway construction; whereupon the cry for Chinese was taken up, full-throated. In spite of much opposition from South Africans of all shades of political opinion, in spite of anxious questionings from New Zealand and Australia, the new Colonial Secretary, Alfred Lyttelton, gave way. In June 1904, the first shipload of yellow labourers landed at Durban; by the end of the year 23,000 were at work and gold production was rising steadily.

"The pigtail question," as Jameson called it, enlivened the otherwise dreary Cape session of 1903; but the main issue before the Houses was the Customs Convention. Jameson, now acknowledged leader of the Progressives, supported it as the true basis of political federation, but the Bond opposed it. To placate the

¹ Necessary, that is, if the five years' development required to give substance to the many companies floated since the peace was to be effected.

Bond, Sprigg fell back on his panacea for all parliamentary ills and introduced a comprehensive scheme of railway construction. He was defeated on a side issue and appealed to the country. A strenuous election campaign followed with the rebels disfranchised and the coloured voters holding the balance. Jameson relied on the hundred per cent. Progressives ; wherefore many of the Moderates swung over towards the Bond which had been reconstituted as the South African Party, a significant change of title and an invitation to those for whom the old name still had sinister associations.

The election resulted in a narrow Progressive victory. Sprigg with all his fellow Ministers save two were defeated ; Sauer and Merriman were out ; and, in February 1904, Jameson took office with a Cabinet which might be expected to speak on the federation question in tones hardly distinguishable from those of the Chartered Company, anxious now for relief from the burden of administering Southern Rhodesia and for a refund of its administrative deficits. De Villiers looked forward to a stormy session, for the Ministerialists had a majority of five only in an Assembly and of one in the Legislative Council over which he presided. Jameson was in difficulties from the first. The income tax alienated his own supporters ; the excise outraged the opposition ; the attempted economies distressed both and he was obliged to moderate his proposals. He had better success with the bill, the first of a series, which embodied many of de Villiers' suggestions for re-organizing the Courts of the Colony.¹ The present measure passed easily for it included relief for the rebels and therefore won the support of the South African Party. The real struggle took place over the Additional Representation Bill, designed to reduce the margin of superiority hitherto enjoyed by the rural and non-Progressive constituencies. The measure had a rough passage through the Assembly for Merriman was once more back in his seat. In the Council the balance was held by Logan, disappointed for the second time of a railway contract and destined to jeopardise another Cape Ministry. In the middle of May, in spite of the prayers of the Progressives, he slipped away to England leaving the Upper House evenly divided. De Villiers was thus called upon repeatedly to use his casting vote to save a Ministry of whose policy he disapproved. It was with

¹ Better Administration of Justice Act, No. 35 of 1904.

unfeigned relief that he saw the session close after the Representation Bill¹ had been forced through the Assembly under Mr. Speaker's closure at the end of an all-night sitting.

The rancours of the parliamentary debates were, however, not a true reflection of the course of opinion in the Colony. The general election had cleared the air; men realized that neither racial party was strong enough to dominate the other; the bitter memories of the war and still more of the agitation which had preceded it gradually faded away. Abraham Fischer told Steyn that the two white peoples in the Crown Colonies were coming together, not through equal rights, but through equal wrongs; but he would have been nearer the truth had he said that they were being driven together under pressure of hard times which paid no heed to party, language or nationality. De Villiers had seen the turn of the tide in the proofs of esteem and even affection which flowed in upon him from all parts of South Africa. He and Kotze made up their differences and his old friend returned from Rhodesia to become Judge-President of the Grahams-town Court. From the newer generation of Transvaal judges came birthday greetings and the hope that he might long be spared to hold his "unique position and enjoy the confidence and regard of all South Africa." He himself forgave the South African College its lapse from grace in the matter of Sauer's seat on the council and opened the Fair, which his wife had helped to organize, to raise funds. And from far-away New York came an invitation to join Mark Twain, Rudyard Kipling, and Admiral Dewey as a foundation member of the "Ends of the Earth Club, an outgrowth of the feeling that has grown strong in America since the Spanish War that the whole world is after all pretty small and that all who speak a common tongue have certain sentiments in common that may be worth cultivating. . . ." So de Villiers joined these "good fellows with no axes to grind who speak our language."

The free political life of the Colony which had so narrowly survived the war became steadily more Liberal. Jameson, realizing that his election cry of "Vote British" could lead nowhere, was attempting to conciliate the Dutch and the English who stood outside the Progressive ranks. The example of the Cape, then as ever the parliamentary model for all South Africa, stimu-

¹ No. 5 of 1904.

lated the revival of free politics in the ex-Republics. The peace treaty had pointed the way towards self-government ; some of the more ardent Johannesburgers had demanded it on the close of hostilities ; the High Commissioner was moving slowly towards it by increasing the non-official element in the Legislative and Inter-Colonial Councils. Now, the British element in the Transvaal was clamouring for responsible government. Everywhere the Afrikaners were once more raising their heads. In January 1903, Hofmeyr had taken the first step in the " Tweede Taal Beweging " by reviving the Taalbond in the Colony ; in the ex-Republics, Dutch schools were opened by voluntary effort to counteract the effect of the unduly anglicized Government schools. Afrikaner sentiment was powerfully stirred by Kruger's State funeral at Pretoria ; and it was not only the Dutch who paid their respects to the returning President but the English also. In the Transvaal, as in the Cape, political parties were being formed on new lines. Creswell's Labour Party could be trusted to resist domination by the ex-Reformers of Johannesburg ; Botha had brought the Diehards and Handsuppers together in peace and, in January 1905, organized the Het Volk Party to work for self-government. A month later Steyn, now partially restored to health, returned from Europe to press on in the same direction and, as he confided to Fitzpatrick during the National Convention of 1908, to secure union before the Anglo-German War should burst upon a divided South Africa.

De Villiers watched the political revival keenly. He did not expect the establishment of self-government north of the Orange in the immediate future ; still less was he sanguine of the prospects of the only kind of federation which he could support. He counselled caution to the enthusiastic Stead who visited South Africa in 1904, for he did not agree with all his views ; but he did approve when Stead returned to London and roundly told the Colonial Secretary that the ex-Republics must have genuine self-government if South Africa was to have rest. On the other hand the High Commissioner's scheme of economic federation was breaking down. Milner had accomplished much ; two of the five provinces were federated ; all five were linked together in a customs union. But the union was precarious ; it would hardly stand if all its members secured self-government before it had time to harden ; meanwhile its maker had lost his strongest

external support. In May 1903, Chamberlain had opened his campaign in favour of Imperial preference, resigned office, split the Conservative party from top to bottom and driven the scattered Liberals together. The Chartered Company showed that it knew which way the wind was blowing by making desperate but unavailing efforts to persuade the Rhodesians to assume liability for part at least of the administrative deficits. The attempt merely had the effect of causing both Dutch and English in the southern Colonies to look askance at a federation which would presumably include an undeveloped territory bought at a heavy price.

In the Cape Colony, Jameson used all his great powers of persuasion to secure a common economic and native policy and a South African Court of Appeal. The utter need of some such policy was proved by the increasing friction between the Colonies. Early in 1905 the Native Affairs Commission reported and a Railway Conference met at Johannesburg. Owing to Milner's efforts on behalf of the coastal Colonies, the Cape was offered one-third of the heavy traffic to the Rand. But Jameson's parliamentary majority was crumbling in face of drought, depression and a growing deficit. The urban voters were mutinying against the high prices, the farmers cried out against the machinations of the Meat Trust, and Jameson only held his party together under threat of resignation. He carried his cheerless budget but, in face of the jealousies of the rival Cape ports and inland towns, he had to allow the railway report to be shelved.

Then in April, Lord Milner made way for Lord Selborne. The change helped to clear the political atmosphere. Inevitably Milner's name was associated in the minds of many with unhappy memories. His successor had a clean sheet and, as a country gentleman born and bred, was *persona grata* with the farmers. Above all he was the exponent of a new policy. The Colonial Secretary had determined to give the Transvaal as full a measure of self-government as was compatible with Imperial interests. The Lyttelton Constitution, published in May 1905, offered the Transvaal a very full form of representative government. Het Volk opposed the scheme. Its leaders held that if any change were made it should be to full responsible government. Perhaps, for the present, they were well content to avoid the responsibilities of administration.

However, the Lyttelton Constitution was a step in the right direction, the earnest of better things to come. De Villiers therefore sailed for England late in May cheerfully enough. Indifferent health and the pressure of legal and parliamentary duties had prevented him from attending the sittings of the Judicial Committee since 1901. Fortunately there had been few South African appeals of late years but two important Roman-Dutch cases were pending and, warned by the fate of his Smit and van Reenen judgments, he determined to be present. The work of the Committee occupied most of his time in London, for the list of appeals was heavy; nine from India and fifteen from other parts of the Empire. He took little interest in the Indian cases—those from the Courts of Ceylon were a different matter—but he took part in hearing many of those from the Dominions and delivered judgment in one arising from Natal.¹ For the rest, he visited friends in different parts of the country eagerly discussing the imminent fall of the stricken Balfour Ministry and the repercussions which its fall might have in South Africa. In November he returned to Cape Town and in the following month the Conservatives, after an almost unbroken tenure of office for twenty years, made way for Campbell-Bannerman's Liberal administration.

The general elections which followed took the form of a Tory debacle. "Chinese slavery," terminological inexactitude though it was, played more than its part in producing that peaceful revolution. The instinct which prompted that cry was sound enough. What check was to be put upon politically organized capital to prevent it introducing unfree labour from the ends of the earth into what purported to be a society of free men? It was the question which was being asked by hosts of English and Dutch electors in South Africa. The advent of the Liberals to power was marked by the cessation of recruiting in China and the formation of Die Oranje Unie by Steyn and Hertzog in the Orange River Colony to work for self-government. But as Milner had foreseen the prospect of political freedom in the Crown Colonies accentuated political and economic friction between all the South African States. The railway agreement of 1905 could not be carried out till the Cape Parliament saw fit to resume its discussion of the terms and the Foreign Office could persuade

¹ *Molyneux v. Natal Land . . . Company*, July 3, 1905.

Portugal to assent to the alteration of the Transvaal-Mozambique *modus vivendi*. Now, early in 1906, Natal denounced the customs union of 1903 but, as if to emphasize the gulf which separated local business ambitions from political facts, the natives rose in the heart of the Colony. Though Imperial troops marched down from the Transvaal, the rising was quelled by local levies. Then in May a larger and more dangerous rising took place in Zululand and this time Imperial troops and volunteers from the other Colonies had to be called in. It was the story of Langalibalele on a grand scale, and that affair had been the prelude to Carnarvon's scheme of federation.

The divergent economic interests of the Colonies were revealed at the Customs Conference held at Pietermaritzburg in March. The Cape and, to a less extent, the Free State wanted a high tariff to produce revenue; Natal, a low tariff to encourage import traffic; in the Transvaal the farmers wished to exclude Cape produce, and the urban population demanded a low tariff to bring down the cost of living and working costs on the mines. A patchwork arrangement was made by the Conference because no one dared face the alternative of failure; but Natal was straining at the leash and, once the Transvaal became self-governing, facts would have to be faced.

The British Government determined to grant responsible government to the Transvaal. In April the West Ridgway Commission arrived to frame a scheme. De Villiers discussed the situation with the chairman in Cape Town and throughout corresponded freely with him and Generals Botha and Smuts:

J. C. Smuts to de Villiers.

Law Chambers, Pretoria, May 3, 1906.

DEAR SIR HENRY,

I was very agreeably surprised by the receipt of your letter. . . The information you gave and the suggestions you make were most welcome and useful, and General Botha . . . joins me in thanking you very heartily for what you wrote.

We have had several meetings with the Commission and, although I do not expect much from them, I admit that they have made a favourable impression on us. They intend to do what is fair and just. At the same time there must be lurking in the dark corners of their minds some strong apprehensions as to our future line of policy. The fear of us I found quite general in England—even in

the most liberal quarters. And it is under the secret influence of that fear that they are now trying to do justice. The result will obviously be of a somewhat mixed character. They told us that they did not wish either or rather any political party in the Transvaal to have a decided preponderance at the start. To this we do not object as we certainly do not count on such preponderance for ourselves. . . . Our fear . . . is that our party might be so small in the first parliament as to be no real check on the mine-owners. However, it is the unexpected that sometimes happens—especially, as you say, with Reform measures. And for the sake of the Transvaal I hope that we shall be strong enough to prevent the accumulation of further ills on this land of sorrows. If we could be strong enough, with a few English and labour members, to put a stop to Chinese labour, we shall have reason to congratulate ourselves and save South Africa from the biggest danger that now threatens her future.

Your letter carried my memory back to the last time I saw you here in Pretoria in 1899. Much water has flowed under the bridges since then, and much ground lost in every way. And yet I believe that the compensations which will appear in after years will far outweigh the loss and the suffering. No people sacrifices itself for an ideal without advancing that ideal and gathering a moral strength which comes alone from adversity.

To us of a later generation (although I too feel like growing old) it has been a consolation and a strength to know that a veteran like you was not quite unsympathetic. . . . We have been much cheered lately by better reports of your health. . . .

The negotiations were long and difficult. The main stumbling block was the allocation of seats as between the rural areas, Pretoria and the goldfields. Het Volk further demanded that the existing districts should each return two or three members to prevent gerrymandering, while the Progressives stood out for one vote one value and equal electoral areas. At the end of June, one of the commissioners told de Villiers in desperation that they could do nothing with the Progressives and Smuts wrote that, if the Progressives won and carried the continuance of Chinese labour, Het Volk would call upon the Imperial Government to settle that matter itself. A month later, however, Ridgway wrote more hopefully, thanking de Villiers for his sound advice and expressing the hope that the leaders of Het Volk and the Progressives would show themselves as moderate in action as they were in debate.¹

¹ Ridgway to de V., July 30, 1906.

Thus encouraged de Villiers set out in September on the Northern Circuit. He knew by long experience that this was the best way of finding out what the men on the farms and in the dorps were thinking. It was twenty-four years since, at the close of the first Transvaal war, he had visited most of the towns on this circuit officially. Everywhere he was welcomed and everywhere he prophesied the near approach of federation.

He was not the only highly placed official to go on his travels during September. The High Commissioner visited Southern Rhodesia and found there a clear case for federation; the country depressed and the Chartered Company drifting gloomily without any apparent policy. Meanwhile the eyes of all England were directed towards South Africa. The Transvaal Constitution Bill was passing steadily through Parliament and the South African Rugby XV. was covering itself with glory in the United Kingdom. "I believe in all sincerity," wrote Botha, "that their tour has done more to dispel racial ill-will than any other event of recent years."¹ So the victorious Springboks returned home and the Transvaal secured responsible government. Owing to the divisions of the British parties Het Volk secured an adequate majority at the elections and, in February 1907, Botha took office with Smuts as his Colonial Secretary. It was less than five years since the Treaty of Vereeniging.

Responsible government was soon proved to be real. The new Parliament passed an Act adopting the principles of the Natal Immigration Act of 1897 and another requiring the registration of all Asiatics other than indentured Chinese. The Immigration Act was reserved for H.M. pleasure. When that was forthcoming, agitation began in India and even the Chinese Government asked questions. Clearly it was time that the Asiatic question be faced by a united South Africa.

The Colonial Conference, which met in London in April 1907, also served to focus attention on the question of closer union; for Botha, with the support of the Cape and Natal delegates, carried a motion in favour of a South African Court of Appeal either with or without political federation.

Once more de Villiers went on circuit. His colleagues on the Privy Council pressed him to join them but the only Roman-Dutch appeal on the list could not come on till late in the year

¹ L. Botha to de V., Jan. 30, 1907.

and London held fewer attractions for him now than formerly. His old friend, Lord Hobhouse, was gone, and Lord Davey had recently been carried home from the House of Lords to die, as he himself was destined to die, working to the last. Above all he was determined to remain in South Africa to assist at the birth of the federal South Africa which was surely coming. So in April he travelled down the Breede Valley through the little towns which he had visited long ago in 1871 with his newly-wed wife and, as he went, he preached federation.

Events marched rapidly. In June the Responsible Government Constitution was promulgated in the O.R. Colony, the Cape Parliament met, and the first party of Transvaal Chinese departed homewards. Then constitutions and the golden East were suddenly overshadowed by the railway question. The High Commissioner published his recent correspondence with Jameson and accompanied it by a memorandum declaring that the railway interests of the Colonies were "not only distinct but absolutely incompatible." Chamberlain was gone, Rhodes and Kruger were dead and the Netherlands Railway Company departed to its own place; but Delagoa Bay and the Vaal Drifts remained. Those facts must soon be faced by "arbitration or the sword."

De Villiers had already written to Botha and Smuts sketching a plan of the proposed court of appeal and pointing to federation as the most satisfactory means of attaining that end. Smuts' reply showed that he and the Transvaal Premier, like Rhodes and Brand before them, hoped to take the economic step first and the political thereafter. They had not yet made up their minds that the two must be taken together:

J. C. Smuts to de Villiers.

Pretoria, July 22 (1907).

DEAR SIR HENRY DE VILLIERS,

I have read your letter in reference to the Court of Appeal and Federation with deep interest, and was especially gratified to see the attitude you take up towards Federation. You approach the subject from the broadest standpoint, but many others approach it from a purely material or selfish point of view—and just there the danger lies. For from a purely selfish point of view the Transvaal has little to gain from Federation. Economically the strongest factor in the South African situation, it is also largely independent of any particular colony, and can therefore view the situation with comparative equanimity. Hence the chief danger

and opposition will always come from the Transvaal, where you have a strong section which would prefer to snap their fingers at the rest of British South Africa, and another equally strong section who see in Federation only a consolidation of "Dutch" influence, and therefore an issue to be fought at all hazards. Besides these two you have here a third section who say that Federation is mere Chauvinism, and that it would be better far to devote our energies to less showy tasks, to repair the losses of the past, to further the material welfare of the people, before we begin a Federation policy. A fourth section (chiefly I believe represented by the older and wiser generation of politicians at the Cape) exhort us to achieve national unity first before we attempt political unity. What with all these views and the real difficulties of the situation, the cause of Federation is by no means assured as far as the immediate future is concerned. And I don't think it is really advanced by a one-sided statement such as the memo, attached to Lord Selborne's minute. But I do not despair. We who love South Africa as a whole, who have our ideal of her, who wish to substitute the idea of a United South Africa for the lost independence, who see in breadth of horizon, in a wider and more embracing statesmanship the cure for many of our ills and the only escape from the dreary pettiness and bickerings of the past—we are prepared to sacrifice much—not to Natal or the Cape, but to South Africa. Next year no doubt Federation Commissions will be appointed from the various South African Parliaments to go into the matter. But the real tussle will probably come in February or March of next year when the Railway and Customs Conference will have to take place. That will probably be the most important conference to be held in South Africa for many a day, and on its issue will largely depend the cause of Union or Federation. I sincerely hope that the various colonies will send their very best men to that Conference, which I hope will be held at Pretoria. If we succeed in establishing an economic union, not on mere patchwork lines but on a broad and permanent policy which will do away with all local friction and irritation, I do not see why we should not soon move further and convert this economic into a political union.

The subject is most difficult and in many ways awkward for a Transvaal politician, but I shall always do my best to keep the larger aspect of the case before me and to contribute something towards the achievement of permanent union. If the end of all our past losses and sufferings is the attainment of a United South Africa in which its people will find peace and satisfaction, that will indeed be a great day. I hope you, who have done so much to keep before South Africans that wider outlook, will live to see that day. I shall do my best to hasten it by all legitimate means, though you much overrate my influence in this connection.

As regards the Court of Appeal I quite agree with what I gather to be your view—that if Federation is at all possible, it should be part and parcel of a Federation settlement of South Africa. Should Federation be relegated by the developments of the immediate future to a more distant day, then the Appeal Court will have to be considered by itself.

The Transvaal government are doing their best to pave the way for larger things by a policy of conciliation conceived on broad South African lines. The outlook economically is far from bright, but on all hands one notices a desire on the part of the various sections of the population to let bygones be bygones and to draw together in spite of or perhaps because of disappointments and adversity. I hope the same spirit will also prevail in other parts of South Africa and that politicians will recognize that our strength does not lie in isolation but in union. In that way Union will come about not as a forced thing but as a ripe fruit fallen from the tree. General Botha's attitude in England will, I sincerely hope, have had a beneficial effect all over South Africa. In his profound common-sense I see deeper statesmanship than in all the astuteness and cleverness of smaller men.—With best wishes for your health,
Yours very sincerely,

J. C. SMUTS.

Jameson had already resumed his federation campaign in the Colony and was smiling upon Hofmeyr's advocacy of the cause. At Bloemfontein he and Botha combined to demand better terms from the Union Castle Company for the carriage of the ocean mails and, on his return to Cape Town, he seconded a motion introduced by F. S. Malan, a stout Bondsman, in favour of taking steps towards closer union. Truly the era of good feeling was dawning; but Jameson's position was very weak. The budget was dismal; the treasury empty; in the Lower House the Progressives were divided on the Free Trade *v.* Protection issue; in the Legislative Council the balance of power lay with Logan and he was intriguing with the S.A. Party. De Villiers did his best to save the Ministry, as in duty bound, but at last the Government was defeated on a financial question in the Council. Jameson appealed to the electorate and issued a statement of Progressive or rather, since his party too had been significantly re-named, of Unionist policy. He then hurried to Southern Rhodesia to issue another statement of policy. There he found the Rhodesians alarmed at the hint which he had admittedly dropped to Sir Percy Fitzpatrick in Johannesburg that the Transvaal might buy

out the Company's rights, resolved to accept no responsibility for the administrative deficits and bent on asking pointed questions about the ownership of the unalienated lands on which the Company had just staked out its first farm, the first of many.

