AN APPEAL

TO

THE INHABITANTS

OF THE

SOUTH AFRICAN REPUBLIC
(TRANSVAAL),

BY

J. G. KOTZÉ, Chief Justice.

PRETORIA:
JOHN KEITH, PRINTER, CHURCH STREET WEST.

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GENTLEMEN,

You have all by this time heard of the most unjustifiable and illegal act of which the Head of the State has been guilty, in arrogating to himself the power of summarily and without any trial, as provided by Law, dismissing from office the Chief Justice of the Republic, who holds his appointment for life. You have doubtless asked yourselves upon what grounds, and for what purpose, this most autocratic and despotic deed has been done? By way of answer to this question, and of pointing out to you the deplorable and baneful meaning of this unwarranted attack upon the independence and sanctity of the Judiciary of the country, I crave your careful attention to what I am about to say on the subject, in the hope that this my appeal to you will not be in vain.

I. It will be in your recollection that on the 22nd of January, 1897, the High Court gave judgment in the case of *Brown vs. Dr. Leyds N.O.* The action was instituted under the Gold Law, for the purpose of having the plaintiff declared entitled to a licence by means of which he could peg off certain prospecting claims, or otherwise to award him a certain sum by way of damages. The Government set up, by way of defence, a certain Volksraad resolution, by which an invalid proclamation, published by the President, was affirmed. In order to maintain the validity of this Volksraad resolution and support the invalid act of the President, the Government appealed to Article 32. of Law No. 4, 1890. This Article reads as follows: "The legal force of a law or resolution, published by the State President in the *Gazette*, may not be disputed, saving the right of the people to petition with respect thereto." The contention of counsel for Mr. Brown against this argument was, that the Gold Law can alone be altered *legislatively*, that is to say, by a declaration of the will of the Legislature *in the form of a law*, and not by a bare and hurried resolu-

tion of the Volksraad, and further that Article 32, of Law No. 4, 1890, need not be construed as necessarily conflicting with the Grondwet or Constitution of the country, and should it be found in conflict therewith, that then it must yield to the controlling voice of the Constitution, as being the higher and fundamental law.

You will observe that the arguments directly raised constitutional points of the utmost gravity and importance, not merely to the inhabitants of the State, but also to all institutions and persons domiciled abroad, who have interests at stake in the country. The Court gave a unanimous judgment in favour of Mr. Brown and against the Government. The Chief Justice and Mr. Justice Ameshoff holding, *firstly*, that a mere Volksraad resolution can not alter the existing law of the country, inasmuch as the Volksraad can only legislate by passing laws, and not by means of bare resolution, as required by the Grondwet; and, *secondly*, that a law or resolution of the Volksraad in conflict with the constitution can not be enforced by the Court in any particular case which may come before it for decision. Mr. Justice Morice thought that the particular Volksraad resolution did not apply to the case of Mr. Brown, as it ought not to be supposed that the Legislature intended it to apply to matters already pending; in other words, that the Volksraad must be taken not to have intended to give the resolution retrospective effect. It has been said that the Chief Justice and Mr. Justice Ameshoff might have avoided these constitutional questions and decided the case upon the narrow ground on which Judge Morice rested his decision, and the most extraordinary and unwarranted motives were suggested in certain quarters for the views expounded by the majority of the Court. These aspersions I pass by in silent contempt, for the sword of justice and not the poisoned dagger of the assassin is the weapon which Themis has entrusted to the hands of her priests and votaries in the sacred and impartial exercise of their functions. With all respect for the view taken by Judge Morice, I have no hesitation in saying that to my mind only one interpretation can be put upon the words of the Volksraad resolution in question, which reads as follows :

"That no person whosoever, *deeming himself injured by this proclamation*, shall be entitled to compensation out of the public Treasury, or from any official who has been instrumental in carrying out the said proclamation."