If Southern Rhodesia was restive, Natal was again in trouble. A further native rising was feared, martial law was declared and Dinizulu, son and successor of Cetewayo, was arrested for alleged complicity in the Zulu Rebellion of 1906. Steps were taken to constitute a special court to deal with him while Miss Colenso, daughter of the missionary Bishop, headed a movement to secure a fair trial. Once more the ghost of Langalibalele was pointing to federation as the only way to safety for Natal and her neighbours.

In the Colony, Jameson tried hard to keep the South African party out of power. He urged Schreiner to form a Moderate-Unionist Coalition to "smash the Bond." In December he redoubled his efforts, for Fischer then took office as first Prime Minister of the Orange River Colony with Hertzog and de Wet as his principal colleagues. Schreiner, however, refused to budge, declared in favour of group politics for a time as the only means of escaping racial politics, and obliged the Unionists to take the field alone against the Moderates and the South African Party whose ranks were now strengthened by the re-instated rebels. In February 1908 the South African Party swept the Legislative Council elections, Jameson resigned and Merriman took office. The Progressives had lost their hold on the third and greatest of the five Colonies south of the Zambesi.

Jameson gave Merriman two years of Ministerial life, for the new Ministry must face very dirty financial weather. "All things working towards the Moderate Party I was trying for," he wrote. "... In the meantime federation must wait."¹ Political prophecies are dangerous. Long before the two years of grace had expired, South Africa had achieved, not federation, but Union.

¹ Colvin, *Jameson*, ii. p. 270.

CHAPTER XXIV

PRELIMINARIES TO UNION

MERRIMAN took office determined to secure union. The Molteno cabinet in which he had served his Ministerial apprenticeship had aimed at the gradual incorporation of the small and struggling States of the north and east with the Cape Colony. There could be no question now of annexing those States but in essence the plan was the same. One unified and not merely federated State was to take the place of many. If, however, the Cape was to make its weight felt in such a union, its finances must be restored. That process needed time and a strong backing in the Lower House. The victory of the South African Party in the Assembly elections gave him the promise of one and possession of the other. He began to wield the axe forthwith. Sweeping retrenchments, a rigid income tax, reduction of the salaries of civil servants and a voters' registration fee began to clear away the £1,000,000 deficit. The Governor feared his Prime Minister was going too fast; Hofmeyr begged him to spare the civil servants and the voters; but Mrs. Hofmeyr adjured Mrs. Merriman to keep her husband in the strait path. It is impossible to say how far this female intervention in politics affected the Prime Minister but he spared no one and, at the end of two painful years, the old Colony entered the Union with a small surplus.

Merriman had not been three weeks in office before Smuts wrote from Pretoria suggesting that now was the time to press on towards closer Union.¹ He eagerly seized the opening. There were lions in the path, the conservatism of the Cape Colony, the material jealousies of the Transvaal, possible obstruction by "the Rhodesian clique" anxious to off-load the liabilities of the Chartered Company; but the lions must be faced lest financial

¹ Smuts to Merriman, Feb. 18, 1908.

burdens crush a hesitating South Africa. Wherefore he proposed that the first steps towards union be taken at the coming railway and customs conference at Pretoria and, to pave the way, he urged Botha and Smuts to bring Fischer and Hertzog from Bloemfontein to talk matters out with him at the coming Agricultural Show at Port Elizabeth. If the Cape, the Transvaal and the Orange River Colony could agree on principles, above all on the franchise and the nature of the union—"the nearer to unification the better,"—the measure might be carried by a *coup de main*.¹ Smuts, on the other hand, held that procedure was of more immediate importance than principles and proposed that the Colonial Parliaments be asked to send delegates to a Convention, which should publish a draft constitution to be carried through each of the Parliaments during the sessions of 1909 or referred to another parliamentary Convention for ratification. "If Parliaments are hostile and peoples are favourable," he wrote, "a referendum to the electorate might be taken."² Merriman, however, insisted that the Pretoria Conference must at least discuss the franchise and the rival merits of federation and unification and pass resolutions in favour of the principle of closer union. The Parliaments could then appoint delegates to the Convention, accept or amend the constitution drafted by it, send it back to be reconsidered by the Convention and finally submit it to be ratified by a "plebiscite of the States." In his desire to exclude the Imperial factor, he even proposed that the Union Act should be the work of the four Colonial Parliaments and the Crown and not of the Parliament at Westminster. "Here in South Africa *at present*," he wrote, "there is among the Governments—with the exception perhaps of Natal, a strong sense of feeling for Union, which ought to smooth away difficulties"—but, he added reflectively, "much depends on the Orange River Colony which is, I am afraid, rather difficile."³

Merriman showed this correspondence to de Villiers. His action was typical of the way in which most of the more important correspondence leading up to the National Convention was dealt with. He and Smuts stated their views to each other and then

¹ Merriman to Smuts, Feb. 24, 1908.

² Smuts to Merriman, March 3, 1908.

³ Merriman to Smuts, March 1908.

passed the letters on to de Villiers and presently also to Steyn for their comments. De Villiers now replied with cautious enthusiasm, giving a very clear statement of the only constitutional means by which closer union could be carried out :

De Villiers to F. X. Merriman.
[Confidential.]

Rust en Vrede, Simondium, March 30, 1908.

MY DEAR MERRIMAN,

I have read the correspondence between yourself and Smuts with much interest and pleasure and am anxious to know what reply he has made to your last letter.

The proposals shadowed forth in that letter seem to open up the way to a practical solution of the question of Union. In regard however to the number of delegates to be nominated by each Colony for the proposed Convention would it not be better to have the same number of delegates for each Colony rather than to proportion the number to the European population of each Colony? In the decision of the question whether there shall be a Union, and if so what its constitution shall be each Colony has an equal interest and should, I am inclined to think, have an equal vote. It would certainly render it less unpalatable for Natal and the Orange Free State to agree to the meeting of a Convention if they are to have an equal voice with their more powerful neighbours in deciding whether the individuality of the smaller States is to be practically extinguished. The Convention in framing the Constitution would of course have to proportion the Parliamentary representation of the different States to their respective wealth, area and population, but until the new Constitution is established each state as a separate entity stands on a perfect equality with its neighbours. I would suggest that each Colony should nominate either three or five delegates, and in order to invest the Convention with a perfectly representative and national character it would be well that the Parliamentary Opposition of each Colony should be fully represented. If each Colony send three delegates there would I presume be only one member of its Opposition nominated, and I would therefore suggest that the number should be five, so that any Colony if so advised may appoint two representatives of its Opposition as delegates.

Your proposal is that the Convention should draw up the Constitution, which instrument should be submitted to the several Parliaments for acceptance or amendment. As you do not provide for the third alternative, viz. that of rejection by one or more of the Parliaments, I presume that in your opinion the acceptance by

any Colony of the principle of Union would prevent it from afterwards altogether rejecting any Constitution framed by the Convention. It is possible, however, that the different Parliaments may make different amendments, in which case there will not be, as you anticipate, one but several amended constitutions to be considered by the second Convention. If all the Colonies are in earnest, they could, by conferring plenary powers on the second Convention expedite the Union and dispense with the proposed ratification by a "plebiscite of states." I confess indeed that I do not quite know what you mean by a "plebiscite of states." Perhaps you mean that each state is to ascertain by means of a plebiscite of its own electors whether a majority is in favour of the Constitution as finally amended by the second Convention, but if so the machinery by which this is to be done should be indicated. The Constitutional mouthpiece of each Colony is its Parliament, and I would not advise that the different Parliaments should be passed by for the purpose of ascertaining the opinion of the electors. The wiser course would be to exercise the greatest care in the selection of delegates for both conventions and to entrust to the second Convention powers to settle the constitution and submit it to the Imperial Government for acceptance or rejection by the Imperial Parliament. I do not see how a scheme of Union could be carried through without the assistance and the intervention of the Imperial Parliament. That is the only legislature which, in theory, has the power of legislating for South Africa as a whole. It is a power which would not be exercised except at the request of the Colonies of South Africa, and it may be taken for granted that a Constitution approved of by them would be sanctioned by the Imperial Parliament. You say that we should consider carefully "whether the Constitution should not be our own act approved by the Crown," but without the intervention of the Imperial Parliament there would have to be several identical colonial acts of Parliament and the fatal objection would remain that, in order to effect the Union, each of these acts by dealing with the affairs of other Colonies would be *ultra vires* of the Legislature which passes it. No such objection would exist to an Imperial Act.

I shall be glad at any time to discuss the whole subject with you, as I consider it to be quite outside party politics. Many ideas have suggested themselves to me as I write but I thought it best to confine my remarks to the pressing matter of procedure. I agree with Smuts that a wrong procedure might greatly delay and even wreck the cause of Union. You will pardon me for referring to a proposal which you once spoke to me about, and which I see mentioned in your letter, viz. to submit the question of Martial Law to the forthcoming conference. Would it be well just now to introduce a matter which could not be satisfactorily dealt with by a Customs

Conference? I fear the introduction of the subject will be regarded as a kind of protest against acts done during the recent war and will not tend to smooth the way to an adoption of your proposals for a Convention, etc. . . . Natal is still maintaining Martial Law within part of her jurisdiction, and there will be difficulty enough to induce that Colony to send delegates to the Convention without introducing a subject on which it must at the present time be feeling very sore.

I was much pleased with your speech at Port Elizabeth and especially with the reference to Smuts. If you can also secure the co-operation of men like Fischer and Hertzog, the cause of Union in the near future will be assured.—Yours sincerely,

J. H. DE VILLIERS.

Merriman sent the letter on to Smuts. "Criticism from such a source," he observed, "is valuable." He was fain to admit that the Chief Justice was right in his estimate of the powers of the Imperial Parliament; he dropped his idea of discussing martial law; but neither he nor Smuts were willing that their Colonies should forgo the representation in the Convention to which their size and the variety of their interests entitled them. "We must before all things," he wrote, "avoid the idea that the Convention is to be a mere hole and corner meeting of a few politicians."¹

At Port Elizabeth, Merriman and Smuts generally agreed upon the basis of representation. Merriman now urged the Transvaal Ministers to speed, for some machinery must be constructed for handling South Africa's affairs as a whole. The Chinese were leaving the Rand but some of the mineowners were casting longing eyes at Madagascar as a source of labour. He begged Smuts to shut out "these syphilitic Malagasys" and Smuts replied as reassuringly as he could. Again, Cape and Transvaal policies in the matter of the ocean-mail contract were drifting apart. There were also the diamonds. Depression in North America had reduced the demand for the precious stones on which the Cape depended for much of its revenues at the very moment that the newly opened Premier mine near Pretoria, in which the Transvaal Government was deeply interested, was playing Samson to the pillars of the De Beers' Kimberley monopoly. Merriman called upon Smuts to help him restore confidence in

¹ Merriman to Smuts, April 3, 1908.

the diamond market. "I have no particular love for De Beers," he wrote, "except as a milch cow, but in that aspect very dear to a Colonial Treasurer." Over and above these considerations was the twin problem of the railways and customs. Local needs and interests were putting an intolerable strain on the patchwork scaffolding which held the Colonies together economically. Natal had hardly been persuaded to stand by the customs union and now the Transvaal gave notice that it meant to withdraw. If it did so, Natal must withdraw too and South Africa, as in 1877, would be faced with the prospect of the north-eastern States allied economically against the Free State and the Cape Colony. Steyn saw the danger and cried out that the day of ring fences was gone and that, if the Transvaal had been ready to accept Free State blood and treasure in times past, it had no right now to close its markets to Free State pumpkins. But business is business and spilt blood soon dries. Clearly the Transvaalers would not give up the economic advantages they enjoyed unless they received a substantial *quid pro quo*; and herein the Transvaal public, as in Kruger's day, was less yielding than its Government.

Merriman reinforced his arguments by warning Smuts that the course of political events in Great Britain suggested that there were "bad times ahead unless we draw together."¹ The Liberal Ministry looked with favour on a South African federation made by South Africans; but the unwieldy Liberal phalanx in Parliament showed signs of splitting. If it fell, a less sympathetic administration might take its place.

De Villiers was predisposed to favour Union rather than Federation. He, like Merriman, cherished the Unionist tradition of the first Cape cabinet; his judicial policy had been based throughout on the concentration of power in his court at Cape Town; he was even now advocating a national teaching university for all South Africa. Any lingering doubts which he may have had as to the superiority of union over federation were dispelled by a visit to Canada. The four South African Governments asked him to represent them at the tercentenary celebrations of the foundation of Quebec. A South African would thus represent South Africa for the first time in the eyes of the outer world and, once Merriman had assured him that he could be

¹ Merriman to Smuts, April 27, 1908.

home again in time to take part in a constituent Convention "should we get so far,"¹ he decided to go :

De Villiers to F. X. Merriman.

April 9, 1908.

. . . My visit to Canada would give me a good opportunity of enquiring into the working of the federal constitution. I am particularly anxious to ascertain whether it would be possible to work a constitution which allotted to the Provincial Legislatures even smaller powers than those conferred on the Canadian provinces. It might be possible to effect a compromise between the supporters of federation and the supporters of unification in South Africa by adopting a federal system with very limited powers for the different State Legislatures. . . . The expenses of a federal system would, I think, be no greater, where the powers of the provincial legislatures are reduced to a minimum, than the expenses of carrying on a single government for the whole of South Africa. Under any system there would be a great many purely local matters which could be best attended to by local representatives. . . .

The idea that closer union of some sort was at hand spread rapidly during the April of 1908, but few men had made up their minds whether it should be a federation or a legislative union. Federalism had held the field for over half-a-century. It had been the method by which large aggregate States had been formed in recent times in Europe, North America and Australia, and the sole great exception of Italian unification was not encouraging to the advocates of Union. Home Rule for Ireland meant the introduction of federalism into the hitherto United Kingdom. Natal and the Orange River Colony, as small States, might be expected to favour a loose constitution in which their individuality as States would be preserved. Hofmeyr and Schreiner soon raised the federal flag in their respective camps in the Colony and the group of Transvaal publicists, which ultimately did so much to work out in detail and to popularize the idea of Union, began to draft schemes for a very close form of federation. De Villiers soon learnt that the High Commissioner and his Transvaal advisers were not yet sanguine of full unification. He had already discussed the pros and cons with Lord Selborne dwelling especially on the means of changing the constitution, that well-worn topic of conversation in Pretoria, and the need for a second chamber presided over by another than

¹ Merriman to de V., April 15, 1908.

the Chief Justice, since Merriman had confessed himself in favour of a Parliament of one House checked by a referendum on Swiss lines.¹

Lord Selborne to de Villiers.

May 2, 1908.

. . . I believe unification to be the ideal, but to be probably impracticable at present, or at any rate the path of most resistance; whereas a form of federation, which will leave a minimum of authority to the provincial legislatures and will leave the Federal Parliament free to develop its powers unfettered by them in future, will be practical unification, may lead to actual unification, and will be now the path of least resistance. . . .

So de Villiers set out for Quebec with the High Commissioner's good wishes. "Canada will feel," wrote Selborne, "that we have sent her our best, and historically you are, if I may say so, a wonderful link between the English, Dutch and French." He arrived in London in the middle of May and was as usual overwhelmed with invitations. He refused them all except the annual South African dinner and a lunch given by Sir Richard Solomon, Agent-General for the Transvaal. There he met Mr. Asquith, Lord Crewe and other Liberal Ministers and with them, both then and afterwards, he discussed the future of the coloured voters and of the native Protectorates in a federal South Africa.² Much of his time was taken up with his legal work but early in June he betook himself with his papers to Geneva and thence to Chamonix, for he loved the mountains and, as he characteristically admitted to his wife, living in Switzerland was cheaper than in the Hotel Cecil. His was something of a "busman's holiday." ". . . I caught a bad cold at Geneva," he wrote to his wife, "and have been rather out of sorts since. . . . I cannot sleep after four in the morning and so I generally get up at about 5.30 and do a good deal of writing before breakfast. I have judgments to write in two of the heaviest cases that have been before the Privy Council and most of my time is spent in reading up the authorities and preparing the judgments. . . ." ³ But his health and nerves were in much better condition than they had been during his last visit to Switzerland in 1900. "I made an excursion," he wrote, "on mule back to Montanvert. . . . I had a guide with me who did not understand a word of English or

¹ Merriman to Smuts, Feb. 24, 1908. ² de V. to Smuts, Sept. 3, 1908.

³ de V. to Lady de Villiers, June 17, 1908.

German and so I had to make the most of the little French I knew. . . . Going down the mountain was not quite so pleasant as going up. . . . He (the guide) should of course always keep on the outside but once at a turn he remained on the mountain side when I called to him ' Voulez vous toch loop an die ander kant ' . . . I am sending you some views taken with my kodak. . . ."¹

At the end of June he was back in London, due to sail in ten days' time for Canada. His short stay in London was a busy one. " I had hoped," he wrote, " that going to the Continent would ease the strain but no sooner did I return than invitations again poured in." As before, he refused most of them and divided his time between the Judicial Committee, the terrace of the House of Commons and the Canadian section at the Franco-British exhibition. " People are surprised," he added, " that I do not attend the Levee and such like functions but in such matters I consult my own taste." His tastes were of the simplest. " I am not taking a servant to Canada as he will be more in the way than otherwise. I got on very well on the Continent without a valet. . . ."² As for receptions, he always fled them when he could and all the more when, as now in London, neither his wife nor his niece, Mrs. Alston, was at his elbow to help him associate the appropriate names with expectant faces.

The main business of the week was the delivery of his two judgments. He had not been boasting when he had told his wife that these were among the heaviest that had ever come before the Privy Council. The first was an appeal from the Supreme Court of Mauritius, the final stage of a dispute carried on with true Oriental persistence and ingenuity for nearly sixty years between rival sections of the Indian community of Port Louis over the ownership of the principal mosque and its appurtenances.³ The other, *Strickland v. Strickland*, was a Maltese controversy about entailed landed property with ramifications running back to 1792. The wealth of legal knowledge displayed in the two judgments suggests that, unless there was a good legal library at Chamonix, de Villiers must have travelled to Switzerland heavily laden.

¹ de V. to Lady de Villiers, June 20, 1908.

² de V. to Lady de Villiers, July 6, 1908.

³ Ibrahim Esmael and others *v.* Abdool Carrim Peermamode and others and I. E. and others *v.* Aboo Bakar Mamode Taher and others.

Two days later he sailed for Quebec. There he stayed as the guest of the Dominion at the Chateau Frontenac but spent much of his time with the Governor-General, Earl Grey, at the Citadel. One afternoon he went with Earl Grey and Lord Roberts to the Ursuline Convent where, to his surprise, he found that he and the newly-discovered skull of Montcalm shared the distinction of being the lions of the occasion. It was only for a time. The good sisters thought he was Lord Roberts, for in their scheme of things a great soldier must be a tall man; and when he told them the truth their enthusiasm for him waned visibly. The historical pageant, naval and military reviews, banquets and other public festivities left little time for such private excursions. He spoke at the State banquet in the presence of the Prince of Wales boldly declaring that Union was coming since all the Colonies had chosen non-party delegations to attend the Convention :

. . . South Africa in recent years has passed through a terrible ordeal, but she is slowly recovering from the effects of an injurious war. . . . It was undertaken for the purpose of obtaining equal rights for all, but for some time after peace was established it looked as if political rights were to be withheld for an indefinite period from the new subjects of the King. At length, however . . . a policy of trust was adopted. . . . If ever any foreign Power should attempt to wrest South Africa from the Empire, you may be quite sure that history will repeat itself, and, just as the French Canadians were foremost in defending their country against attacks from without, so the Dutch inhabitants of South Africa will fight shoulder to shoulder with their British fellow-subjects for King and country.

He spent little more than a week in the Dominion and had no time to go beyond Quebec. But if he could not go out to Canada all Canada came to him. He found that federal officials thought the provincial powers too great, provincial officials thought them too small, and non-officials, like the leading merchants and bankers, agreed with the federal authorities. He made up his mind that the fathers of the Canadian constitution had left far too much to the provinces, a mistake which had led to friction between the central and local Parliaments, continual appeals to the courts, and the utmost uncertainty as to the validity of acts of the Dominion Parliament. In Quebec, he wrote, "the result has been to establish a distinctly French province without any prospect of its being ever merged into a Canadian as dis-

tinguished from a purely French nation." He resolved that in so far as in him lay that cause of stumbling should be removed from the path of his own country. Merriman kept him posted with the course of events in South Africa. The Pretoria conference had met on May 4th and at its second meeting passed six resolutions in favour of taking steps to achieve an early union under the Crown. There its unanimity ended, for on the railway and customs questions it failed to reach any agreement. But it had done its work. Economic and political federation were fused at last.

J. X. Merriman to de Villiers.

Schoongezicht, May 31 (1908).

MY DEAR SIR HENRY,

Doubtless the newspapers will have told you the results of the conference but you may care to know a little of the inner workings first hand. When we arrived at Pretoria I found that Smuts had drafted some resolutions pretty much on the lines of the correspondence that I showed you before you left. He had adopted the principle of Proportional Representation but upon the basis of members of Parliament—Cape 11, Transvaal 7, O.R.C. 4, Natal 3. I altered the wording and the proportion as follows:—Cape 12, Transvaal 8, Natal and O.R.C. each 5; 30 in all. This was approved and Smuts moved the resolutions in the conference. After a good deal of opposition from Natal they were accepted, including the important principle of voting per capita and not by states and the scarcely less important provision that if two states agree to send delegates the convention will go on. You will see that we have made provision for Rhodesia joining the Union as soon as they are in a position to do so. The delegates are to be chosen by Parliament. The mutual understanding is that we should endeavour to get some list agreed upon by both parties in each Parliament.

The first meeting of the Convention is fixed to be held at Durban in October. There is a general consensus of opinion that you should occupy the position of Chairman and I hope that you will allow nothing to prevent you from doing so. As regards further procedure, we have left that open for the Convention. If we agree on any instrument there is a great feeling that it should be submitted to a plebiscite, but of course you will recognise that there are forcible objections and these are very strongly present to the minds of our Transvaal friends. The precedents are rather against us as neither the U.S.A. or Canada would have got their constitutions through on a popular vote.

I think the best course for us to adopt *at the Convention* will be

to pass a series of resolutions as they did at the Quebec Convention, and then submit these to a Committee under your presidency to draft the instrument which can be brought up as a bill to the Convention and be discussed clause by clause before adoption. I think the trend of popular opinion in South Africa is strongly in favour of unification as against federation. Of course this connotes some form of local government which will have to be pretty extended. I think the public here and certainly most of the people who have devoted any thought to the matter are prepared for something much more restricted than the Canadian provincial system.

The leaders of public opinion in the press have been most ludicrously out of touch with the general feeling. When the resolutions first appeared there was a great outburst of "federalism" and a backing up of the contention of Natal that there should be equal representation and voting by states, but for once in a way public opinion was wiser than its mentors who very soon found out that they were on the wrong tack and even in Natal they have had to "take the curve."

This part of the Conference was satisfactory enough. When, however, it came to the discussion of fiscal and commercial arrangements, a hopeless divergence soon set in. The Transvaal is rich and wants to remit revenue. All the rest of us are poor and want to get revenue through customs. Result a hopeless bungle—and a conviction that we must either break and by so doing untie our hands in the matter of taxation or unite and by so doing spread the burden over the whole South African community.

Our financial position is truly appalling, but like all miseries one gets accustomed to it. . . .

Faced with the choice between closer union and a rate and tariff war, the four Colonial Parliaments adopted the Pretoria resolutions and appointed Convention delegates. The twelve Cape members included six Ministerialists, four Unionists, W. P. Schreiner as an Independent and an authority on the Bantu, and, at the head of the list, de Villiers.

De Villiers returned to Cape Town late in August. He found preparations for the meeting of the Convention being hurried on amid great and growing excitement. Hofmeyr had refused a seat on the Convention for he thought no good would come of it and therefore preferred to remain free to press the claims of federation outside the walls of the conference chamber. Schreiner still stood by federation as the only certain means of safe-guarding the Cape native franchise¹; but presently he resigned his seat to undertake the defence of Dinizulu. His place was taken by

Colonel Stanford, another champion of the natives; but Schreiner's resignation meant that the Convention would include no exponent of the Cape federal point of view. In the Colony and indeed generally in South Africa outside Natal, public opinion began to run strongly in favour of Union. Closer union societies sprang up in all directions and the Press for the most part took up the cause of unification. It may safely be said that in no other Dominion on the eve of its formation were the people so fully informed of the rival merits of federation and union as were the people of South Africa.

De Villiers plunged into the discussion behind the scenes as became a Chief Justice. On landing he found awaiting him a confidential draft scheme of union drawn up by Smuts. The memorandum formed the basis of the draft constitution which the Transvaal delegates used with such effect in the Convention. It would be out of place to reproduce the whole of it in a book which does not profess to be a history of that Convention but only of the part one man played in it; nevertheless a fairly full summary of the memorandum must be given if only to explain de Villiers' comments upon it—comments which reveal the frame of mind in which he took the chair at the Convention.

"The paper," wrote Smuts, "represents merely my personal opinions. . . . If the main ideas are approved, I propose to prepare a draft constitution which might largely expedite the work of the Convention: and time is of enormous importance in this matter."¹ The problem was to set up a central authority whose supremacy should be undisputed without sweeping away existing Colonial Governments lock, stock and barrel. The solution he proposed was the creation by act of the Imperial Parliament of an indissoluble union of five provinces carved out of the four Colonies; the Eastern and Western Cape Colony, the Orange Province and the Transvaal including Griqualand West and Bechuanaland respectively, and Natal. "The division of the Cape Colony into two Provinces," he wrote, "is rendered absolutely necessary by its enormous area and the impossibility of any small local legislature coping with the diverse needs of so large an area and so scattered a community." The central Legislature was to consist of two Houses. Each of the existing Colonies was to have equal representation in the

¹ Smuts to de V. Aug. 29, 1908.

Senate: that is twelve members each from the Transvaal, the Orange River Colony and Natal and six from each section of the Cape. Provincial representation in the House of Representatives was to be fixed arbitrarily for a term of years at some multiple of the representation of each Colony in the National Convention; for, to base representation either on total population or on the number of registered voters would, he observed, be "tantamount to the annexation by the Cape Colony of the rest of South Africa." A special commission was to mark out electoral areas for both Houses on the basis of population, thereby avoiding party gerrymandering; redistribution was to take place every five or ten years according as the census was taken: members for both Houses were to be elected under proportional representation to ensure fair play to minorities and existing franchise laws were to stand until the Union Parliament changed them. The relations of the two Houses were to be governed by ordinary British practice as laid down in the Transvaal and Orange River Colony constitutions and, in case of a deadlock, both Houses were to vote together.

Each province was to be ruled by a Lieutenant-Governor, as in Canada, and a House of Assembly of the same strength as the provincial representation in the Lower House. "Provinces," he wrote, "will continue to be administered by Responsible Governments, although the number of Ministers may be very usefully reduced." Then came the crux, the division of powers. "The proper arrangement . . . seems to be not to create a hard and fast division of power at the outset but to provide a large amount of elasticity in the constitution, so that the Central Parliament may gradually assume more and more of the functions which properly belong to it. . . ." That Parliament must be declared supreme and certain matters of common concern handed over to it at once, but "a scheduled list of local laws will be unalterable without the concurrence of the local legislature."

Smuts, like the High Commissioner, was thus looking to a semi-federal constitution which might in course of time become completely unitary. Hence he proposed that the Supreme Court must be not only the Court of Appeal but also a court of first instance in inter-provincial and other cases arising out of the constitution. "The capitals of the Union," he added, "and of the

Eastern Province . . . would probably have to be settled in the constitution."

Then, passing on to the natives he showed that he expected that the three Imperial Protectorates of Basutoland, Bechuanaland and Swaziland would be handed over to the Union at once ; for he proposed that the Governor-General should, on the advice of his executive council, exercise the powers of administration and legislation hitherto wielded by the High Commissioner or Colonial Governors in those territories and in the Transkei and Zululand. For the rest the Union was to take over Colonial debts and as an offset, railways, customs and other large sources of revenue ; give help to provincial Governments which might thus be financially weakened ; run the railways and harbours on business lines with an eye to the development of national resources and not as hitherto as a means of raising revenue ; honour all Colonial treaties, assure equal rights to the Dutch and English languages and safeguard the privileges of civil servants. Finally the constitution was to be changed only by an act of Parliament passed by an absolute majority in both Houses and ratified by the Legislatures of the provinces directly affected.

De Villiers welcomed the scheme as a whole but on one point he thought Smuts went too far and on another that he did not go far enough. After his recent experiences in Canada he was resolved to work for an even closer form of union than was here sketched out, and the experience of a lifetime decided him to refuse to have the scales weighted against the old Colony as heavily as Smuts proposed, even though its cash balance was so much lighter than that of the Transvaal :

De Villiers to Smuts.

Legislative Council, Cape Town, September 3, 1908.

MY DEAR SMUTS,

I have read your scheme for South African Union with the greatest possible interest. For the greater part it embodies my own views on the subject, but there are some details in regard to which I would suggest certain modifications.

Rather than divide Cape Colony into two provinces, I would add a larger slice than Griqualand West to the Orange River Colony, and the whole of Bechuanaland to the Transvaal. A division of the Cape Colony into Eastern and Western Provinces would revive all the old animosities which were removed by the Seven Circles

Act and would accentuate the differences between the Dutch and English sections of our population. It would add greatly to the cost of administration by necessitating the appointment of an additional Lieutenant-Governor or Administrator and an additional local council and executive government. If on the top of all these local parliaments and local governments there is to be a large central parliament and ministry the expense of administration would be more than South Africa can bear. Moreover, if owing to its greater size and population the Cape Colony is to be divided into two provinces each of those provinces would be entitled to equal representation with the other provinces in the federal senate.

In regard to the constitution of the Senate I would like you to consider whether the members representing each Province should not be elected by the provincial council or assembly of such province. This would give such councils or assemblies at least one very important function to perform and help to reconcile the different Colonies to being shorn of many powers hitherto possessed by them.

In regard to the allocation of powers between the Central Parliament and the local legislatures your proposals seem to be well suited to the circumstances of South Africa. I am not sure, however, that it would be advisable to have a scheduled list of local laws which are to be unalterable without the concurrence of the local legislature. If such a provision should be insisted upon as *sine qua non* it might have to be adopted, but it would be a serious limitation of the powers of the Central Parliament and might lead to great embarrassment in the future.

As to the title of the united provinces you use the term Union, and it would be worth considering whether that should not be the official title. It is rather a misuse of an abstract term, but the same objection might be made to the term "Dominion." You propose that the popular House should be styled the House of Representatives; but would not House of Commons or House of Assembly be more acceptable to non-republicans? In regard to the representation of the Provinces in that House you say that it would be impossible to carry out the principle of representation on the basis either of the total population or the registered voters of the Provinces, as that would be practically tantamount to the annexation by the Cape Colony of the rest of South Africa. That view assumes that the Cape Colony is a homogeneous whole, the parts of which are likely to act together as against the remainder of the Union, but I feel quite sure that when once the Union is in operation the Northern parts of this Colony are more likely to work in co-operation with the Transvaal and the Orange River Colony than with their Southern neighbours. It is the unexpected, however, that happens in politics, and in framing a Constitution the best course is to be absolutely fair and just to every section of the

country without regard to the immediate effects on particular local interests. If a basis of representation is to be ultimately established would it not be best to tackle the question at once and fix the basis in the Act establishing the Union? This was done in Canada with excellent results. . . .

I am entirely at one with you as to the franchise question. This is one of the questions which will have to be relegated to the future Union Parliament for solution. It is, moreover, one of the few questions in regard to which the British Government would wish to have some guarantees. When we meet I should like to tell you what I have gathered to be the prevailing sentiment among the supporters of the present Government. The native franchise and the native protectorates are the two matters on which they seem to feel strongly, but I am inclined to think that the British Government would not object to these matters being reserved to the Parliament of United South Africa. The only objection I have heard is that such a Parliament would be too strong for the Government of the day successfully to cope with, but that is of course not an argument which would have much weight here.

I am glad that you favour Proportional Representation for the House of Representatives as well as for the Senate. . . . It should be made as simple as possible so as to be "understood of the people," and I hope you will be prepared with definite proposals.

You propose to have a Lieutenant-Governor, a House of Assembly and a small ministry for each of the Colonies. I confess this is a point which I find more difficult to decide upon in my own mind than on any other. The expense is a great objection but it is not the chief one. The effect would be to introduce federation and not unification. In theory the supreme power would be in the federal Parliament, in practice the local legislatures would retain all the powers conferred on them by the constitution and insist upon additional powers. Even in Canada there is a continual conflict between the two. It has been held as between the British Government and the Colonies that when once a legislature and Responsible Government have been given to a Colony they cannot be taken away, and I feel sure the different Provincial Parliaments and Governments will take up a similar attitude towards the central Parliament.

I find, moreover, as to the Lieutenant-Governors they are not men of much weight or standing in Canada, but they insist upon gubernatorial honours and emoluments and they remain partisans of the Governments which appointed them. If however there are to be Lieutenant-Governors I would prefer their being appointed by the Federal Government rather than by the Imperial Government as in Australia, where they claim the right to represent the Sovereign and to correspond directly with the Imperial Government.

The ideal Constitution would be one under which all local affairs could be administered by an efficient executive officer styled say Chief Commissioner or Administrator, appointed by a Central Government and assisted by a Provincial Council with powers limited in the same way as the powers of municipalities and divisional councils are now limited. . . .

I am so pleased with the general tenour of your paper that I almost feel it to be ungenerous for me to have offered so many criticisms on it. There are several other matters about which I would have liked to write but I must leave them for a future letter or until we meet. . . .

Many of these modifications of the draft were actually adopted. The Colony was not divided; the bulk of the Senators were elected by the Provincial Councils; the Lower House was called the Assembly and the provincial head the Administrator. The scheduled list of laws for whose alteration the consent of the local Legislatures was to be required was dropped; the semi-federal powers of the provincial Governments drastically whittled away and the arbitral powers of the Supreme Court rendered unnecessary by the adoption of an essentially unitary constitution. But all this lay in the future. Here at least was a basis for discussion—a discussion in which at the last moment Southern Rhodesia was invited to take part though without power to vote. So on October 12th, with all Durban in the streets and a British squadron in the Bay to welcome it, the National Convention met. It was nine years to the day since the crackling of mausers at Kraaipan had announced the beginning of the South African war.

CHAPTER XXV

THE NATIONAL CONVENTION

"When you assemble a number of men, to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views."
—BENJAMIN FRANKLIN.

WIDELY divergent views are held of the part de Villiers played in the Convention. Some say that he practically made the Union; others, that he was simply the dignified figure-head of the body that made it. Both views are wrong. The leaders throughout were Merriman seconded by Jameson from the south and Botha and Smuts from the north. De Villiers' primary duty was to preside at the full meetings of the Convention. Most of the motions and reports which he made from the chair had either been decided beforehand in committee or agreed upon by so many of the leaders that the risk of their rejection was slight. Even in those sections of the work which were most definitely his, he constantly consulted the politicians and his fellow-judges.¹ But when all is said and done he was much more than a mere chairman. The elastic procedure of the Convention enabled him to speak, to vote and to use a casting vote; of the seventeen committees which prepared most of the work of the Convention, he was chairman of ten; and in the labours of those committees he took his full share. In committee and in numberless private conversations his influence smoothed away many difficulties: for he was, what one shrewd and well-informed Transvaal admirer called him, "the man with the oilcan." His prestige was such that he was able to bring forward with fair hope of success suggestions which, in the hands of others, would have met with

¹ Those sections were the organization of the Courts and the negotiations with the High Commissioner for the future transfer of the Native Protectorates, etc., to the Union. The correspondence on these points naturally looms larger in a *Life* of de Villiers than it would do in a history of the Convention.

certain defeat. The bitterest opponent felt that if this just man from the old Colony was willing to introduce a given scheme, that scheme must possess hitherto unsuspected virtues. Whoever else may have underrated his services the leading Transvaalers did not. Towards the close of the Durban sessions de la Rey found him sitting alone on a damp bench in the public gardens worn out with heat, overwork and depression. Laying his hand on his shoulder the General said, "Hoofd Regter"—for they all called him that—"if it had not been for you, I don't know where we should have been." And there is the authority of General Smuts and Mr. Merriman for the fact that, though the Convention could probably have finished the draft constitution at Durban, it adjourned to meet again later at Cape Town very largely because its indispensable president showed signs of breaking down.

De Villiers stayed at a hotel on the Berea some distance from the meeting place of the Convention. The Governor had invited him to stay at the King's House but he found the climate of the high ground less trying than that of the city and, on the Berea, he could live in constant touch with some of his fellow-delegates. "I am staying at the Ocean View Hotel," he wrote to his wife, "where President Steyn, Hertzog, Malan, Fischer, Browne and Jagger are also staying. Mrs. Steyn is with the President. . . . He has taken a very excellent part in the Convention. The whole tone of the proceedings there has been such as to cheer me up."¹

The Convention began well. De Villiers was elected president and Steyn vice-president. In returning thanks de Villiers stated what the work of the Convention was to be :

. . . It is well, gentlemen, that we should at the outset clearly understand the exact nature of the duties entrusted to us. . . . We have a mandate . . . to enquire, not whether an early union is desirable, but what form that union should take and what should be the machinery for bringing it into being. There appears to be an impression abroad that this Convention is going to lay down the lines to be followed upon such questions as the future native policy of South Africa, but I think you will agree with me that questions of that nature can only be dealt with by us in so far as they bear upon the immediate matters submitted to us.

So much of the Convention's deliberations was given to the public. The rest of its work was done behind closed doors. The

¹ de V. to Lady de V., Oct. 16, 1908.

main issue was settled at once in a three days' battle. Merriman moved in favour of union; Morcom of Natal brought forward amendments which would have set up a federation. The Natal amendments were defeated and henceforward it became merely a question of the degree of unification. Fair weather continued for the next day or two and equal rights for the two official languages, a bi-cameral Parliament and a Ministry of ten were agreed upon. But on October 25th the first storm burst. Merriman moved that the existing Colonial franchises should be changed only by a three-fourths majority of both Houses sitting together; whereupon Stanford, the champion of native interests, moved the abolition of the electoral colour-bar. For the next three days, with a petition from the coloured men of the Rand before them, the delegates debated that issue.

De Villiers was already feeling the pressure of his work in the unaccustomed heat of Durban.

De Villiers to Lady de Villiers.

Durban, Oct. 21, 1908.

... The heat is becoming very trying. There is almost daily rain, but it is a tropical mist which does not cool the atmosphere but only adds to the depression. All the delegates at this Hotel complain of loss of appetite and the nights are so close that one does not get much sleep. Fortunately the mosquitoes have not yet appeared in numbers, but as a matter of precaution I always sleep under mosquito curtains. ... Things are getting on very well at the Convention but the strain on me is very great. You will I am sure quite understand why I do not write to you more often. The correspondence in connection with the Convention is very great, and in addition to that I have to revise resolutions and put them into shape and act as general adviser. We are now busy with the most thorny question we have to deal with, viz. the native franchise, but I feel sure that by the time you receive this letter we shall have found a solution. ...

Next day he was less hopeful. "We are busy with the native franchise, which I fear will take up several days more."

The franchise question was a reminder that the work of the Convention was not exempt from the pressure of the native and coloured problems which underlie all South African politics. Those problems—for they are and always have been separate problems—have lain at the bottom of most of the disputes

between the Imperial Government and a large section of South African opinion. In the Cape Colony natives and coloured alike could acquire the vote; in the other Colonies they either could not or, in the case of Natal, did not. During the recent Cape elections many members of all parties had committed themselves to equal rights for all civilized men; but few were ardent supporters of this principle while others were hostile to it. In the other Colonies the vast majority would not hear of it, at least as far as the Lower House was concerned. It was, however, fully realized that the attitude of a Liberal British Ministry towards the coming Union must depend largely on the treatment meted out to the coloured and native peoples.

No one realized that more fully than de Villiers. He had always upheld the Cape Liberal policy towards the non-Europeans in Parliament and on the bench. He shared the fears of Rose-Innes, Chief Justice of Pretoria, that unless this Cape native franchise were entrenched it might be swept away with the certainty of future trouble.¹ He also knew from his recent conversations in London that the franchise and the future of the native protectorates were intimately connected in the minds of Imperial Ministers. He had since heard that H.M. Government, mindful of the Basuto and the House of Commons, would probably insist that the conditions under which the Protectorates would be handed over to the Union be embodied in the act of Union. The High Commissioner removed any doubts on that score. Lord Selborne told him that he was looking forward to a general native and coloured franchise based upon a civilization test, and that this franchise and the transfer to the Union of Basutoland, Bechuanaland and Swaziland were part and parcel of the same question:

Selborne to de Villiers.

[Confidential.]

[COPY.]

King's House, Durban, 20th October, 1908.

. . . The question (franchise) is one on which I am bound to state His Majesty's Government feel very anxious. . . . Nothing can be further from the desire of His Majesty's Government than that there should be the slightest appearance of want of harmony between them and the South African National Convention, or of the interference of what is called the Imperial factor, in the virtue

¹ Rose-Innes to de V., Oct. 20, 1908.

of which, except in the most exceptional and extraordinary cases, I for one wholly disbelieve. At the same time you must recognise what a very difficult position H.M. Government will be placed in when they are reminded of the article of the Treaty of Vereeniging, which deals with this question. That article is generally considered, and I think justly, to mean two things—that the question of the native franchise would not be mooted in respect of the Transvaal or Orange River Colony until after responsible government had been granted to those two Colonies, and that the subject would be dealt with shortly after responsible government had come into existence in them. The comment will certainly be made that no more appropriate moment for dealing with it could occur than during the consideration of a Constitution for South Africa.

Mr. Merriman's amendment cuts both ways. If it succeeds in making the franchise secure to the Cape natives, it will also make it practically impossible at any time to extend the franchise to any of the natives of the Transvaal, Natal, or the Orange River Colony.

You will see that I have kept this question of the native franchise altogether separate from the question of the native Protectorates, on which you also touched in our conversation, but it has one bearing on it which I think I should mention in this letter.

The obligations of H.M. Government to the tribes inhabiting Basutoland and the Bechuanaland Protectorate are obligations of honour of the greatest possible weight. These tribes surrendered themselves under the dominion of Queen Victoria of their own free will and they have been her loyal subjects and the loyal subjects of King Edward ever since. The history of the connection with Swaziland is different, but the obligations are only different in degree. It is quite certain that these tribes will be very loth indeed to be transferred . . . and there will be many people in the United Kingdom, and indeed some in South Africa, who will urge H.M. Government on no account to effect the transfer. To put it shortly, it will be very difficult for H.M. Government to agree to that transfer; but, as I have told General Botha, in my opinion, there is no doubt that it is to the permanent interest of these tribes and of the Imperial Government no less than of the South African Government, that that transfer should take place; and I venture to think I shall be able to persuade H.M. Government to take my view. The transfer might be immediate, but probably H.M. Government will prefer to take power in the South African Constitution Act to effect this transfer later. In any case they will require that the conditions of transfer should be embodied in that Act. I need not say, however, that this opinion of mine is based on the supposition, of which I entertain no doubt, that the South African National Convention will agree to such conditions of transfer as would be consistent with the obligations of honour of H.M.

Government, to which I have already referred. It is obvious that unless they were satisfied with the conditions, H.M. Government could not possibly agree to the transfer, and my view would be the same. . . . The conditions of transfer . . . must necessarily be affected by the decision of the National Convention on the general subject of the native franchise of South Africa. . . .—Believe me,
Yours sincerely,

SELBORNE.