It is difficult to see how Mr. Brown could possibly have come to the Court for redress, unless *he deemed himself injured by the proclamation,* and as he did resort to the Court to enforce his rights, it is perfectly clear that but for the proclamation, and the Volksraad resolution confirming it, he would have had nothing of which to complain. The object of this Volksraad resolution, passed after Mr. Brown had already issued his summons or citation, was to prevent his enforcing his rights and obtaining any compensation. The constitutional questions, therefore, of the capacity of the President and Executive to act contrary to the law, and of the Volksraad to act contrary to the Constitution or Grondwet, were directly in issue, and the Court was bound to give a decision upon them, which, as I have already stated, was pronounced by the Chief Justice and Mr. Justice Ameshoff.

II. In laying down that both the Executive and Volksraad must exercise their functions in keeping with the controlling voice of the Constitution or Grondwet, the Court did not, as is sometimes asserted, seek to raise itself above these two important bodies in the State. On the contrary, the Court has thereby simply sought to protect itself and the suitors who resort to it, by maintaining that any interference by the Executive and Legislature with pending cases can not be tolerated, inasmuch as the people have expressly in the Grondwet conferred judicial functions solely upon the Courts of Justice, in the exercise of which they are declared to be free and independent, and inasmuch as the people have also in the Grondwet guaranteed to all persons within the Republic full protection for their rights. The Court merely laid down the obvious and elementary truth that the three powers in the State, the *trias politica,* if you will, must, each in its own sphere, work side by side with one another, under and subject to the Constitution. The Court was also careful to lay down in the judgment that the Volksraad is the highest authority *(hoogstegezag)* in the State, for the simple reason that the Constitution expressly says so. There must necessarily be some such highest authority, as I pointed out in my judgment, for as such the sanction of the Volksraad is, *e.g.,* required for the validity of treaties concluded with foreign powers, for the alienation of State property, the raising of loans and pledging the credit of the State, and many other matters which can not be regulated without that sanction.

This, however, does not mean that the Volksraad is the supreme or sovereign power in the State, for that vests and resides in the people alone. The Volksraad, therefore, can not raise itself above the Constitution, and seek by means of laws or resolutions, without any previous knowledge and sanction of the people, to alter the terms of the instrument or Constitution by which it has been created. The Volksraad then, as explained in *Brown vs. Leyds, N.O.*, is only the "highest power" under and by virtue of the Constitution, and can not override its provisions. It, therefore, inevitably follows that if any Act of the Volksraad is alleged to be contrary to the Constitution in any particular suit before the Court, the latter, finding upon due investigation that such is the case, is bound to follow the written Constitution under and in accordance with the provisions of which alone the Volksraad can exercise legislative functions. If this be not so, and the contrary doctrine is to prevail, viz., that the Volksraad is the supreme and sovereign power and above the Constitution, if in other words the Volksraad be a law unto itself, mark what the results must be. The Volksraad can then at any moment pass a resolution that a person's property may be taken for public or any other purposes, or be expropriated, say for the purposes of the railway, without any compensation; or that the interest stipulated for or running on mortgage bonds, bills of exchange, promissory notes, &c., shall not be claimable; or that the day of payment of the principal sum shall be postponed until after the lapse of so many years; and all this notwithstanding the Grondwet guarantees to everyone his property and personal rights.* If now we are to hold that everything done by the Volksraad has the force of law, the legal tribunals in the cases I have supposed would be bound to uphold the action of the Legislature, and thereby violate the Grondwet and deny justice to those who, by an appeal to the Constitution, seek protection of their rights. In the same way, if the Volksraad can do as it pleases, it may, by a mere resolution, abolish the Executive Council or give it full legislative powers; cause people to be punished without due trial; create itself into a Supreme Court of Appeal from all the other judicial tribunals, and in short tear up the Constitution altogether. It is of

* This is no exaggerated representation of the matter. The Records afford abundant proof of similar proceedings by the Volksraad at the suggestion of the Government.—J.G.K.