The High Commissioner's letter had been written at de Villiers' request and served to clear the air in the Convention.

De Villiers to Selborne.

[Confidential.]

DEAR LORD SELBORNE,

Durban, 21st October, 1908.

. . . The letter is so important that I have taken the liberty, in accordance with the permission you kindly gave me, to communicate its purport to the Convention. . . . It will, I fear, be extremely difficult to devise some scheme for applying the "civilization" test which you suggest. I believe that some of the delegates will make an effort in that direction, and, in the meanwhile, I would be glad to know whether, in case such a scheme is evolved, the suggestion would be that it should apply to the whole of South Africa. If so, I fear there are many voters on the Cape Electoral Lists who would not be entitled to remain there. Even if they are not to be deprived of their vested rights the difficulty would still be that those natives who have not yet been registered but have the Cape qualification would be excluded because they do not conform to the new standard of being civilised. If it should be found that no satisfactory test of civilization can be devised the plan suggested by Mr. Merriman will probably be adopted with an important modification to meet the objection which you raised. The modification is that for the purpose of conferring the franchise on natives in those Colonies where they have hitherto been deprived of it, a bare majority in Parliament would be sufficient. But it is reasonably clear to me that Mr. Merriman's amendment, whether so modified or not, has no chance of being carried unless there is a further provision that only persons of European descent shall be eligible for election as Members of either House. It seems to me extremely desirable that before any resolution is arrived at I should know whether, in your opinion, the Home Government would agree to the application of the test of civilization to coloured persons and not to Europeans. I should like also to know whether, in case no satisfactory test of that kind can be agreed upon, the Home Government would allow the present franchise to remain in the different Provinces until

altered by the Union Parliament, either with or without the proviso that such alteration shall not be allowed in regard to the qualification of coloured persons in the Cape Colony unless carried by a majority of not less than three-fourths of the Members of both Houses, sitting together. And lastly, it is very important I should know whether the Home Government would agree to a provision that only persons of European descent shall be eligible as members of either House of the Union Parliament. The Cape delegates seem to be prepared to accept such a provision seeing that without it an agreement on the matter of franchise would be almost hopeless.

Selborne at once replied that in his opinion the civilization test should be applied to all South Africa but that the Imperial Government would probably agree to limit the test to non-Europeans, "as part of a general settlement of the franchise question in South Africa which gave an adequate permanent access to the franchise to the coloured people and natives."¹

On the other hand he doubted whether the Imperial Government would agree to let the present Colonial franchises stand, until they knew the main details of the general scheme of Union and the degree of unanimity with which the Convention supported that scheme. "I am confident, however," he wrote, "that, in default of a general settlement of the native franchise question, they would warmly sympathise with any provision securing to the Cape Colony coloured persons and natives that access to the franchise which they at present enjoy." As for limiting the membership of the Houses to Europeans, "I do not think that His Majesty's Government would object to such a provision as part of an otherwise satisfactory settlement. . . . May I suggest in conclusion that the position of the coloured people should not necessarily be identified with that of the natives?"

With the franchise in the hands of a committee, the High Commissioner and de Villiers passed on to discuss the transfer of the Protectorates. Most of the leaders in the Convention expected that the three territories would be handed over to the Union at the outset to be administered by the Governor-General-in-Council, in other words, by the Union Ministry. De Villiers found that this was by no means the intention of H.M. Government. Selborne proposed that power should be taken to make the transfer at a future date on terms which were to be settled immediately and embodied in the act of Union. Those terms

¹ Selborne to de V., Oct. 22, 1908.

would *inter alia* safeguard the native reserves, prohibit the sale of liquor therein, secure to each territory its present share of the customs duties and preserve the Basuto tribal assembly.¹ De Villiers admitted that these terms were just and reasonable but he had doubts about the special commission which, in spite of general supervision by the Prime Minister, was to be the real ruler of the Protectorates. During the next few days he sounded the leaders of the Convention. Jameson and Farrar, one of the Rand delegates, accepted the scheme *en bloc*; Botha and Smuts reserved judgment; but the Premiers of the Cape, O.R. Colony and Natal asked for immediate transfer. Merriman approved of the safeguards of native rights as fully as de Villiers; Fischer and Moor made no objection to them beyond suggesting that reserves might be made exchangeable for land in the sparsely peopled Bechuanaland Protectorate; but all three feared the commission as a certain source of friction with the Union Government. De Villiers urged these objections on the High Commissioner and suggested that the politicians would be satisfied if the Governor-General-in-Council were plainly recognized as the supreme authority. Subject to that recognition members of the commission could still hold office on the same terms as the judges: they could take a share in the administration of the territories; they could give advice and, if their advice were overridden, they could lay their side of the case before Parliament. This was however a radical change in the proposed scheme and Selborne, bound by his instructions, could not commit himself to it.

For the moment a deadlock had been reached on the all-important native question and Selborne warned de Villiers again that unless an agreement could be reached the situation must become very difficult. In other directions however the Convention had made good headway. "The public festivities are fortunately over," wrote de Villiers to his wife, "so that the delegates can proceed with their work without interruption. I had no idea that so much work would be thrown on me but thus far I have managed to get through it."² He supported Fischer's proposal that the Senate should be partly nominated and moved his first comprehensive amendment that for ten years after Union thirty-two members should be elected and ten nominated, half to be chosen for their special knowledge of native affairs and

¹ Selborne to de V., Oct. 26, 1908.

² de V. to Lady de V., Oct. 23, 1908.

half, like Roman senators, by reason of administrative or judicial experience. His proposals were adopted in the main though the total of nominated members was reduced to eight and the "Roman" qualifications were dropped. The method of electing senators was then referred to a committee under his chairmanship. Smuts had proposed election by large constituencies voting under proportional representation; but de Villiers, though not opposed to P.R., favoured election by the provincial councils. His committee made a compromise. For the first Senate, the two Houses of each Colonial Parliament sitting together were to elect sixteen candidates under P.R. from whom the Governor-General-in-Council should select eight to sit for six years. Thereafter the Union Parliament would regulate the matter of election for a further period of four years. So it was carried with the amendment that nominated senators should hold office for ten years.

After the Senate, the House of Assembly. The Transvaalers proposed a House of ninety-six members allotted to the different provinces on the basis of European voters, for in the ex-Republics white manhood suffrage was the rule; but the Cape delegates held out for the number of European inhabitants as the basis whereon the Colony equalled the other three Colonies combined. After nearly two days' debate the matter was referred to a committee, with de Villiers once more as chairman, and the Convention passed on to decide on the procedure necessary to end a deadlock between the Houses and to define the Senate's powers. The proposals were mostly Smuts's, the amendments Merriman's; but de Villiers secured one important change in a resolution which would have prevented the Senate amending bills which imposed taxation. "No," said he, "only in so far as those bills impose taxation." His memory at least went back to Wodehouse's exposition of the gentle art of tacking representation clauses to the Kaffarian annexation bill. On October 29th he introduced the first report of his committee on the Assembly, practically embodying Merriman's plan of a House of 121 members allotted to the provinces on the basis of European population.¹ The report, with which he thoroughly agreed, was adopted and the Convention resumed its debates on the franchise.

¹ Seats in the House of Assembly were, however, allotted to the Transvaal on the basis of the voters' roll.

These debates showed that the idea of a sovereign Parliament legislating for an essentially unitary State was crystallizing in the minds of the delegates. Sauer's proposal that the Cape native franchise should be placed beyond the reach of legislation was referred back to the franchise committee and a Natal proposal that the provinces should have power to change their own constitutions was shelved. At last, on November 4th, the Convention made up its mind on two of the most vital questions. Membership of Parliament was limited to Europeans but, on the other hand, Botha met Merriman half-way by agreeing that the Cape native franchise should be altered only by a two-thirds majority of both Houses sitting together. De Villiers then brought in the second report of his Assembly Committee recommending that a commission, presided over by a judge and entrusted with wide discretion in dealing with thinly peopled areas, should delimit constituencies each returning three members to the assembly on a system of proportional representation. The report was adopted with the one amendment that the commission was to consist wholly of judges to do away with any risk of gerrymandering. On the same day an important change in procedure was made. The Convention had intended to adjourn on November 4th and to meet again at Durban on the 10th to finish the draft constitution. Now Botha moved that it push on with its work for a few days and then adjourn to meet later in Cape Town. There were two main reasons for this change. H.M. Government showed no signs of yielding in the matter of the Protectorates and de Villiers showed abundant signs of breaking down in health :

De Villiers to Lady de Villiers.

Durban, Oct. 30, 1908.

... The climate here is very unpleasant. ... I get very little sleep and that little is not refreshing, but I manage to get on with my work. The other delegates insist upon my taking a furnished house with Indian servants, etc., but I do not care about moving now. ... Unfortunately the O.R.C. delegates will have to go away for a few days to settle up matters in connection with the disastrous fire at Bloemfontein. My proposal was that this would be a good opportunity of moving to Johannesburg, but the proposal does not meet with general favour. President Steyn is ill to-day. ... I shall be very sorry if he should be incapacitated for I have taken a great liking to him. ...

Since the Convention might sit for at least another week de Villiers decided to introduce his scheme for a Union court of appeal. It was not an ideal scheme and he knew it; for beside the chief justice and two judges of appeal it was to include the chief justices of all the provincial courts and the judge-president of the Eastern Districts court. This concession to local feeling limited the chances of securing the best men but he doubted whether the Convention would, in its present mood, be induced to forgo that concession. He therefore tabled twelve resolutions to test the feelings of the delegates. After a short discussion all were referred to a committee headed by himself and, on November 5th, the Convention adjourned.

It met again at Cape Town on November 23rd and, after dealing with some minor points, settled down to define the position, powers and constitution of the provincial Governments. The Natalians fought doggedly for local powers but they were outnumbered time after time. De Villiers, mindful of his experiences in Canada, voted steadily with the majority till the question was referred to a committee under his chairmanship. As far as the meetings of the Convention were concerned, a lucid interval ensued during which many financial clauses were adopted, de Villiers as usual voting with the party of economy against the more lavish-minded Transvaalers. But behind the scenes de Villiers found the work of the Convention by no means placid. He was chairman of the provincial and judicial committees, and was once more in the thick of the controversy with the High Commissioner on the fate of the Protectorates.

During the first week of December the recommendations of the provincial committee were adopted much as they appear in the South Africa Act, and on December 8th de Villiers introduced the report of the judicial committee. The short discussion in the Convention at Durban and his subsequent correspondence with Sir James Rose-Innes and Sir William Solomon of the Transvaal bench had convinced him that a much more revolutionary scheme than that which he had at first proposed might be carried. He therefore boldly went back to the plan which he had outlined to Barkly in 1877 and proposed to abolish the existing Colonial courts to make way for a South African Supreme Court with provincial divisions and an appellate division above and distinct from them all.

He found the opinion of his committee much divided on the rival merits of the old plan and the new. One difficulty was common to both schemes : that of giving the appeal court enough work to do, for in South Africa appeals were not frequent. Yet to give the appeal court much work of first instance would be hard on suitors and, since there must be an appeal from any court of first instance, would give rise to the very appeals to the Privy Council which the new court was designed to check. The Durban scheme had many advantages. It would please the provinces ; it would probably be cheap ; the power of the provincial supreme courts to hear appeals from single-judge courts would secure the speed which in criminal cases is the essence of justice. On the other hand the new proposals would avoid multiplicity of appeals ; the appellate division would have more work to do since all appeals would lie to it ; if local feeling were ignored a really strong compact body of appeal judges could be formed. Rose-Innes and Solomon urged him to take the bolder course, to limit the original jurisdiction of the appellate division and to run the risk of local storms in order to secure a strong appeal court capable of dealing with those inter-racial and quasi-political cases which were likely to become more frequent than ever if anything like a federal constitution were adopted.¹

De Villiers decided to go forward. He proposed that all the judges of the Colonial Supreme Courts should become members of a South African Supreme Court organized in provincial divisions with an appellate division superimposed, which should hear, not only appeals which would formerly have lain to the Privy Council, but all appeals from the E.D. court, similar courts in any Colony or in Southern Rhodesia and from any single-judge court. Appeals from the appellate division could still be made to the Privy Council by special leave of the King-in-Council, but the cases in which that leave might be asked were to be defined by Union Parliamentary acts reserved for the signification of His Majesty's pleasure. There was much opposition to his proposal to do away with appeals to the provincial divisions. The composition of the appellate division caused almost equal difficulty. The Durban scheme had provided for an appeal court of eight or nine judges ; but now there was to be a court of five, the chief justice, two permanent judges of appeal and two additional judges of appeal

¹ Memorandum by Rose-Innes and W. Solomon, Nov. 30, 1908.

summoned from time to time from the courts in which they usually dispensed justice. Some of the Transvaal judges and other legal officials supported by a few Free Staters would have preferred a court of five permanent judges of appeal or even a chief justice and a panel of ten judges liable for service when called upon; but de Villiers, with the help of Smuts, had his way. With mere verbal alterations in four of the twenty clauses, the Convention passed his scheme at a single sitting.

So far so good, but next day Botha raised what Jameson called the "damned capital question." Apart from the claims of the four Colonial capitals the Convention had before it many offers from public-spirited mayors anxious to sacrifice their townships on the altar of patriotism. Worcester, Queenstown, Mafeking, Parys, Kroonstad, all pressed their suits, and Potchefstroom made mention of a low death-rate as a special inducement to elderly legislators. Most of the Transvaalers and Natalians tried to hasten the settlement but the Cape Colonists, the Free Staters and Smuts were too strong for them. De Villiers was appointed chairman of a committee to report on a method of deciding the problem "after the resolutions on which the constitution is to be based shall have been settled." It was a prudent proviso.

One Convention skeleton was thus banished to the cupboard of which de Villiers held the key but the other promptly took the centre of the stage. On December 10th the Protectorates question was raised once more. De Villiers had discussed the matter with the High Commissioner towards the close of the Durban sessions and, during the recess, Lord Selborne had talked it over with his Transvaal advisers:

Selborne to de Villiers.

[Private and Confidential.]

Government House, Pretoria, Nov. 17th, 1908.

DEAR SIR HENRY,

I have had a long talk with General Botha and General Smuts on the subject of the protectorates. . . . They strongly expressed their hope that there will be no delay in the transfer. . . . While reserving their right to address H.M. Government again on the subject of the time of transfer, I understood them to fully accept the view that the conditions of transfer should be settled now and embodied in the Act.

We then discussed the rough heads of the proposed conditions, a copy of which you have by you, and, as a result of our discussion, I understood that they were prepared to accept the whole of those conditions, provided that that change was made in the relative positions of the Governor-General-in-Council and the proposed Commission which I discussed with you at our last meeting in Durban. . . . To apply this very important modification to the rough memorandum supplied to you, it would follow that the Governor-General-in-Council would be appointed in place of the High Commissioner. . . . It goes without saying that no duties or imposts of any sort would be levied by the rest of South Africa on the produce of the Protectorates. They would, in short, automatically be subjected to whatever customs or excise duties were levied in South Africa generally. . . . Further, I take it that the inhabitants of the Protectorates, whether white or black, would be allowed free intercourse with the rest of South Africa under the same conditions and subject to the same laws as govern the relations of the rest of the whites and natives of South Africa, and that all the revenue, direct and indirect, arising from the Protectorates would be spent on the inhabitants of the Protectorates.

You asked me my candid opinion as to what the result would be of a failure to arrive at an agreement on these points and I told you how difficult I thought the situation would become if unfortunately we were not able to agree. May I extract from an absolutely private letter from the Secretary of State, dated the 17th October, a paragraph which really might have been written in answer to your question? It is as follows:

At the same time I want to impress strongly on your mind that it would be practically impossible to secure the assent of the House of Commons and the country here to any Constitutional Act which failed explicitly to provide for the security of the native population in the Protectorates, so that inclusion of these safeguards must be regarded as a necessary condition.

May I ask you not to show this letter to anyone else and above all not to quote this extract? I wish above all things to avoid anything which might be considered in any degree to dictate to or to put undue pressure on my friends the statesmen of South Africa. I ask you to look upon this letter as material which you may use in persuading those statesmen to propose to H.M. Government, through me, an adaptation of the scheme, which, I believe, commends itself to your ripe judgment. I do this with perfect confidence, because I have met with such extraordinary sympathy and consideration from you in this matter.—Believe me, Yours sincerely,

SELBORNE.

During the first week of the Convention session at Cape Town, de Villiers did his best to induce the Colonial Prime Ministers to come to terms :

De Villiers to Selborne.

[*Confidential.*]

S.A. National Convention, *Nov. 30th, 1908.*

DEAR LORD SELBORNE,

I had a long interview with the Prime Ministers yesterday and found that, with the exception of Mr. Moor, they were prepared to accept the principles embodied in your memorandum save as to the Constitution of the proposed Commission. Mr. Moor takes up the *non possumus* attitude, but I understand him to agree with the other Prime Ministers' views, assuming that some decision has to be arrived at now. All of them think that the transfer of the Protectorates, if made at all, should be made as soon as possible after Union.

As to the constitution of the Commission they all strongly object to officials who are actively engaged in administration being members. They consider that the Commission should be a purely advisory body and that the members should be appointed for a period of, say, ten years, and should during that period be irremovable except upon address from both Houses of Parliament. Such a Commission, the Prime Ministers consider, would be a nucleus of an advisory body in regard to all native affairs. . . . They would, therefore, be entitled to receive good salaries and would have sufficient to do, although not engaged on definite administrative duties. If you consider that this modification of your memo would be acceptable I could draw up the clauses to be embodied in the Act for your consideration. . . . The position of the members of the Commission would be analogous to that of the Council of India.

The High Commissioner was by no means satisfied with these proposals :

Selborne to de Villiers.

Mount Nelson Hotel, Cape Town, *Dec. 5th, 1908.*

DEAR SIR HENRY DE VILLIERS,

Your letter . . . advances our informal exchange of views to a point at which I may say that only two matters remain outstanding : the exact nature of the functions which the Commission is to perform, and the period for which the Commissioners are to be appointed. . . . You state that the Prime Ministers "consider that the Commission should be a purely advisory body." The

whole question is, what do you mean by those words? A meaning could easily be attached to them which there would be no chance of H.M. Government feeling able to accept. . . . I have, accordingly, drawn up a memorandum . . . in which, while the Commission may be described as "a purely advisory body," the main principles laid down in my original memorandum are adhered to. If this is what the Prime Ministers mean, then I should wish to be able to inform H.M. Government of the fact at the earliest possible date. I should say at once that I do not think they will be prepared to agree to anything less.

Then you tell me that the Prime Ministers think that the Commissioners should be appointed for a term of ten years. Now that is a very large departure from the original proposal which H.M. Government authorised me to make, a very large departure indeed, and I think they would be more likely to accept fifteen years. . . .

Lord Selborne's proposal now was that the Governor-General-in-Council should legislate for the Protectorates but that actual administration should be in the hands of the Prime Minister assisted by three commissioners and a secretary. The Premier was to preside and to exercise a casting vote but not an ordinary vote, and must consult the commission before carrying any law into action. The commissioners were to have access to all official papers dealing with the Protectorates and to have the right to discuss and to offer their advice on any matter connected therewith. If the Prime Minister accepted that advice the secretary was to give effect to it; if not, the commissioners could appeal to the Governor-General-in-Council and, if its decision were given against them, lay their case before Parliament.

At this stage, on December 10th, the Convention appointed de Villiers chairman of a strong committee including the four Prime Ministers to enquire into the matter of the Protectorates, native affairs generally and the method of admitting or erecting new provinces or territories of the Union. Difficulties arose at once:

De Villiers to Selborne.

S.A. National Convention, Dec. 12th, 1908.

. . . A meeting of the Committee was held yesterday at which it was decided to submit to you certain Resolutions in the form in which the Committee considers the provisions relating to the Protectorates should be embodied in the Imperial Act. The members of the Committee find it difficult to adopt all your suggestions without

considerable modifications. . . . It was suggested by the Committee that there should be a provision enabling the Union Parliament to amend the Schedule with a proviso that such amending Bill be reserved for the signification of His Majesty's pleasure thereon. It would help to hasten a settlement if you would allow me to call on you. . . .

De Villiers drew up the terms of the transfer in the form of a schedule setting out in detail most of the principles already agreed on.¹ He added several new points. Proclamations by the Governor-General-in-Council duly laid before Parliament were to have the force of law unless repealed by act; each Protectorate was promised a share of the customs revenue reckoned on the basis of its share of the revenues of the customs union in the year preceding Union; the Union Government was to make up the shortfall for any one year in the revenues of any Protectorate. On the other hand the powers of the commission were cut down still further. The committee held out for a ten years' appointment; the Prime Minister was to act in cases of emergency and explain his actions to the commissioners afterwards; the commissioners might be forbidden to lay the reasons for dissenting from any action taken before a Parliament if the Governor-General-in-Council held that publication "would be prejudicial to the public interest."

Two days later de Villiers discussed the schedule with the High Commissioner. Selborne made various suggestions but generally showed himself ready to accept most of the clauses provided the transfer were made to the Governor-General-in-Council and not to the Union Government and Parliament. He also told de Villiers frankly that he was anxious as to the effect which the news of the coming Union, let alone the transfer of the Protectorates, might have on the natives concerned, and warned him that the terms of the transfer must not be published before he had had time to speak to the tribes and the chiefs to approach the King if they so wished. Rather than that he suggested that the Draft Union bill be published with a note that the Protectorate negotiations were going forward hopefully. It was a very real difficulty. Letsie, paramount chief of the Basuto, had already asked leave to send a deputation to London and on the very day of Selborne's conversation with de Villiers Mr. (now Sir Herbert) Sloley,

¹ Memorandum, Dec. 12, 1908.

Resident Commissioner of Basutoland, on his way to England—on leave—had discussed this deputation with the High Commissioner. On the other hand the Convention was to adjourn on December 18th so that the Union bill could be drafted and, even if the committee could come to terms with the High Commissioner, the Secretary of State must be given time to have his say. Selborne assured de Villiers that he need fear no objections to principles but only to matters of detail; wherefore de Villiers promised that, if he submitted the schedule to the Convention before Downing Street had spoken, he would make the delegates understand that the scheme was still subject to the approval of H.M. Government.

De Villiers' committee accepted most of Selborne's proposals. They agreed that laws altering the schedule should be reserved; that proclamations should be withdrawn if necessary by resolution of the Houses and not by act; that the commissioners should be free not only to tender advice to the Prime Minister but to discuss any subject they chose relating to the Protectorates and, in the last resort, to publish their views provided such publication did not "constitute a public danger." They even met the High Commissioner half-way by agreeing that commissioners might be reappointed for a further period of five years at the end of their original term of ten and gave up all idea of putting existing Colonial native territories under the Protectorate machinery. They also improved the financial position of the Protectorates by agreeing to assess their share of the customs revenues on the basis of the three years preceding Union instead of one year only, and by promising that no special duties should be levied on Protectorate produce entering other parts of the Union and that Protectorate revenues should be spent on the Protectorates. One point they modified. White and black inhabitants of the Protectorates were to have free access to other parts of the Union subject to the ordinary laws "including the pass laws." But on one point the committee held firm:

De Villiers to Selborne.
[Confidential.]

S.A. National Convention, Dec. 15th, 1908.

... The Committee is, however, unable to adopt your suggestion that the transfer should be to the Governor-General-in-Council

instead of to the Union. . . . Your Excellency inquired from me whether the Convention would publish its decision relating to the Protectorates. I fear it would be difficult to avoid such publication, as the different Colonial Parliaments will have to be asked to sanction the whole scheme proposed by the Convention of which the Schedule relating to the Protectorates will be an important part. I suggested to the Committee that the Convention might postpone the publication of its Report for some weeks after the work is concluded, but it was pointed out that such a course would give rise to great public discontent. The public is satisfied to be kept in the dark so long as the deliberations are being carried on, but would have reasonable cause of complaint if the publication is delayed. . . . Mr. Merriman's idea is that the Report of the Convention should be published as soon as it is completed and that thereafter the Parliaments should be convened as soon as possible. . . .

The High Commissioner at once agreed to de Villiers' suggestion that the main headings at least of the schedule be laid before the Convention "on the understanding that they will be subject to modification after the Secretary of State has been communicated with."¹ De Villiers therefore brought forward the schedule in *extenso* on December 17th. Discussion was, however, held over while the delegates wrestled with the other skeleton from the cupboard; for de Villiers had to report that the committee on the capital being hopelessly divided proposed that the question be left to the four Prime Ministers. That, he observed, was no better than leaving it to the committee; therefore he suggested that the King be asked to appoint three men not being South Africans to make the award. But the Transvaalers would have no board of Podestas and back went the skeleton to its cupboard for a season.

On the morrow, the last day of its Cape Town sessions, the Convention faced the schedule. The Natalians helped by some of the Transvaalers tried to cut it out of the act altogether but the majority decided that the terms of the future transfer must be settled at once. The twenty-four clauses were passed rapidly with a few amendments increasing the power of the Prime Minister, who was to be frankly recognized as administrator of the territories without the intervention of the secretary. It was decided that the Union should not make up any shortfall in Protectorate revenues but merely advance the money on loan, and

¹ Selborne to de V., Dec. 15, 1908.

that inhabitants of the Protectorates should be subject not to the "ordinary laws" but to the "laws" of the Union, a Free State amendment which left it open to Parliament to frame special pass laws against them. Once the schedule was disposed of the two remaining proposals of de Villiers' committee vesting the control of native affairs in the Governor-General-in-Council and providing for the future admission of other territories such as Southern Rhodesia were at once accepted and the Convention adjourned till after the New Year.

There was little rest for the President. He was chairman of the committee appointed to draft the Union bill during the next three weeks and he must still keep in touch with the High Commissioner in the matter of the Protectorates:

De Villiers to Selborne.

South African National Convention, *Dec. 19th, 1908.*

MY DEAR LORD SELBORNE,

I herewith enclose the Resolutions provisionally adopted by the Convention in regard to the Protectorates. There was considerable difficulty in inducing the Convention to accept them. . . . It will be difficult enough, it was said, to induce the existing Parliaments to ratify the general conclusions of the Convention, and this difficulty will be greatly increased when it becomes known that the provisions of the Schedule display such distrust of the future South African Government and Parliament. I am sure, therefore, that any modifications of the resolutions in the direction of shewing greater confidence in the justice of the European people in South Africa would be greatly appreciated and would facilitate the ratification of the Convention proposals. . . .

De Villiers had written in haste to give the High Commissioner the news before his departure for Johannesburg. Two days later he wrote again:

I fear that I have conveyed to you the impression that a majority of the delegates, including myself, accepted the Resolutions under protest. A majority took the view which I did that the Resolutions were perfectly fair and reasonable, but there was a strong minority which urged the objections mentioned in my letter. . . . Of course if the Home Government consider that they cannot, consistently with their duty as trustees for the native tribes in the Protectorates, further alter the conditions . . . the Convention will be bound by its resolutions. . . .¹

¹ de V. to Selborne, Dec. 21, 1908.

Selborne had taken his stand throughout on the ground of trusteeship. The continued charge of want of trust moved him to send to de Villiers some confidential remarks on that head which were infused with justifiable warmth :

Selborne to de Villiers.

Dec. 28, 1908.

... In South Africa nothing is ever heard of what goes on in the Protectorates. . . . It is said that the natives of the Protectorates are spoilt and out of control. This suggestion is without foundation. How many of those who make this statement have ever been in these Protectorates? It has been my special business to know these Protectorates. I have been through and through them. . . . The British Crown and people are at present trustees. . . . The question now before us is the transfer of the trusteeship from the British people to the South African people. If you or I establish a trust for our children in case of our death and we make our own brother the trustee, do we make him that trustee without any conditions? Never! . . . But it is asked, why raise the question now? . . . My answer to this is that, while the South African Government is being established it should be the aim of all true men to eliminate in advance all possible causes of difference of opinion between H.M. Government and the South African Government. H.M. Government are prepared when the proper time comes . . . to eliminate altogether what is called the "Imperial factor" from the internal affairs of South Africa. Could any greater mark of confidence be shown in the people of South Africa? Is it generous or fair to complain? . . . It is no question of policy about which we are disputing; it is a question of honour, and one to which every section of public opinion in the United Kingdom, Government and Opposition alike, are keenly sensitive.

Selborne was not thinking so much of the storms which the publication of the schedule would raise in the Colonial Parliaments as the whirlwind which the news of the coming Union might summon up in the Protectorates. In his train on the way to Johannesburg, he had written to the Governor of the Cape Colony that he meant to tell the chiefs "that it is now certain that the Convention will presently present a Constitution to the Parliaments" and that, though no immediate change would be made in their condition, arrangements were being made to safeguard their interests against the day when they must be transferred to the Union. "I and the Resident Commissioners," he added, "will answer for the Protectorates—I will guarantee to

keep them perfectly quiet, but I must answer the questions the Chiefs are constantly sending me. The question I want you to ask the Chief Justice is whether he sees any objection, from the point of view of the Convention, to telling them as much as I have stated."¹ To which de Villiers replied cautiously that there was no objection provided the Chiefs were told that it was "almost certain" that the Convention would produce a constitution.² He at least knew that the cause of union was by no means won.

The Convention assembled at Cape Town on January 11th and steadily ploughed its way through the draft bill. A week later the first serious check occurred when de Villiers tabled a further report of the capital committee. His own scheme by which the Convention was to decide in which Colony the capital was to be by a process of elimination in which every delegate present must vote had been rejected; the committee had been evenly divided and, rather than leave the issue to his casting vote, had decided to appeal to the Convention. Perhaps de Villiers ought to have taken the risk of deciding; but, in view of the storms which the capital question always aroused and the fact that he was so closely connected with Cape Town that no one could imagine him voting for any other place, he and his fellow-committeemen feared to risk his reputation for impartiality which they knew was essential for the success of greater issues even than that of the capital. Hence the Convention was left to wrangle over rival schemes produced by the Transvaal and the Free State. "They are all so damnable about it," wrote Jameson, "our own financial friends far worse than the Dutchmen"³ and at last the question was thrust back into the hands of the unhappy committee.

In other directions the Convention was more successful and clause after clause of the draft bill was approved with comparatively few amendments. On January 25th the judicial section was reconsidered but the only change of importance made was the substitution of a clause more explicit than that originally proposed by de Villiers, making it perfectly clear that the Grahams-town, Kimberley, Johannesburg and circuit courts were to rank as local divisions of the Supreme Court alongside of the large provincial divisions. On the 28th the all-important preamble to the bill was adopted and de Villiers was able to report that the

¹ Selborne to Hely-Hutchinson, Dec. 21, 1908.

² Telegram, Dec. 29, 1908. ³ Colvin, *Jameson*, ii. p. 281.

draft was finished. On the same day the schedule was accepted. Its course had been beset with difficulties to the last. At the beginning of the January session de Villiers received a letter from the High Commissioner telling him that the Secretary of State fully understood the point of view of the delegates and suggested that, since details must be discussed in London, the Convention should merely pass resolutions affirming certain broad principles. "I can say without hesitation," he wrote, "that these principles would be accepted by H.M. Government without modification."¹

A mere affirmation of principles would avoid the necessity of publishing the full details of the schedule side by side with the draft bill and thereby avert the uproar from Parliaments and electors which many delegates feared. On the other hand a bald statement of principles might be misleading. De Villiers soon found however that the High Commissioner was more anxious on another score. He feared that some of the delegates might turn against the terms of the schedule when they were brought forward in the Colonial Parliaments. To avoid any misconceptions of what the Imperial Government had done and meant to do, Selborne gave de Villiers leave to use his letter of January 11th as he saw fit:—

Selborne to de Villiers.

[*Personal.*]

Newlands House, Newlands, *Jan. 13th.*

... After I had seen you this afternoon I saw at Groote Schuur Jameson and Farrar who have always done all in their power to help me to bring this Protectorates question to a satisfactory solution, and I showed them confidentially a copy of the letter which I had given to you. So do not be surprised if they speak to you about it. Neither of them in any way shared the view, held apparently by Merriman and Sauer, that any Parliament, which would otherwise accept the Constitution, would be likely to reject it because of the provisions about the Protectorates. . . . Whichever course is taken, whether the original or more detailed resolutions, or the suggested simpler assertion of principles, are published as the proposals of the Convention to the Parliaments of South Africa, I take it that they will be defended to those Parliaments by the delegates to the Convention on their merits, and that they will not be represented to those Parliaments as provisions forced unsympathetically on their attention by H.M.G. After the protracted

¹ Selborne to de V., Jan. 11, 1909.

and fair give-and-take negotiations which we have had, I think that would be very unfair both to H.M.G. and to myself, and I should certainly feel justified in protesting.

De Villiers spent an anxious day in interviewing the suspected delegates and found to his relief that they were willing to defend the schedule and agreed with him that the full text ought to be discussed by the Convention. "It will," he told the High Commissioner, "of course be clearly understood that the Schedule is provisional only and that it is subject to further modification at the hands of H.M. Government after consultation with any delegation that may be appointed to discuss the terms of the bill with the Secretary of State."¹ . . . On that understanding the Convention accepted the schedule with very slight alteration and the one addition, to which the High Commissioner readily agreed, that the Protectorates should pay their share of the cost of Union defence. On the morrow de Villiers presented the draft bill complete and was appointed chairman of a committee of the four Premiers to stake steps to publish it.

There was a blank in the bill. The capital had not yet been named and the naming could be put off no longer. Smuts therefore told de Villiers that the Convention must take Solomon's advice and "divide the baby." "Yes," was the reply, "but will it work then?" "Perhaps not," answered the General, "but without it there will be no Union and you are the man to bring it forward." De Villiers found that Merriman and Sauer also thought that this was the only way out. He himself would rather have kept the Executive in Cape Town and let the Legislature go to Pretoria, but they were determined that Parliament should remain open to the healthy sea-breezes of Table Bay. So it was done. Steyn, in spite of the geographical advantages of Bloemfontein, stood aside rather than endanger the chance of a settlement and on February 2nd the capital "*in tres partes divisa est.*" Pretoria secured the civil service, Cape Town the Parliament and Bloemfontein the court of appeal with the proviso that the court might sit elsewhere to meet the convenience of suitors. But Natal did not go empty away. On the same day the Cape, the Transvaal and Natal signed the railway agreement for which Natal had been pressing since 1903. Natal thereby

¹ de V. to Selborne, Jan. 15, 1909 (Personal).

secured 30 per cent. of the heavy traffic to the Rand, Delagoa Bay from 50 to 55 per cent. and the Cape ports the fluctuating balance. But the coveted 30 per cent. was only to go to Natal if she entered the Union and the Transvaal's treaty with the Portuguese was still to come. The velvet glove of the Transvaal covered a golden gauntlet, glittering, attractive, but capable of squeezing.

Next day de Villiers, first of all the delegates, signed the draft Union bill and the members dispersed to face their Parliaments and the country.

CHAPTER XXVI

THE SOUTH AFRICA ACT

THE Convention had done its work for the time being by drafting the Union bill. The next move lay with the Colonial Parliaments which were to meet at the end of March to consider that draft. Thereafter the Convention would meet again at Bloemfontein in May to deal with possible amendments and then in June, with the final draft before them, the four Parliaments were to pass addresses to the King and the Colonial Governments appoint delegates to go to London to watch the bill on its way through the Imperial Parliament.

Apart from its possible hostile reception by the public the future progress of the bill was not made any easier by the fact that certain of the members of the Convention were inclined to bristle at even the most distant approach of the Imperial factor to the Ark of the Covenant :

De Villiers to Selborne.

Feb. 3, 1908.

... The official letter enclosing the Report is not such as I would have wished to send, but on reading the draft of the letter it was altered beyond recognition at the suggestion of some of the delegates. On the whole I am quite satisfied with the work of the Convention, and if all the delegates support the provisions of the Draft Act in their respective Parliaments there is no reason why the Imperial Act should not be passed before the end of the year. . . .

The letter actually sent was polite but curt, whereas de Villiers' original letter, having been written for publication, had contained a statement of the principles underlying the constitution and a much franker recognition of the part played and to be played by the Imperial Government in the making of the Union than some of the other delegates were willing that the public

should know. Even so the departure of the High Commissioner for the North would prevent the publication of the short official letter with the Draft Act.

The Draft Act was published on February 9th and men hurried from all sides to look the gift horse in the mouth. The Transvaalers were on the whole best satisfied with the inspection, and with good reason; but many objected to the dual capital, others demanded a plebiscite on the union issue, and others again grumbled that the whole scheme was a plot to allow three poverty-stricken neighbours to insert their hands in the Transvaal's pockets. Natalians hailed their Prime Minister as a traitor who had betrayed the interests of the Colony to South Africa and the Colony itself to the Dutch. The Free Staters were jealous of the Transvaal and objected that too much political power was to be given to the towns as against the country. In the Cape Colony, Hofmeyr opposed the bill. He had taken no part in the work of the Convention and had even given up all idea of a campaign in favour of federation because he had believed that unification was "as good as dead." Now he tried to swing the Bond against the Union which showed such unwelcome signs of vitality. The Cape Town branch of the Bond, his branch, published a long list of objections to the measure condemning the under representation of the Colony, all those clauses which made the constitution a union and not a federation, the exclusion of non-Europeans from Parliament and the possibility of doing away with the Native franchise and of dividing the Colony without the consent of the Cape members and their electors. It rejected proportional representation, for Hofmeyr was an experienced political boss, and demanded that the possible preference to be shown to sparsely peopled areas in the marking out of constituencies should be made compulsory; for the strength of the Bond lay in the country-side. It objected to the railway and finance commissions, to the honouring of all Colonial treaties especially those made since the opening of the Convention—for the Transvaal-Mozambique Convention was on the point of completion—and finally demanded a detailed definition of the meaning of equal language rights, a parliamentary enquiry into "the possible evils resulting from the establishment of the administration at Pretoria" and a referendum on the constitution.

Many Cape Unionists had to admit that there was much weight in some of Hofmeyr's criticisms but Hofmeyr failed to swing the Bond as a united body over to his side. The Bond Congress, early in March, carried most of his resolutions but left Bond members of Parliament free to vote as they thought best on this matter of Union. On the other hand Hofmeyr found a strong ally in Schreiner. The Dinizulu trial ended and Schreiner returned to Cape Town. Vague suspicions were abroad in the minds of the Bantu, not only in the Protectorates, but in the Colony. The coloured folk were wroth at the threatened loss of the highly-prized though hitherto unexercised right of sitting in Parliament. Schreiner believed that federation was the only real guarantee of the Cape native franchise; on general grounds he agreed with Hofmeyr that the old Colony was getting too little and giving too much; wherefore he prepared to support Hofmeyr with one hand and, with the other, rally every coloured and native voter from Table Bay to the Kei and every negro-philist in South Africa and the United Kingdom to oppose the draft constitution.

The Cape Ministerialists stoutly defended their handiwork, but they were hampered by the fact that they were party men. De Villiers suffered from no such disability. He if anyone could speak with authority on the work of the Convention and the meaning of Union; hence, for the first time since he had ceased to be member for Worcester in 1873, he went upon the stump. He only addressed one audience, in his birthplace the Paarl, but he was really speaking to South Africa. "I shall endeavour," he said, "to treat the subject from a South African rather than from the local point of view."¹ He admitted that the constitution was a compromise, but urged that it did at least give the country a single Government and a flexible constitution. . . .

No question received more careful and prolonged consideration from the Convention . . . and . . . we were forced to the conclusion that unless we could enter into a Legislative Union it would be better for the colonies not to unite at all. . . . It is this flexibility of our proposed Constitution which is its chief merit, and I feel certain that the fears of our Natal friends that Natal will become a kind of Ireland of South Africa are wholly groundless. . . . The keystone to the new Constitution is a short section which has not been much noticed by the critics. . . . It is the 86th section which

¹ *Ca pe Argus*, March 20, 1909.

reads as follows: "Any ordinance made by a Provincial Council shall have effect in and so far as it is not repugnant to any Act of Parliament." This section, I am glad to say, was unanimously adopted. . . .

Then, turning to the new Supreme Court, he told his audience that "the reforms thus proposed . . . were found to be impracticable without a complete political union." But he soon passed on to the question of the franchise which he knew was uppermost in the minds of most of his hearers. The coloured franchise was safe :

Let me assure you that this security would not have been obtained if the Cape delegates had not consented to a provision that coloured people shall not be eligible to the Union Parliament. . . . As to the position of the natives and coloured people in other parts of South Africa, no reasonable man can doubt that it will be greatly improved. It is because of my firm conviction that such would be the result that I felt justified in affixing my name to the report.

He confessed that the loss of seven members to whom the Colony was entitled was a serious defect ; even so he warned his audience against pressing vital amendments :

I have already seen several lists of amendments which Parliament is to be asked to insist upon. With a great many of them I fully agree, but I know that if they are insisted upon as a *sine qua non*, there will be no Union. . . . The sacrifice we are asked to make is a great one, but remember that every other Colony is making great sacrifices. As for the divided capital, I feel justified in saying that if any one place had been selected as such full seat it would probably have been Bloemfontein. It soon, however, became apparent that if a majority should decide upon Bloemfontein, there would be a secession of some of the delegates, and there would be no Union. . . . One Transvaal Minister is reported to have publicly rejoiced that . . . the Transvaal had secured the body, while the Cape has only the skeleton. If the comparison pleases our friends across the border, why should we grumble? The aspirations of Cape Town will surely be fully satisfied if it is privileged to supply a backbone to the new Constitution, leaving it to other places to supply the less durable portions of its anatomy.

He soon harked back to the franchise and the distribution of seats, defending P.R., and explaining that, though he himself was in favour of women's suffrage, the balance of the petitions

received by the Convention had been against it. His attitude towards women in public life was much more modern than that of most men of his generation. As far back as 1882 he had declared in public that he could see no reason why most of the learned professions should not be thrown open to them; even the bar and the bench "after our day." For the rest he told his Paarl audience :

I regret to see that there is a tendency in some quarters to enter into minute enquiries as to how many seats this party will lose and that party gain by adopting the proposals of the Convention. Ladies and gentlemen, if these proposals are fair and just they should be accepted without regard to their effect on the fortunes of any party. The party whose cause is just will in the end prevail. . . . I am firmly convinced that the draft Act of Union, with all its defects, is worthy of acceptance. . . . If we do not succeed in now uniting when circumstances are so propitious we shall never unite, at all events, not in the lifetime of the present generation. There will be a repetition, in an aggravated form, of all the dissensions of the past. . . . Even if Union be not indefinitely postponed, rest assured that delay will not improve the position of this Colony. From what I know of the inner workings of the Convention . . . the same terms will not be offered again. . . . It is my fervent hope . . . that before the year has come to an end the Act of Union may have passed to serve as a treaty of perpetual peace and amity between peoples and races which have hitherto been kept asunder by artificial boundaries, local jealousies, constant misunderstandings, and want of a common South African patriotism.

De Villiers' statement of the case did much to rally an uncertain mass of public opinion to the side of Union. Even so the risk of wholesale amendments by one or other of the Parliaments remained. The four Parliaments met on March 30th. At Pretoria alone was the constitution passed without amendment. The Transvaal decided to bring forward its amendments at a more convenient season. At the moment it felt that it must emphasize its readiness to sacrifice itself for the common good for, appropriately enough on April 1, it had signed the Mozambique Convention safeguarding the interests of the Delagoa Bay trade route. The agreement would have to be honoured by the future Union and, coming when it did, it almost wrecked Union in sight of port. The Natal Parliament under extreme pressure from the Ministry and the Pretoria authorities accepted

the draft bill but proposed a number of amendments, largely financial, including two which sought to countervail the effects of the Convention on the through traffic and sugar industry of their Colony. The Free State amendments aimed at excluding non-Europeans from the Provincial Councils, securing preference for country areas in the delimitation of constituencies and making sure that judges of the new local divisions of the Supreme Court should be eligible to serve in the appellate division.