no avail for those who hold the theory that the Volksraad is above the Grondwet, to say that if the Volksraad attempt to exercise judicial function it will be stepping beyond its province and be acting *ultra vires*, for by this theory the Volksraad, and not the people, is the sovereign and supreme power, and can exercise its will without any restrictions. How then can such a body, *ex hypothesi* subject to no legal and constitutional restraint, act *ultra vires?* The only sound view, therefore, is that, seeing we have a Grondwet in which it is expressly declared that all power emanates from the people to the various departments in the State, the sovereign power vests in the people alone. Now, the will of the people is expressly declared in the Grondwet, by which legislative functions are entrusted to the Volksraad and judicial functions to the Courts of Justice. It follows that neither the Legislature nor the Judiciary is subservient to each other, but that both are subject to the controlling terms of the Constitution, by which they have been created. Again, if by the words of Art. 52, of Law No. 4 of 1890, "the legal validity of a law or resolution, published by the State President in the *Gazette*, may not be questioned, saving the right of the people to petition with regard thereto," we are to understand that *anything* and *everything* published by the President in the shape of a law or resolution is to be accepted under all circumstances as absolutely binding and beyond inquiry by the Court, when the issue is distinctly raised in a given case, it follows that if it be shown that what has been published as a law has been approved by a Volksraad, in which there was not the proper quorum, or has never even been before the Raad at all, and private rights are infringed thereby, there will be no redress. What is this but a violation of the Constitution—a virtual denial of justice and a closing of the Courts of Law? It is, therefore, clear that the High Court does possess the power of testing laws and resolutions by reference to the Grondwet in any particular case which may come before it, and requires the exercise of that power. It is an accepted axiom by all the most approved constitutional writers that, where the written Constitution of a country is silent on the point, there the Court of necessity possesses the testing power. What would be the use of placing a clause in the Constitution or Grondwet, providing how alone it can be altered in a given and special way, if the testing power does

not also necessarily and tacitly accompany it? Otherwise it would be the simplest thing to pass laws and resolutions contrary to the Grondwet, and if the Court is not to test these either in matter or form, whenever a suitor complains that his rights have been affected thereby in conflict with the Constitution, the protecting clause in the Constitution would at once become a mere dead letter. It can not be too often repeated that in exercising the testing right only when the particular case judicially calls for it, the Court is not guilty of any usurpation of authority, nor does it thereby set itself above the Volksraad. It merely maintains the controlling force of the Constitution or fundamental law over against that of an ordinary law or resolution, just precisely in the same way as the Court would enforce an ordinary law above a resolution by the Executive. Nor can the Legislature by an ordinary law or resolution seek to define and interpret the Constitution for the Court. These principles have been admirably expounded to the plainest demonstration by many of the most competent authorities, among whom it is sufficient at present to mention Hamilton in the Federalist, Opzoomer, Cooley, and Bryce.

III. It has also been said that the President and the Executive had reason to be dissatisfied with the judgment in *Brown vs. Leyds, N.O.*; that it came upon them as a complete surprise; that it reversed two previous decisions given by a majority of the Court; that it rendered rights and titles insecure, and cast doubts on the validity of other laws and resolutions than the one affecting the case of *Brown vs. Leyds, N.O.*; that the judgment in fact introduced a state of legal uncertainty amounting to chaos. Now, far be it from me to deny that the Government may have been placed in difficulties by the judgment in Mr. Brown's case. These difficulties have, however, been much exaggerated, and it is with no little surprise that I have seen these exaggerated statements of the difficulties made by persons from whose education and training the public had a right to expect the expression of calmer and sounder views. Moreover, the difficulties which arose through the particular case of Mr. Brown were entirely of the Government's own making. It is perfectly correct that on two previous occasions the High Court had by a majority of two Judges, first in 1884 and again in 1888, given a decision at variance with the constitutional doctrines laid down in the