The real struggle took place at Cape Town. Hofmeyr concentrated his attack on the language clause, the basis of representation and, somewhat less vigorously, on the native clauses whereon he had the support of Schreiner and the veteran Sprigg. Merriman was soon in difficulties and was glad to have the help of Malan's section of the Bond and Jameson's Unionists. Even so he was obliged to accept many amendments, notably compulsory preference to rural areas in the allocation of seats, election of Provincial councillors by the old-fashioned single-member constituencies and a more elaborate and explicit definition of the legal equality of the Dutch and English languages.

The Free State and Cape amendments tying the hands of the judicial commission which was to mark out the constituencies called forth a storm of protest from the towns. The principle of equal political rights was threatened, the balance was to be weighted in favour of the country against the towns; in other words in favour of the Dutch against the English, for in 1909 the racial and local divisions coincided much more nearly than they do to-day :

Lionel Curtis to de Villiers.

Johannesburg, *May 2, 1909.*

... I speak for the group of men who have worked for three years to prepare the way for Union. . . . To distinguish townsmen as an inferior class of citizen is in the circumstances of South Africa equivalent to branding the British section as an inferior race. That we will never admit. As you know we have faced the principle of equality to its conclusion. We honestly believe the English tongue to be unequalled amongst living languages. But when President Steyn appealed to us on behalf of his own people that they should not be asked to admit the stamp of inferiority on their mother tongue, that appeal was irresistible. . . . Less than ever can we admit now the stamp of inferiority. . . . On this matter even the Labour Party, which usually stands aloof, is at one with the rest. . . .

J. Rose-Innes to de Villiers.

Pretoria, May 2, 1909.

. . . The talk about this cry for equal rights in voting being a capitalist cry is really very uninformed. To begin with a democratic basis for voting is the very best way of curbing the power of the capitalists. And it is not the mining magnates but the *people*—the urban population—who are determined upon the “one vote one value” principle. My firm belief is that the capitalists would be in favour of compromise; but the attitude of the people makes that impossible. . . . The agitation will spread to Natal and to the urban centres in the Cape; and the result I am afraid will be that the British Government will hold their hand. . . .

If the balance had to be tilted one way or the other, de Villiers would frankly have preferred that it should be in favour of the country rather than the towns. He was a farmer himself and a countryman born, his political friends were of the South African Party and he had little cause to love the late Progressives. But he was a just man and a wise one. As such he had pressed throughout for a straightforward allocation of seats in each Colony on the basis of adult white inhabitants without any of this distasteful manœuvring for party and racial advantage. For the moment he was unable to check the tacticians but he made his plan of campaign and bided his time.

Meanwhile he continued to wield his oil-can. During the debates in the Cape Parliament on the language clause he issued an eirenicon at a men's meeting in Cape Town advising his predominantly English-speaking audience to imitate the Dutch and learn the “other language” since Union could only stand on a basis of mutual understanding.¹ He allayed the fears of the Imperial authorities by assuring them that, though the position of the Indians had not been fully considered by the Convention, “as I read the Draft Act of Union the Parliament and not the Provincial Councils will be responsible for fresh legislation.”² He was unable to comfort my Lords of the Treasury who claimed that the loans guaranteed after the war to the ex-Republics should become a first charge on Union revenues. That was outside his province and perhaps he agreed with Hely-Hutchinson who wrote that “all the rest, about the security of stockholders, is so much bunkum.”³ He did however, at Lord Selborne's

¹ April 16, 1909.

² de V. to Selborne, Feb. 25, 1909. .

³ Hely-Hutchinson to de V., April 18, 1909.

suggestion, persuade the Cape Ministry to amend the clause defining the Governor-General's powers of reserving bills to read that these powers should be exercised according to the Royal Instructions as well as to the terms of the Union Act. On the other hand he dissuaded some influential members of the Cape Parliament from pressing for the annexation of part of the Bechuanaland Protectorate to the Union on the plea that it was empty but might be occupied by natives before the Protectorate was transferred to the Union. Such an annexation would strike the hard-won schedule at its most vital spot. "I believe," he wrote to Selborne, "that an attempt will be made to obtain a recommendation in the above sense from the Convention and I shall be glad if you would give the matter your consideration before we meet."¹ The High Commissioner's reply was short and decisive :

Selborne to de Villiers.

Rustenburg, *April 24, 1909.*

... The portion of the Bechuanaland Protectorate ... could not be immediately included in the Union, because, as I think I explained to you and to the Prime Ministers, when I saw them in your room in the Houses of Parliament, Cape Town, the British South Africa Company has a concession of mineral rights over the whole of that area, and also, I understand, it claims the right of the first option to the occupation of the land outside the native reserves. ... The mere fact of natives taking occupation of that land ... would not, of course, constitute that land a native reserve, and I am not aware how they could take occupation of such land without the sanction of the Secretary of State.

The proposed judicial arrangements were much criticized. Few of the judges or other legal officials relished the idea of Bloemfontein as the seat of the appellate division, for the little town lacked a strong bar and well-stocked legal library. The proviso that the court might sit elsewhere for the convenience of suitors opened a way of escape at the cost of inconvenience to the judges ; but it was already by no means certain whether this avenue would be left open :

J. Rose-Innes to de Villiers.

Pretoria, *March 22, 1909.*

... Merriman and Sauer both seemed to think that it did not mean much ; the Free State quite understood that the headquarters

¹ de V. to Selborne, April 17, 1909.

were only nominally to be at Bloemfontein. But from what I have heard since I should be greatly surprised if the Free State authorities took that view. . . . If the Court is not to be permanently fixed at Bloemfontein, is it too late yet to placate the Free State in some other way and to settle the Appellate Court permanently somewhere else ?

De Villiers hoped that the seat of that court would, for practical purposes, be Cape Town and other judges fully expected or feared that this would be so. Hence the objections of many Transvaal lawyers to his scheme of a Chief Justice, two permanent and two specially summoned justices of appeal. De Villiers, in the course of nature, would be Chief Justice and the two permanent justices would probably be, as a matter of convenience, two of the Cape Town judges. There was also strong opposition to his proposal to deprive the provincial divisions of all appeal work ; there was fear lest judges of local divisions like the Eastern Districts and Witwatersrand courts might be reduced below the level of equality, on which they had hitherto stood, with the judges at the provincial capitals. De Villiers persuaded the Cape Parliament to meet these objections. Judges of local divisions were to be eligible for service in the appellate division, to have a voice in framing rules of procedure and to have power to remove civil suits from one court to another ; a good deal of minor appeal work was to be left to the provincial divisions ; all specific reference to the temporary nature of the two additional justices of appeal was to be omitted. But on the main point, the structure of the appellate division, de Villiers held his ground. At last the Convention met at Bloemfontein on May 3rd to consider the tale of amendments. There was no time to waste for the drafting committee must present itself at Westminster by the middle of July ; otherwise the Union bill would be too late for the session and " time," as Smuts had written, " is of enormous importance in this matter." Yet the Transvaalers now produced a list of twenty amendments. Fortunately most of them were slight and all were carried save one : the proposed abolition of the office of Attorney-General in the provinces. Several of the Transvaal amendments covered the same ground as those already proposed by de Villiers to the Cape Parliament but one was worded inadvertently in such a way as to make appeals from the three-judge Eastern Districts Court lie to the provincial division at Cape Town instead of to the appellate division ; a

slip on the part of the Transvaal judges, who were thinking in terms of the single-judge Johannesburg court, which drew down upon their heads the anathema of the Grahamstown court and municipal council and which was only rectified by de Villiers in the last stages of the passage of the draft constitution in London.

One Transvaal amendment was of a different nature from the rest. From the first an *in terrorem* clause had threatened any Colony which did not enter Union at once with loss of ground floor privileges. The hangman's whip now became a cat-o'-nine-tails. Not only would these privileges be lost to any such Colony but also to any place in such Colony, a palpable *argumentum ad Durban* which was more inclined to come to terms with the Transvaal than the rest of Natal. The Natalians riposted unsuccessfully with a motion, of which de Villiers approved, permanently safeguarding the minimum representation of provinces in Parliament.¹ They did secure free-trade within the Union but they failed to force their sugar and their railway traffic into the constitution.

The crucial debates took place on the Cape and Orange River Colony amendments on the distribution of seats among rural and urban areas. The Transvaalers stood up solidly against the proposal and the struggle raged for all one sitting and most of the next. At last de Villiers suggested that electoral divisions be formed after each census each containing as nearly as might be a number of voters equal to the quota of the province; in other words, equal treatment for town and country within the provincial boundaries. The Convention adjourned to talk the matter out in private. Two days later the question was referred to a committee with de Villiers as chairman. He made up his mind to press the solution on which he had decided after reading the indignant letters written by Rose-Innes and Curtis a week previously. He would have wished to keep proportional representation; he believed in equal political rights; but the enemy was too strong and he knew that Merriman's Ministry feared to give too much power to the Progressives. The committee accepted his compromise and Fischer withdrew the Cape-Free State amendment. Three-member constituencies were swept away in favour of the old-fashioned single-member areas, but

¹Natal carried a resolution permanently entrenching the minimum representation of the smaller Provinces. This resolution was presently rescinded and the arrangement stated in the text reaffirmed.

wide discretion was left to the judicial commission in fixing the limits of those areas.

The abandonment of three-member constituencies ruined the prospects of P.R. The elections of members to the Assembly and the Provincial Councils were re-established on the well-tried and sorely abused basis and at the same time it was made clear that non-Europeans were eligible to the Council in the Cape. On the other hand Natal failed to save one relic from the wreck of federation, for the other three Colonies, in an attempt to shut out the party system from provincial politics, refused to give up P.R. as the method of electing the provincial Executives.

The remainder of the work of the Convention was little more than formal. Hofmeyr's elaborate clause defining the equality of the two official languages was rejected with the assurance that the fullest equality was intended. Another clause provided that whichever version of a bill, Dutch or English, the Governor-General should sign should prevail in case of conflict. The High Commissioner took it for granted that the Transvaal law requiring the Governor to sign the English version would be maintained in practice and asked de Villiers to have the matter placed beyond all doubt.¹ De Villiers as a lawyer agreed that trouble might easily arise if the Governor-General signed a bill which was unintelligible to him but he assumed that he would naturally sign the English version.² Hence, beyond laying the correspondence with the High Commissioner before the Convention, he did not press the point as he found that other members agreed with him.³ But Selborne was right. Under the rule of his successor, Lord Gladstone, the difficulty did arise and served in a mild degree to inflame the language disputes of 1911.

All that was, however, in the future, though the Convention had already noted the gulf which was beginning to divide Hertzog and his followers from Botha and Smuts on the dual language issue. Jameson tactfully moved that the old name of Free State be restored to the Orange River Colony; Steyn failed to secure the destruction of the records of the doings of the Convention; de Villiers took charge of the said records; and on May 11th, the Convention "adjourned *sine die* at a quarter past twelve o'clock p.m."

¹ Selborne to de V., March 8, 1909.

² de V. to Selborne, March, 16, 1909.

³ de V. to Gladstone, April 25, 1911.

The revised bill was published as soon as possible, for the next step must be to induce the Parliaments in three of the Colonies and the electorate in Natal to accept it. The Parliaments were due to meet on June 1st but at the last moment a serious rock of offence was thrown in their path. The Convention had decided at Bloemfontein that a drafting delegation should go to London to discuss the bill with the Colonial Secretary and to agree to any necessary amendments which involved no matter of principle. A speech by the Under-Secretary of State for the Colonies was now so severely "reuterized" in transmission to Cape Town that it was read by many to mean that H.M. Government claimed the right to propose or to accept material amendments independently of South African opinion. Some of the Convention delegates professed alarm, for it was known that Sir Charles Dilke and others intended to divide the House of Commons on the Native question.¹ De Villiers did not share the alarm, but to allay it he obtained reassuring messages from the High Commissioner and the Secretary of State and pointed out in the Legislative Council that, though nothing but matters of detail in the body of the Act would be discussed in London, the Protectorate schedule admittedly stood on a different footing and was subject to much freer discussion on both sides. Even here there was confusion. "The report published in the papers," he complained, "is much abridged and very incorrect and makes it appear as if I had said that the deputation alone could propose amendments."²

In face of these assurances the storm subsided and the Parliaments of the Cape, the Transvaal and the Free State passed the necessary addresses to the King and appointed delegates to go to London. The Cape delegates were Merriman, de Villiers, Jameson, Sauer and Hofmeyr. Hofmeyr had at first declined the not very cordial invitation wrung from Merriman; but, after an interview, he decided to go provided the draft act was submitted again to the Cape Parliament if the Cape delegates should fail to agree on any amendment however formal. As he later on publicly announced that his task in London would be to say No to any amendments, the prospects of the inclusion of the Colony in the Union were still by no means certain.

¹ Selborne to de V., May 29 and June 1, 1909.

² de V. to Selborne, June 5, 1909.

Jameson sailed at once on June 9th but the Colonial Ministers had much to do before they could follow. Meanwhile political factors other than the Convention were preparing for a descent on Downing Street and Westminster a week before the drafting delegation could arrive. Merriman hurried de Villiers off in the same ship as the High Commissioner and Schreiner to hold the fort till his supports could come up. "I do hope *most earnestly*," he wrote, "that you may find it convenient to go on the 16th. It is of the utmost importance."¹

De Villiers duly sailed on the appointed day accompanied by his niece, Miss Jourdan, and cheered by the news that the electors of Natal had declared in favour of Union. Sorely against her will Lady de Villiers remained at home. She had been anxious to go with him for she feared that he would overwork and take little care of himself. "I don't like the idea of your doing the Privy Council work in addition to your other work," she wrote, "one never knows what difficulties may crop up with the draft act that you will have to solve."² In her eyes, at least, de Villiers carried the fortunes of South Africa single-handed. "I am thankful," she concluded, "that I am not adding to your anxieties. . . . I am carrying out your last request to write fully. . . . You must carry out Planchette's message 'if you trust do not worry.'" In spite of bodily weakness, Lady de Villiers had a strong will and strong hands.

De Villiers' thoughts on board ship were certainly not wholly devoted to the draft act. The Atlantic was very blue, the sun was shining, and politics lay either before or behind him. His first letter home asked for some notes on the motor cars best suited to South Africa, for he had come away in a hurry and had left it behind. (He had also left behind his thin waistcoat which worried his wife but himself not at all.) Next, sell 800 of the Randfontein shares when they reach £3 10s., but alas! before the letter reached Cape Town the £3 shares were falling. There was, he complained, very little cricket on board, and only two chess players; but everyone played bridge:

De Villiers to Lady de Villiers. R.M.S. Briton, June 28, 1909.

. . . I and my partner, Malcolm, won the bridge tournament. My prize was a tortoise-shell cigarette box, silver-mounted, and I had to

¹ Merriman to de V., June 10, 1909,

² Lady de V. to de V., July 5, 1909.

receive it personally from Lady Selborne at the distribution of prizes. I felt like a schoolboy going for his prize. . . . I have taught several people to play Wynberg House patience. . . . Schreiner is a very keen disciple. . . . We are now passing through the Bay of Biscay and the sea is as smooth as when we sailed together in the "Prinz Regent." . . . I have not changed my time, so that by looking at my watch I always know what you are doing. . . .

The party with all its different hopes and interests reached Southampton on July 3rd. De Villiers' first week in London was a full one. It began badly. On the morrow of his arrival his old friend Philipson Stowe died. But there was little time for private griefs :

De Villiers to Lady de Villiers.

London, July 9, 1909.

. . . By the time this letter reaches you the fate of our Draft Act will probably be known. As far as I can gather the Bill will pass both Houses, but Schreiner is doing all he can to wreck it. He never spoke to me on the subject on board, and of course I could not broach it unless he took me into his confidence. . . . I have been leading a very busy life and have not been able to attend the Privy Council. On the arrival of the other delegates I shall have to get one of their numerous secretaries to do my secretarial work. At present all the work of the delegates falls on me and invitations to them are all addressed to me with the request that I would make the necessary arrangements. I know that the delegates will not attend one tenth of the functions, but of course I am not at liberty to say so until they arrive. . . .

He found time for lighter matters. An old Cape friend, Spencer Todd, discussed with him a coat-of-arms for the Transvaal and, somewhat prematurely, another for the Union for which de Villiers suggested the motto "initium melioris aevi." In the end the Transvaal scorned Spencer Todd's efforts. "If the Transvaal prefer," he grumbled, "a public seal representing an old-fashioned boer trek-wagon as it were arm-in-arm with a modern gold-mining machine, that is the affair of the country's Government, not *mine*."¹ But there have been less truthful descriptions of the Transvaal than that which Spencer Todd wrote in his wrath.

¹ Todd to de V., July 9, 1909; July 28, 1910.

These be but toys. With the arrival of the main body of the delegates negotiations began with the Colonial Secretary on the draft act and with the shipping companies on mealie rates and the mail-contract. The latter were outside de Villiers' province but the former fell largely to his care. Hardly had negotiations begun however, when terrible news reached him from home. Lady de Villiers had sustained a stroke, pneumonia was feared and her condition was serious. On reading the message de Villiers broke down and wept like a child. Thereafter his first instinct was to hurry back to the Cape. He cabled at once "Shall I sail Saturday," that is on July 17th? This, by a merciful mistake in transmission, reached his wife "Shall sail Saturday." She reckoned out the time of his arrival and contentedly fell'asleep.

Later cables were more reassuring and de Villiers postponed his departure till the 24th :

De Villiers to P. de Villiers.

Hotel Métropole, W.C., July 16, 1909.

... I have had repeated interviews with Lord Crewe with the view to my having a consultation with the other delegates before we meet him formally. It is essential that I should be here for another week, but of course if I am required at the Cape I shall leave at once. I do hope and pray that the light of our house may not be extinguished. . . . While writing I have just received your further cable. . . . This confirms me in the decision to postpone my departure. . . . I have cancelled all my engagements. . . .

De Villiers manfully shouldered his public duties as well as his private sorrow. There were still difficulties to be faced. On the one side were Merriman watching Downing Street like a mastiff eyeing a badger-hole and Hofmeyr with his Everlasting Nay; on the other was the Secretary of State mindful of His Majesty's loyal Commons proposing amendments to the schedule and nervously questioning certain sections of the draft act :

De Villiers to Selborne.

London, July 19, 1909.

... I have received from Lord Crewe a copy of the amendments which he proposes to discuss with the delegates. I do not personally object to any of them, but I fear they will prove very unpalatable to most of my colleagues. Those I have spoken to are much averse

to the proposed amendments to the Schedule and if the Government should insist upon them there will be great difficulties in the way of agreement. . . .

Formal conversations with Lord Crewe began on July 20th. Nearly all the amendments proposed by him in the body of the Act were of a formal character intended to clarify the meaning of clauses or to supply obvious omissions. One of them providing for the appointment of a deputy during the temporary absence of the Governor-General touched de Villiers closely, for he was to be that deputy for some months in 1912 and it was as acting-Governor-General that he was to die in 1914. All these amendments save one were agreed to with little difficulty, even Hofmeyr confessing that "there was not much to fight about." The amendment which caused the only serious trouble was the proposed inclusion in the body of the Act of a proviso which already appeared in the Schedule, safeguarding the customs revenue payable to the territories. De Villiers was ready to accept the addition but, as many of the delegates were not, he privately persuaded the Colonial Secretary to drop his demand in return for a statement that the delegates felt "assured that no change will be made in the policy which has heretofore prevailed with regard to the admission of the Native Territories to membership of the South African Customs Union without differentiation."¹

The amendments proposed in the schedule were naturally more substantial. The Secretary desired to forbid differential railway rates on territorial produce, to strengthen the clause protecting the salaries and pension rights of members of the projected Native Commission and to lay it down that the law against the sale of intoxicating liquors should be no less stringent after transfer than it had been before :

De Villiers to Lord Crewe.

Foreign Office, *July 23, 1909.*

. . . The delegates do not feel themselves at liberty to add . . . the words "or railway rates" as the question was not raised in the Convention, and it would be impossible for them without further consideration to appreciate the full effect of the amendment. They therefore trust that it will not be pressed. In regard to the 15th clause of the Schedule I am authorized to state that the delegates

¹ Crewe to de V., July 22, 1909.

will accept the addition of the words proposed by your Lordship viz. "and no provision giving facilities for introducing, obtaining or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed." Some of the delegates were opposed to the amendment but it was felt by the delegation that nothing should be left undone which might prevent any further amendments being introduced by Parliament. . . .

Wherefore Crewe dropped his request for further safeguards of the Commissioner's rights "fully relying on the Union Parliament to deal with these matters in a reasonable and liberal manner," waived all mention of railway rates on a similar understanding and, since the delegates were only at one on the liquor clause in desiring that it should not be introduced as a Ministerial amendment, agreed to make no mention of it provided H.M. Government were free to accept a similar private amendment which was likely to be moved in the Commons "in view of the support which it is certain to receive from all parties."¹

Before the discussion came to an end the Union bill had begun to pass through the Imperial Parliament. On the afternoon of July 22nd de Villiers sat with his fellow delegates on the steps of the throne in the House of Lords, of which he was soon to become a member, to hear Lord Crewe introduce the measure. He was a happy man that day. The union for which he had laboured since 1871 was at last coming to pass and he had just received the good news from home that his wife was out of danger telling her nurses that she meant to be well before her husband came back. "She has splendid pluck," wrote his son, "and will never meet her difficulties half-way." Nor did she, though it was soon certain that she would never walk again. To her de Villiers wrote his *Nunc Dimittis* on the morrow of the introduction of the Union bill:

De Villiers to Lady de Villiers.

London, July 23, 1909.

. . . You can imagine what a period of terrible anxiety I have gone through. . . . It was some consolation that the greatest sympathy was shown to me on all sides from the King downwards. I had made all my arrangements to leave by to-morrow's boat but after the cable of yesterday I felt I ought not to leave until my work here is completely done. . . . My work has been very suc-

¹ Crewe to de V., July 22 and 27, 1909.

cessful and I feel that I have been of real use in smoothing over difficulties. . . . I was much pleased to-day to receive from my fellow delegates a beautiful silver president's hammer with a finely wrought ivory handle as a memento of my presidency over the Convention. The arms of the different Colonies are affixed in engraved gold and there is a somewhat flattering inscription on the mallet itself. The presentation was made by President Steyn on behalf of the delegates. I appreciated the gift more than any honour that can be conferred on me. . . .

In the House of Lords no amendment was pressed to a division. The real danger would arise in another place. Fifty-three amendments were tabled in the House of Commons but on one only, that permitting non-Europeans to represent the Cape and Natal in Parliament, was a vote taken and it was rejected in a thin House by a three to one majority. "The bill," wrote Crewe to de Villiers on the eve of his departure, "is in quite smooth water and the demonstration which the very well-intentioned, but on this occasion unwise, advocates of native claims may make in the House of Commons will not in any way endanger it. . . ." ¹ Even Sir Charles Dilke was disposed to be optimistic, especially as the Protectorates Schedule and the position of the natives in Natal and Zululand had been much improved in the final version of the bill. So de Villiers sailed with a light heart on July 31st.

He reached home in time to receive the cabled news that the South Africa Act had passed through all its stages at Westminster. As far as parchment, ink and sealing-wax could make the Union, the Union was made and there was the silver hammer as witness to the part he, de Villiers, had taken in the making. As he looked at the hammer a notable company must have passed before his eyes—Saul Solomon, diminutive in stature but great of brain and heart; Grey with his anxious, keen blue eyes; the patient, full-bearded Brand; Carnarvon with his Dundreary whiskers and good intentions; Froude, eloquent, ambiguous, disastrous; Shepstone, lean and secretive; the alert but dignified Frere; Burgers bubbling with ill-timed enthusiasms. After them came Robinson, jovial in spite of his troubles, well named Sir Hercules for he in his time had laboured not without success; next Hofmeyr, now sickening to his death far away in Europe

¹ Crewe to de V., July 30, 1909.

but then vigorous and full of fight—and the burly, loosely hung figure of Rhodes battling mightily, not always according to Queensberry rules. Watchful of them both, Loch sat once more under the orange tree. Then Milner, courteous, smileless, determined; Selborne and Steyn, Botha and Jameson, Smuts, Fischer and Sauer; they were crowding round him now, the living and the dead; and among them all, from the days when the Cape Parliament was young, moved the gaunt form of Merriman and his own. Little remained to both of them of man's allotted span. Unless by reason of great strength neither would live long in the Promised Land; but at least they would enter into it. Parchment, ink and sealing wax? The South Africa Act had been written, every line of it, in blood and sweat and tears. Even so none knew better than the old Chief Justice as he sat in his study with his broken wife beside him—and she had worked and watched and nursed him against this day—that the real Union of South Africa was still to be made. The Act was not the end but the beginning.

CHAPTER XXVII

LAST YEARS

"It would doubtless be lawful to say much about Union, but I question whether it would be expedient, bearing in mind the advice of the Apostle: Let not him that putteth on his armour boast as him that putteth it off."—
JOHN X. MERRIMAN, June 1, 1910.

THE South Africa Act supplied the machinery of union. It still remained to set that machinery in motion and thereafter to pray that it would stand the strain. In the three short generations which had passed since the Great Trek of the 'thirties local State patriotisms had hardened; none of the provinces had ever acted with any of the others for any length of time; the South Africa Act perpetuated the old State boundaries and the patriotisms enshrined therein. Each province had its own tradition of administration and its own constitutional experience. British parliamentary institutions were well-established and well-understood in the old Colony; they were of more recent growth and on a much smaller scale in Natal, novel experiments in the ex-Republics.

All these sources of dissension, troubled by a revival of the racialism which had died down during the Convention period, ran together in the torrent of intrigue which raged around those who had to form the first Union Ministry. Ten portfolios were available. The name of the aspirants thereto was Legion for they were many. Jameson at once suggested a "best man" government. Botha, liberal, moderate and anxious for "conciliation," was willing to listen to him but Steyn looked askance at any coalition and promised to oppose any Ministry which included a "Charter man." For he and many others expected that the Ministry would have to arrange terms with the British South Africa Company for the immediate inclusion of Southern Rhodesia in the Union. The Natal politicians stood aloof, but

ready for a bargain; a general indication that they would ultimately throw in their lot with the Transvaalers with whom they had everything in common—except history, tradition and sentiment.

There were those who expected that de Villiers would be asked to form the first Ministry.¹ He himself entertained no such ambitions nor was he seriously considered by those in authority. The real claimants for the office were Botha and Merriman. Both were willing to serve under Steyn but Steyn's doctor forbade him to risk his life by taking office and neither would serve under the other. Nor would Merriman or the Free Staters hear of a "best-man" government. In the event Lord Gladstone, the newly arrived Governor-General, sent for Botha who formed his Ministry and prepared to fight the elections on party lines.

The Union constitution came into force on May 31, 1910. At Pretoria de Villiers administered the oaths of office to the Governor-General and Ministers of a united South Africa. It was a composite, almost a federal cabinet—three members from the Transvaal, four from the Cape, two from Natal and two from the Free State. Already it was an open secret that the Cabinet was not at one on important points of policy notably on the score of education and "conciliation." Botha and his Transvaalers thought that Hertzog as Minister of Education in the Free State had gone too fast and too far in his attempt to force Dutch and English on to an equal footing and the Free Staters retorted that the less drastic Transvaal law made it difficult for them to enforce their own. Mingled with this difference of principle were personal jealousies bred during the late war, resentment that the Transvaal had secured self-government before the Free State and even that the Cullinan diamond, the pride of the Premier mine, had been presented to the King; above all, suspicion of Botha's negotiations with Jameson and his leanings towards Natal.

However, such as it was, there was a South African administration embodying one of the dreams of de Villiers' life. The realization of the other soon followed. Botha had already told him that he was to be first Chief Justice of the Union. "I know," he wrote, "the appointment will be the most popular

¹ *Cape Times*, Sept. 3, 1914.

one in South Africa and the Empire that the Union could ever hope to make."¹ On June 4th de Villiers presided at the opening of the Appellate Division at Bloemfontein sitting between his old friends Sir James Rose-Innes and Sir William Solomon, the new judges of appeal, and C. G. Maasdorp and J. de Villiers, judge-presidents of the Cape and Transvaal Provincial divisions, the additional judges of appeal. It was little more than a formal opening. Only one case was heard at the Free State capital and then the court transferred its activities to the more congenial atmosphere of Cape Town.

De Villiers had travelled north as Sir Henry. He returned home as Baron de Villiers, the first creation of the reign of George V., the first—and hitherto the last—South African to receive the honour of peerage. Congratulations poured in upon him from the Prime Minister, from Lord Macnaghten as eldest member of the Judicial Committee, from the municipal council of the Paarl "proud of its most illustrious son." Lord Selborne cabled his "Best congratulations to the House of Lords as well as to Lady de Villiers and yourself"; and one friend, looking at the event from the Canadian point of view, raised it to the level of high Imperial politics :

G. R. Parkin to de V.

Waterloo Place, S.W., September 17, 1910.

... Your influence, as I know better than most people, has been felt in Canada as well as in South Africa as a unifying force, and this recognition will be appreciated there almost as much as in your own country. It is a sign of the transition through which the Empire is going, when service in any part of the Dominions is valued from a wide national point of view.

Another thing has particularly pleased me. Here in England wealth seems sometimes to be as much considered as merit and partly more than public service. Your elevation proves that the higher standard in both respects still has its place. . . .

But the message which probably gave de Villiers most satisfaction of all came from Sir Evelyn Wood :

Evelyn Wood to de Villiers.

Millhurst, Harlow, June 3, 1910.

... My warmest congratulations to you on your new honour. My memory goes back to this time some 29 years ago when we

¹ L. Botha to de V., May 24, 1910.

agreed to differ so often. Neither of us could then have anticipated this happy ending of the struggle of the two races. I hope you may long live to advise the African Government as loyally as you have done for the Imperial Power. . . .

A voluminous correspondence ensued with Garter King-at-Arms and Bluemantle. Here Spencer Todd's knowledge of the ways of heralds helped to smooth the *gradus ad Parnassum*. The main difficulties were the transfer of de Villiers' French coat-of-arms to the English list and the fact that the crest included the coronet of a Count, a rank unknown to the British peerage but elsewhere ranking above that of Baron. The Heralds at first proposed to grant him a "celestial crown" in lieu of the coronet. De Villiers, however, considered such a grant premature to say the least of it. He wanted no "inventions" in his arms and he was determined to have his count's coronet which, wrote Todd, must be that of Philippe de Villiers de L'Isle-Adam, Count of the Holy Roman Empire, defender of Rhodes against the Turk in 1522 and recipient of Malta at the hands of Charles V.¹ He had his way in the end and, to emphasize his victory, placed the coronet round the necks of his springbok supporters. So on September 21st the patent was issued to him as Baron de Villiers of Wynberg in the Province of the Cape of Good Hope and Union of South Africa.

He returned to Cape Town to find the election campaign in full swing, the combined Progressives or, as they were now called, the Unionists against the still disjointed provincial "Afrikander" parties with Labour creating a diversion on the Rand. By the middle of September the struggle was over and the Ministry assured of a substantial majority in both Houses always provided that its supporters held together. The campaign had been hot and angry. Twice during its course de Villiers issued an eirenicon, once in the form of a warning, once as an appeal to South Africans to forget their local jealousies and the bitter memories of the past. On the morrow of the consummation of Union he published a message to the country:

"The long-desired Union of South Africa is at length an accomplished fact. Should the immediate results not come up to the expectations of the people of South Africa, let them not be dis-

¹ S. Todd to de Villiers, Sept. 14, 1910.

heartened. If the history of other countries similarly circumstanced is to be a guide, we may confidently look forward to a sure and steady improvement in our political, social and economical conditions, and to the building up of a great and united nation within the folds of the British Empire."¹

He delivered his real message, however, not by letter but by word of mouth standing at the foot of Rhodes's statue in the Municipal Gardens at Cape Town. He had been invited to unveil it. It was not an easy task for him of all people to undertake, but he did it and gave the truest appreciation of Rhodes's character, services and shortcomings that has ever been expressed in so short a space :

" . . . Yonder facing this statue stands one erected to the memory of another great Englishman, whose name was as well known to all South Africans as that of Rhodes now is. It is quite appropriate that the images of the two men should stand in proximity to each other, for in many respects there was great similarity of aim and of character between Sir George Grey and Mr. Rhodes. They both were firmly convinced that the civilisation of Africa was to be achieved from the South, with Capetown as the base of operations ; they both strove for the Union of the Southern Colonies and States before the time was quite ripe for it, they were both somewhat careless as to the means employed by them in order to attain their great ends ; they both in consequence fell into disgrace for a time, and they both lived long enough to find that their mistakes had been forgiven, if not forgotten, and their great services to this country appreciated by the people of this country. . . . As to the details of Rhodes's political career, it would be affectation on my part to say that I am in complete agreement with his more ardent admirers. I suggested to the committee that it would be more appropriate that the ceremony should be performed by his intimate friend and fellow-worker, Dr. Jameson, but it was their unanimous wish that it should be performed by me. If my taking part in this function means that I approve of every act of Rhodes's career I would not be present here to-day ; but when we erect a statue to a man we do so not because, in our opinion, he was free from faults, but because of his possession of qualities which command our admiration and deserve commemoration at our hands. As we get further and further from the events of Cecil Rhodes's life, we are better able to judge of his career as a whole, and by that standard I feel sure, he would himself have wished to be judged. If using the imagery of the Hebrew prophet, ' his legs were of iron and his

¹ *Cape Times*, June 1, 1910.

feet part of iron and part of clay,' we can never forget that 'his breast and arms were of silver,' and that 'his head was of pure gold.'

As time passes, and his achievements are seen in their true perspective, it is the 'pure gold' of his composition which will be the prominent feature of his image. . . . No Dutchman in South Africa will withhold his regard for an Englishman who has meant well by their country merely because he is an Englishman. The name of Sir George Grey still remains a household word in many a home in South Africa, and I entertain the confident hope that as the years roll on my fellow countrymen will prefer to dwell on that side of Rhodes's character which was of pure gold, rather than upon that which was partly of iron and partly of clay. His admiration for the Dutch remained with him to the end. . . .

If during the later years of his life he sometimes showed signs of irritability, the state of his health and the ordeals through which he had so recently passed offer a sufficient explanation. He was indeed a character of extraordinary complexity, and I must repeat, for it cannot be said too often, that we cannot duly appreciate, or even properly understand, his strange and varied career unless we judge of it as a whole. If we do so without any racial prejudice, and without any political bitterness, we must all whether friends or foes be constrained to confess in the words of Hamlet that 'he was a man; take him for all in all, we shall not look upon his like again.'"¹

With that epitaph Rhodes may rest content.

Once more at the eleventh hour de Villiers made an appeal for peace. The night before the opening of the Union Parliament, at a banquet in the debating chamber of the House of Assembly attended by representatives of Great Britain, Canada, Australia, New Zealand and Southern Rhodesia, he proposed the toast of the Union. The Canadian representative had touched gently on the racial question, thereby giving him his text. He expressed his hopes in the form of a statement of fact:

" . . . Coming here so soon after the election, M. Lemieux may have formed a wrong impression. . . . There is no real racial feeling here. The language question is one which, to my mind, will settle itself. As in other things, the greatest will survive; and with regard to the other, we cannot blame those who use the language if, in the meantime, they do their utmost to retain their language."²

On November 4th the Duke of Connaught performed the opening ceremony, de Villiers administered the oath to the members, the Union Parliament came into being and promptly joined battle on the education issue.

¹ *Cape Times*, June 29, 1910.

² *Ibid.* Nov. 4, 1910.

As he withdrew in the train of the Duke from the House of Assembly which, to Merriman's dismay, had been subjected to this invasion by Royalty—the first such invasion of a Lower House, he was careful to note, since the days of Charles I. of unhappy memory—de Villiers may well have believed that he was also withdrawing from the active political life of his country. The Legislative Council over which he had presided for nearly a generation was gone and with it his *locus standi* in politics. He might still hope to take part in an unofficial, advisory capacity. Indeed Lord Selborne, on the eve of his departure, had done his best to give him an opportunity of sharing in the "stoep politiek" in which he excelled. "I took the liberty," he wrote, "of telling Gladstone that to you, when in a difficulty, he could always go for advice."¹ More than that de Villiers neither expected nor desired. The hope of helping forward closer union had for many years been the one inducement to him to take part in politics. Now Union was a fact. His warfare was accomplished. Henceforward he might devote himself to the work of the new Appellate division and of the Judicial Committee.

On the whole his expectations were justified. During the four years which were vouchsafed to him after the meeting of the first Union Parliament his public work was almost entirely judicial. Nevertheless he did exercise an uneventful acting-Governor-Generalship for a few months in 1912 and again, during the last two months of his life, he held the same office. This time the office was no sinecure. During that July and August of 1914 he had to preside over the entry of South Africa into the great war and to watch the first flickering of the rebellion which was to test the newly-made Union so cruelly. Early in September he died.

There were those who regretted the intervention of the Appellate Division between the Provincial Courts and the Privy Council. Some indeed went too far and lost sight of the fact that appeals to the Judicial Committee were still possible. "The new Supreme Court" wrote the English *Law Journal*, "ousts, indeed, the Privy Council from its old position as the ultimate tribunal of appeal for all the Britons beyond the seas; but fortunately Sir Henry de Villiers is a member

¹ Selborne to de V., May 19, 1910.

also of that august tribunal, and it is to be hoped that he will so mould the practice of his Court as still to leave some measure of authority in South African matters to the ancient Court by which, since the foundations of the Empire were laid, equal justice has been assured to all his Majesty's subjects." ¹ At the first session of the Appellate Division at Bloemfontein de Villiers explained the meaning and scope of the work of the new court in such a way as to allay all such fears; but it was not until long after his death that the Judicial Committee explicitly defined its policy under the new conditions. In 1920 a citizen of Natal asked leave to appeal against a decision of the Appellate Division in a suit concerning town lots in Durban. Lord Haldane, on behalf of the Judicial Committee, refused leave. "It may be," he said, "that there is a real constitutional question of the type which should come here, but it is primarily very much of a local question. The effect of confederation was to say that South Africa is to dispose of its own appeals . . . except such as, in the strict exercise of the prerogative, His Majesty should say that he would allow on some great ground. . . . It is not a case in which the discretion which remains ought to be exercised." ²

Within its own sphere the Appellate Division worked well. The terms of the Union Act on which de Villiers had insisted ensured that it was manned by the strongest judges in the country. His influence on its procedure was marked, but not altogether in the way which he desired. During 1910 the Appellate Division was peripatetic. After its short session at Bloemfontein in June it reopened in Cape Town in July and there it did most of its work. On September 6th however it sat once more at Bloemfontein, on the 14th at Pretoria, on the 20th at Pietermaritzburg and thence back to Cape Town early in October to finish its year's work in the middle of December. It was hard work for the judges but convenient for suitors and pleasing to provincial patriots, who saw their local capitals each in turn honoured by the presence of the justices of appeal. Unfortunately the experiment was not repeated. De Villiers hated concessions to local feeling. He thought the seat of the court ought to be in Cape Town and he determined that in so

¹ Quoted by the *Cape Times*, June 22, 1910.

² Whittaker v. . . . Borough of Durban (*S.A. Law Journal*, xxxvii., p. 289).

far as in him lay it should be there. Under the Union Act the court might sit anywhere for the convenience of suitors. This gave him his opportunity. Twice during 1911 short sessions were held at Bloemfontein. The remainder were held in Cape Town. During the first half of 1912 the court again sat twice in the northern centre and thrice for much longer periods in the south. It was an error in tactics. Had the Transvaalers and Natalians been humoured by occasional visits of the court the Free Staters would have received little sympathy. As it was the opinion gained ground in the provinces other than the Cape that the court was sitting not for the convenience of suitors but of the Chief Justice. Hence an act was passed providing *inter alia* that, except under special circumstances, the court must sit at Bloemfontein.¹ During 1913 and 1914 therefore the sessions at Bloemfontein became more frequent; but even so de Villiers, thanks to the comparative freedom of choice which the new act specially gave him during his tenure of office, was able to call the Appellate Division to Cape Town for fully half its time.

De Villiers had hoped, now that he was relieved of his Parliamentary duties, that he would be able to attend the sittings of the Judicial Committee more regularly. In 1911 he sailed for England early in June. His visit was a short one for he hurried back to the Cape at the end of August. His work as acting-Governor-General prevented him going in 1912 but in the following year he attended the session of June and July. It was the last meeting of the unreformed Judicial Committee. In 1914 the act based on the recommendations of the Imperial Conference of 1911, organizing the House of Lords and the Privy Council into an Imperial appeal court sitting in two divisions, was to come into force. As a member of the Judicial Committee and a Peer of the realm de Villiers looked forward to taking part in the work of both divisions. "We are," wrote Haldane, the parent of the scheme, "always very glad to see you here, and either in the House of Lords or the Privy Council we should welcome your presence."² Political duties once more stood in the way and de Villiers never helped to administer justice in that most ancient court, the House of Lords.

Meanwhile around and beneath the Appellate Division the

¹ No. 27 of 1912.

² Haldane to de V., May 26, 1914.

framework of Union creaked and strained as it settled down upon its foundations. De Villiers watched it all with growing disappointment and anxiety—the ambitious finance which moved him to lamentations and Merriman to angry expostulations in the House ; the failure to consolidate the laws of the provinces ; the constant concessions in new legislation to provincial jealousies and vested interests ; friction with the Indians of the Transvaal and Natal inflamed by the increasing activity of their fellow-countrymen in India ; friction over the eternal language and education questions ; and latterly, a new note in the uproar, the rumble of a storm rising in the industrial centres of the country especially along the Witwatersrand.

De Villiers held aloof from the quarrel between Botha and Hertzog which ruined the first Union Ministry and split the main body of voters on which it had rested. The two Ministers had been uneasy colleagues from the first and, as far back as May 1911, Hertzog had told Steyn that he could not carry on much longer under existing conditions. The union of the provincial parties supporting the Ministry into the South African Party in the following November camouflaged but failed to close the growing breach. Hertzog disliked Botha's attendance at the Imperial Conference ; still more did he disapprove of his speeches in London, guarded though they were, on immigration and a contribution to the Navy ; a little later Botha's speech on the unveiling of the Rhodes memorial at Groote Schuur inflamed his wrath and that of the straiter sect of his followers. Then in June 1912, a Cabinet quarrel led to the dropping of one of the Transvaal Ministers and a consequent increase in the importance of the two Free State members of the Cabinet.

In July Gladstone went to England for a time and, from the middle of the month till the beginning of November, de Villiers took his place. Residence at Pretoria was distasteful to him ; his sleeplessness returned ; he was continually anxious about his wife's health. He fled back to the Peninsula whenever he could but his duties often called him north. Early in September he fell ill with influenza and to Botha's dismay talked of resigning. "Of course," wrote the Premier, "we may not ask you to sacrifice your health, but unless it becomes clear that your health would suffer, I must appeal to you not to think of resigning."¹ Botha's

¹ L. Botha to de V., Sept. 10, 1912.

anxiety was natural. De Villiers at least was universally recognized as the man marked out by office, by reputation and by personality for the post. It would not be easy to replace him and, in that September of 1912, Botha desired no addition to his worries. For the strain between Hertzog and himself was becoming unbearable.

Then at Nylstroom in October, just before Botha's visit to Natal whose predominantly English population was traditionally Imperialist and nervous of Dutch influence, Hertzog delivered himself of a speech. Whatever he may have meant to convey the speech was taken to be a condemnation of the Government's "conciliation" policy, an insistence that the Dutch and English must be kept separate from one another and a scarcely concealed threat to the British connection. There was an immediate outcry against the speech and Botha was much embarrassed.

De Villiers' sympathies were with Botha who was seeking to carry out the policy of conciliation which he had spent so much of his life in preaching and practising, and he had, moreover, a poor opinion of his rival as a statesman. He held that since the Union had been explicitly formed "within the folds of the British Empire," any tampering with the British connection without just cause was a tempting of Providence and a wanton affront to the sentiments of the vast majority of the people of the Union; for unlike so many of the disputants on either side, he at least did not forget that the native and coloured peoples were also inhabitants of South Africa.

At the end of the first week in November to his very great relief Lord Gladstone returned. The crisis speedily followed. Hertzog publicly repeated and emphasized his indiscretions; Leuchars, a Natal Minister, resigned; and Botha, having failed to persuade Hertzog to follow Leuchars' example, resigned himself and re-formed his Ministry without including the redoubtable Free Stater.

So the growing "racial" struggle went on. It was soon overlapped by a more serious and fundamental conflict. In spite of the efforts of the Labour organizations, Labour was inadequately represented in Parliament. Already in 1907 the miners on the Rand had tried conclusions with the mine-owners. On that occasion the Transvaal Government had taken no part in the conflict, contenting itself with keeping the ring in approved

nineteenth-century fashion. In May 1913 however, the trouble began again and soon became so serious that Imperial troops were called in to assist the police. Early in July a mob burnt Johannesburg Station and a newspaper office and next day lost heavily in conflict with the troops near the Rand Club. Thereafter the storm abated. The threatened general strike was not proclaimed and the Government appointed a Judicial Commission of Enquiry.

In face of Indian grievances, loss of prestige, Rand troubles and the growing split in the Ministerial ranks which culminated in the formation by Hertzog and his followers of the Nationalist Party in November, the Government toyed with the idea of a dissolution. Steyn begged Botha and Hertzog to stand back in favour of a *tertium quid*—de Villiers or another; but after a momentary hesitation the Government carried on, passed a bill establishing a defence force and prepared a series of measures dealing with the industrial situation in terms of the report of its Commission of Inquiry. But the directors of the British South Africa Company had little difficulty in persuading the Southern Rhodesians to vote for a renewal of the Charter since they insisted that the only alternative to Chartered rule was incorporation with the Union.

Then, early in January 1914, the bulk of the men on the State-owned railways struck, the Federation of Trades took up their cause and a general strike was proclaimed. The Government declared martial law, called out the newly organized Defence Force and the burgher commandoes and, on the collapse of the strike after some violence in Johannesburg, deported nine Syndicalists without trial to Great Britain. It was a false step. The unprecedented stretch of Dominion powers led to some unpleasantness with the Imperial Government at whose expense it had been made; the violation of the liberty of the subject cost the South African Ministry dear. Parliament met towards the close of January and sat with one short break until July 7th. The Government managed to carry an Indemnity bill in spite of the opposition of some of its own supporters; but while they debated, Labour gained a majority in the elections for the Transvaal Provincial Council. There, the Labour members promptly passed an *ultra vires* ordinance transferring the powers of the Administrator and his Executive to select committees of the

Council. The whole provincial system was thus brought into question.

Finally there was growing discontent among the natives. The Land Act of 1913 aimed at segregating whites and blacks in separate areas. Its immediate effect was to curtail the right of natives to acquire land outside existing native areas. Much would depend on the administration of the Act; still more on the sense of justice of the promised commission which was to demarcate European and additional native areas.¹ Sauer, de Villiers' friend, introduced the bill lest the duty fall to another less sympathetic to the natives than he. It was his last public act. In July he died.

De Villiers had done well to warn his fellow-countrymen not to expect too much from the mere inauguration of the Union constitution; but his faith in the ultimate destiny of his country never wavered. In spite of disappointments he took the long view and, during the last few weeks of his life at Pretoria especially, talked much of the great future which he believed lay before South Africa. That he could talk so in the black August of 1914 is a proof that his faith was great. On July 9th he sat for the last time to hear an appeal in his court at Cape Town² and a few days later took over the duties of Governor-General from Lord Gladstone who sailed for England suspecting no evil. On the 27th he set out for Pretoria with the news ringing in his ears that Austria had issued an ultimatum to Serbia and that all Europe was feeling for its weapons. He arrived in the northern capital two days later to be greeted with a warning message from London: "Adopt precautionary stage. Name of powers will be communicated if necessary."

De Villiers kept a detailed diary of the events of the crowded weeks which followed, a record which reflects the uncertainty of the times, the doubtful attitude of large sections of the South African public towards the war, the difficulty of entering upon a struggle with a defence force still in the early stages of formation and the division of opinion among the civil and military leaders as to the policy to be pursued. There was one man, however, who was not troubled by philosophic doubt. On July 30th

¹ The commission delimiting European and native areas only reported in 1917. The bill based on its report was dropped.

² *Benning v. Union Government* (A.D. 1914, p. 420).

the Admiral commanding the Cape squadron suggested that obstacles be put in the way of the departure of the "Eber," a small German gunboat under repair in Cape Town docks. The Union Government passed on his message to London but the Imperial authorities refused to take action. The European situation was too precarious to permit of a squabble about the smallest gunboat and the "Eber" presently sailed away to transfer her men and coal to more dangerous craft in South American waters.

Two days later (August 1) came instructions from London to enforce the examination system at all defended ports and to call out the Royal Naval Reserve. On the same day Baron von Humboldt, German Consul General, bade de Villiers farewell—by telegram. "Obliged to leave to-day by mail boat with my staff. Would be very thankful if Union Government could arrange by cable that on arrival at Southampton we receive safe conduct to Germany. . . ." Here again was a man untroubled by doubts as to the next step.

Thereafter events moved with increasing speed towards their appointed end. On the 2nd, the Admiral, posting home from Zanzibar, asked that Walfisch Bay be garrisoned with men and guns and that the Royal Naval Volunteers be mobilized. There was no hope of meeting the first demand for lack of transport, to say nothing of guns. As for the second, Ministers asked de Villiers to reply that, unless the Admiral had strong reasons known only to himself, they considered the step unnecessary and only likely to cause a panic. But de Villiers had a will of his own. "As I did not agree," he noted, ". . . I sent the following: I have consulted Minister of Defence. He is of course unwilling to put any obstacles in the way of necessary measures of protection but he has asked me to enquire whether you have strong reasons unknown to him for proposing this step at the present time." The response to this much less damping message was an urgent request for the Volunteers, and then: "Last seven groups of your telegram unintelligible as received." It was a good augury. Croakers were saying that the navy had lost the "Nelson touch"; but the Admiral's message showed that it at least retained his blind eye. The Volunteers were mobilized forthwith.

On the 3rd the telegrams came thick as autumn leaves: a warning to be prepared to institute a censorship, news of the

moratorium in London, a request from the officer commanding in the Cape Peninsula for leave to proclaim prohibited areas, a message from Durban that the German steamer "Admiral" at Delagoa Bay was acting as a wireless station in port in defiance of the Radio Convention and was sending on German Government messages and calling up Luderitzbucht and a German cruiser. Then from the Colonial Office, "My warning telegram having regard to strained relations with Germany be on your guard against the possibility of attack in advance of any formal declaration of war. This is not war telegram—please understand that clearly."

On the fateful 4th Botha arrived in Pretoria hot-foot from Rhodesia and next day the Secretary of State formally announced the beginning of war with Germany. The Government therefore took the necessary steps. In some of them de Villiers' legal mind saw difficulties. The proclamation of prohibited areas was simple enough but, in the absence of a specific law empowering him to do so, he only agreed to sign the proclamation forbidding the export of foodstuffs without the permission of a Minister in view of the exceptional circumstances and on receipt of an assurance that permission would be given in all cases which were not prejudicial to the country. Similarly, in the absence of statutory or of martial law, he refused General Wolfe Murray's¹ request for a censorship but promised to ask Ministers to use their influence with the newspapers. On the General's request that all troops in the Cape Peninsula—still the halfway house to India and likely to be more so than ever if the Suez Canal were closed—be put under active service conditions, a misunderstanding arose with the promise of constitutional complications to follow.

De Villiers to General Wolfe Murray.

Governor General's Office, Pretoria, Aug. 6 (1914).

MY DEAR GENERAL,

In reference to your letter of 5th inst. stating that it is desirable for all troops in the Cape Peninsula to be placed under active service conditions, I have communicated with the Secretary of State and will issue the desired Proclamation as soon as the requisite authority is obtained from him.

In regard to the proposed mobilization of the South African defence force there has been some misunderstanding. I had

¹ G.O.C. Imperial Troops in South Africa.

understood and I think informed you that the Minister of Defence had decided to mobilize all the forces in the Peninsula. It now appears, however, that he is only prepared to call out the Garrison Artillery. He considers that the necessity has not yet arisen for any larger measure of mobilization. He assures me that . . . the forces in the Peninsula could be concentrated at a given point at 6 hours notice. In the meantime he considers that the great expense of maintaining 2000 men in the field and the great inconvenience of withdrawing that number of young men from their civil duties ought to be postponed as long as possible. In this view the Prime Minister concurs.

In regard to the telegrams from the O.C., C.G.H. Dist., dated August 5, 1914, both the Prime Minister and the Minister for Defence are of opinion that the information before them is not sufficient to justify the enforcement of Martial Law, even in a modified form, in the Cape Peninsula. . . . The same remark applies to General Thompson's request for power to commandeer necessaries. . . . I may add that I have called the attention of the Minister of Defence to the 77th section of the Union Act No. 13 of 1912¹ which requires that Parliament should be summoned to meet not later than thirty days after proclamation of mobilization even if it be partial. This would be most inconvenient and undesirable under present circumstances. It would perhaps be possible to call out the Garrison Artillery without a Proclamation of Mobilization, but if the whole citizen force of the Peninsula were called out a Proclamation of Mobilization would be necessary. . . .

With this the general was satisfied. It was the gunners he wanted for, as he pointed out, as far back as 1912 the regiment had been placed at the disposal of the Imperial Government in case of war and the defence scheme of the Peninsula based upon it. So on the 6th the necessary orders were issued and on the 8th the gunners went to their stations alongside the R.G.A. in the forts on Table Bay and at Simonstown.

Immediately on the receipt of the news of war the Union Government had offered to make itself responsible for the defence and internal order of South Africa to permit of the withdrawal of the Imperial troops. The Imperial Government gladly accepted the offer. It went further. It suggested that the Union should destroy the German coast wireless stations at Luderitzbucht and Swakopmund (6 August).² Then on the 7th came the warning, "Arrest and detain all German officers and reservists as prisoners of war. Watch Austrian officers

¹ Defence Act.

² Cd. 7873.

and reservists pending further instructions." Decidedly matters had moved since July 29th!

The Executive Council met on the 7th. De Villiers read the Imperial Government's acceptance of the Union's offer and announced that this would mean the withdrawal of all the Imperial troops save those required for the defence of the all-important Peninsula.¹ The Cabinet met immediately afterwards, discussed the proposed withdrawal of the troops and deferred a decision thereon till the morrow. Generals Botha and Smuts also told de Villiers that a certain number of the Defence Force could be called out for training thereby rendering the summons of Parliament unnecessary. Even so de Villiers reminded them that "it is not peace training but war service that is required and that even if it were peace training the units could not be kept together for more than 21 days." But three weeks would be gained and next day (8th) Ministers decided to call out the whole of the Peninsula defence force and face Parliament six weeks later. So it was done and the Peninsula regiments solemnly paraded for peace training as their first share in a war which was to have lasted six months and which actually endured for four years.

Late on the evening of the 7th came a telegram from Admiral King-Hall, *en route* overland from Durban to Cape Town, asking de Villiers to meet him at Bloemfontein on the 8th.² De Villiers was willing to go but the Prime Minister would not hear of him leaving Pretoria and he had no one to send as his representative till Smuts stepped into the breach. The explanation of the hurried request came next day in a telegram from the Colonial Office:—"H.M. Government regard as urgent necessity seizure of coast wireless stations. . . . Although it is of great importance to capture long distance station at Windhuk this would be serious military undertaking and will occupy some time. It might follow smaller expedition against the coast stations or be carried out from the interior independently but this must rest with your government."³ On the 10th de Villiers showed the message to Botha who told him that the Cabinet was already discussing the question of an offensive

¹ The Royal Garrison Artillery were only withdrawn at the beginning of 1916.

² de V. to King-Hall, Aug. 8, 1914.

³ Diary and Cd. 7873.

against German South-West Africa and added "that there was a difference of opinion among them as to whether the Union Government should at this stage take the offensive." Presently, however, Smuts returned from Bloemfontein with the report that he had arranged ways and means with the admiral for possible future co-operation. On the same day (10th) the Union Government agreed to co-operate with the Imperial Government against the coast stations.

Preparations were begun forthwith. Ministers wanted to retain some of the Imperial artillery to deal with the German guns at the water-holes. "There has," de Villiers cabled to the Secretary of State, "as yet not been time to get together either the material or the personnel required for really efficient batteries . . . and though the few batteries that the Union Government could muster up can be relied on to give a good account of themselves, their inexperience is likely to be a weak link in what Ministers are confident will be a very efficient force."¹ But the Army Council was adamant. It wanted all its guns and gunners save those in the Peninsula, for "impending military operations on a large scale." This uncompromising message was followed by the news that war between Germany and Japan was inevitable and that Great Britain had actually declared war on Austria-Hungary. Whereon de Villiers wearily noted "All the necessary steps were accordingly taken." The one ray of hope which lightened his gloom was that Lord Buxton, the new Governor-General, was due to arrive early in September.

De Villiers was thoroughly unhappy. He loathed and feared war. He would have been much more at ease if the Union had waited to be attacked before launching forth on expeditions into German territory. He was still in the frame of mind in which the outbreak of hostilities in 1899 had found him. This time he had no shadow of a shade of doubt that Great Britain was in the right and that South Africa must support her; but he still vaguely hoped that the war might be localized so that it would not touch South Africa too closely. It seemed possible that this might yet be so, for on the 14th came the cheering message from London to relight all the coast lights except where immediate attack was expected and generally to delay British

¹ Experience proved that this fear was groundless.

shipping as little as possible. "Business as usual." That was reassuring. Europe was far away and periodical messages from the Admiral cheered him up. The King's ships were going upon their lawful occasions. All was still well. And yet he could not deny that attack is usually the best defence. War is war. Germans in South-West Africa were much the same as Germans in Europe with the additional disadvantage of being nearer; queer tales of talk and doings in the backveld were already drifting into Pretoria; there was no knowing what might happen if the Germans crossed the border in force; besides, if the sea was to be held and the war kept at a distance, those wireless stations must be destroyed. So he discussed the coming expedition with Botha. "Among other things," he noted, "suggested to him to construct Railway from Prieska towards G.S.W.A. which would serve double object of relieving distress of unemployed and bring troops nearer by rail to G.S.W.A. in case of attack suggested by S.S." ¹

So far, so good; but on the afternoon of the same day (14th) he heard bad news, the worst he could have feared to hear. "General Wolfe Murray . . . informed me that it had been reported to him that some malcontent Boers in the Lichtenburg district intended holding a meeting the object of which was to support a movement to get rid of British rule." It was only too true. A meeting had been summoned at Treurfontein for the 15th, the day on which the local prophet van Rensberg said was marked out according to a vision for some signal honour for General de la Rey, the uncrowned King of the Western Transvaal. Botha gave de Villiers fuller details on the morrow (15th): "In regard to malcontent Boers in the Lichtenburg district," de Villiers recorded, "it appears that there had been some ground for apprehension owing to a rumour which had spread among the Boers in that district that a supposed prophet (van Rensberg) had seen visions which portended the fall of the British empire. A few mischief-makers spread the report among them that by desire of General de la Rey a meeting was to be held at a particular point and that those attending the meeting were to come armed. One of the Commandants of the district seems to have been informed and on this coming to the knowledge

¹ During the South-West Africa campaign the railway was carried on at speed from Prieska to Kalkfontein.

of General Botha he had sent for General de la Rey and it was agreed that the latter should attend the meeting and explain the position fully to those assembled." To his great relief, Botha came in the evening to tell him that de la Rey had been successful and that the Government had decided to carry on the Prieska and Port Nolloth lines towards the German borders and to send an expedition up the coast as soon as the Admiral could furnish a convoy.

It was not, however, a coincidence, that on the day of the Treurfontein meeting the Government began to consider taking more stringent steps against enemy reservists. Hitherto the Secretary of State had asked that no one be arrested whose character was known to be harmless or who was otherwise vouched for. "Every consideration," he cabled, "compatible with safety will of course be shown to *all* persons." Hence reservists had merely been obliged to report daily at the magistrate's office. But now the military authorities at the Cape were complaining that the number of German reservists at large in the Peninsula—over 160 in all and their number daily increasing—was embarrassing, and that two highly placed officers had refused to give parole. One, an elderly Lieutenant-General, had been left at large but the other, the Prince Salm-Salm, who had arrived by the mail-boat on the day war was declared, had been lodged in the Castle. A few days later the order went forth that the reservists were to be interned up-country.

So the character of the war hardened and preparations for the coastal expedition went forward. On the 19th came a reminder from London that the Union Jack must be hoisted over all occupied territory and a Provisional Government set up but that "no formal proclamation of annexation should however be made without previous communication with H.M. Government," de Villiers signed a proclamation announcing that such units of the defence force as might be notified would be liable "for service anywhere in South Africa within or outside the Union," and next day Ministers recommended that the main expeditionary force be increased to 6000 men and another force of 3000 be told off to work northward across the Orange from the railhead at Steinkopf. Hard upon the heels of this decision came news which dispelled any doubts which de Villiers may have had about the wisdom or necessity of the expedition. At the Executive meeting on

the 21st he learnt that the Germans had entered the Union and were "entrenched 700 yards on our side of Orange River." That day he wrote his last letter to his wife and his words show what a relief the knowledge of the invasion was to him. "I am still having anxious times. Now that the Germans have invaded our territory there is but one course open to the Government."¹

There were still obstacles in that course. The Australian Government hastened to supply rifle ammunition but the necessary naval convoy was lacking. On the 26th the Admiral explained that, under Admiralty orders, the little "Pegasus" must remain at Zanzibar and the "Hyacinth" and "Astraea" escort the Imperial troops homewards on the morrow. All he could offer was an armed merchantman; wherefore the Union Government decided that the expedition up the coast must be abandoned till one or more of the cruisers returned in the middle of September.

So ended de Villiers' lesson in the art of conducting war. He was looking forward now to returning to Cape Town. Parliament was to meet on or about September 7th. "I leave for Cape Town very early in September," he had already told his wife, ". . . I shall then remain at home for a week before leaving for Bloemfontein where I shall be engaged for about three weeks."² This time his sojourn in the northern capital had been more pleasant than on former occasions. It was winter; the keen, dry air braced him; his health was better than it had been for many years past; in spite of the anxieties attendant on his duties he slept well. His elder son with his wife had stayed with him until the 21st when they had gone down to Durban to return home by sea, if a boat were available, fully expecting him to follow them in a fortnight's time. It was then that he was struck down. On Friday, August 28, he went with General Botha to the Country Club some miles out of the town. It was a deceptively sunny winter's day and, as his custom was when left to himself, he went without an overcoat. Late in the afternoon it turned bitterly cold and Botha pressed him to take his coat for the return journey by car. He would not hear of it and drove back unprotected in the biting wind. Next day he was ill with influenza and, as there was no one at hand to look after him in his rooms, he went to the Zuid Afrikaanse Hospitaal, a

¹ de V. to Lady de Villiers, Aug. 27, 1914.

² *Ibid.*

small establishment newly opened, the first of its kind staffed by Afrikanders for Afrikanders. His condition was not regarded as serious at first. Certainly he himself did not worry, but asked his nurse to send to his hotel for some daffodils that had come from Wynberg House, bade her read him the war news and talked cheerfully of his speedy return to Cape Town. But he soon became worse; the chill settled upon his lungs and he coughed heavily all the Sunday night. Next day he told his nurse "I am very sorry for myself." "You are very patient," she replied. "It would not help me," he said, "if I were otherwise." On the Monday evening he was so much weaker that his doctor called in a colleague from Johannesburg for consultation and sent a message summoning his son from Stellenbosch. For now the rarefied air of the High Veld, 5000 feet above sea-level, bracing enough while he was well, was telling on him, a man of seventy-two whose lungs had never been strong since his desperate illness long ago in 1866. On Tuesday he was often delirious but once he roused himself to write to his wife. His nurse, however, persuaded him to let her write for him: "Please inform the Lady de Villiers that I will leave Pretoria either Thursday, Friday or Saturday." He never realized that his life was in danger, but on the Tuesday evening the doctors agreed that the crisis was coming and that if he lived after 3 a.m. there would be a chance of his recovery. He slept fairly well till 2 a.m. Then a changé came. His life gradually flickered out and, as the clock struck three, he died.

His body was brought back to Cape Town "very early in September," as he had written, accompanied by his elder son, two Ministers of State and a guard of honour. On September 7th, he, the most pacific of men, was laid to rest in Woltemade Cemetery on the borders of his beloved Peninsula amid the armed pomps of a State funeral.

Far away in the land of his ancestors the roar of guns along the Marne proclaimed the end of his generation and of the old familiar things.

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