Brown judgment; but this last decision can not fairly be said to have come as a surprise to the President and Executive Council, as the following circumstances will clearly show:—In April of 1895 the case of *Hess vs. The State* came on in appeal before the full Court. In this case Mr. Hess, who very ably conducted his appeal in person, raised three points for the decision of the Court; the first of which was as follows: "That Act 11 of 1893, under which he had been tried, is really no law, inasmuch as (*a*) it was not passed by the Volksraad with a due observance of the required formalities, and (*b*) because there existed no pressing necessity for passing this Act, as required by Article 12 of the Grondwet." On the 2nd May, 1895, some two and a half months before Mr. Brown had issued his summons and before the Volksraad resolution of which he complained had been taken, the Court gave a unanimous judgment in favour of Mr. Hess on the second of the three points which he had raised. I, however, took this opportunity, in a considered written judgment, which will be found reported at page 4 of Mr. Duxbury's Reports,* of openly and solemnly stating, with regard to the first point taken by Mr. Hess, that I had come to the conclusion that some of the constitutional positions laid down by the decision in the McCorkindale case in 1884 were untenable and could no longer be supported. This my judgment was also published in the newspapers of the time, and I can not assume that any members of the Executive nor the legal advisers of the Government were ignorant thereof, more especially if we bear in mind that the State was a party to the case. Here I may add that, although my colleagues (Judges Ameshoff and Jorissen) did not express any opinion on the first point raised by Mr. Hess, it was well known that Mr. Justice Jorissen approved the views expressed by his son, the late lamented Judge S. Jorissen, in the Doms case in 1888. By no possibility can it be said that, after I had publicly stated from the Bench what my views were on the constitutional questions touched upon in the McCorkindale case and raised by Mr. Hess in his appeal, the Government and its legal advisers had any reasonable gounds for thinking that, when a similar case should come up for decision, I would not follow what I had so recently laid down in the Hess case. Again, if the Government thought it in the

*See also 2, Off. Rep., p. 139, and Vol. 12, Cape Law Journal, p. 226. —J.G.K.

interest of the country to close the gold-field which had been set open, and on which Mr. Brown desired the licence to go and peg off claims, there was nothing to have prevented them from introducing legislation to that effect—that is to say, by proposing to alter the Gold Law by a proper draft law (and not by a mere hurried resolution of the Volksraad), under and in terms of Article 12 of the Grondwet, declaring the necessity and urgency of the case, and asking the Volksraad to dispense with the usual three months' previous publication. Instead of following this safe and constitutional course of altering the Gold Law, subject to any rights which Mr. Brown and others might have acquired in the meanwhile, the Government, wishing to proceed by way of resolution, was advised by its law officers to adopt this unconstitutional course in July of 1895, and this in spite of what had fallen from the head of the Court in the case of *Hess vs. The State* some two and a half months previously. I will not say that this course was adopted for the express purpose of bringing about a collision between the High Court and the Executive and Legislature, but I do say that in the face of the warning given in the case of Mr. Hess, the Government and its advisers can not justly maintain that they were not sufficiently warned. The President personally was well aware of the true position, for, during an interview with His Honour on the afternoon of Saturday the 7th September, 1895, some six weeks after Mr. Brown had issued his summons, Mr. Kruger mentioned the Hess case and wished me to promise him that I would obey and enforce the Volksraad resolution as law. I told the President that I could not give him any such promise, but would do my duty, after I had heard the case, according to law and my conscience. Mr. Kruger, finding I was not to be persuaded, then informed me that if I did not obey Volksraad resolutions he would be obliged to suspend me from office. This, be it remembered, was in September, 1895, fully two months before the Brown case came on for hearing, and while the Volksraad was still in session. I then felt that a trial of strength between the President and the High Court was no longer far off. From the above facts it will be seen *firstly*, that the assertion of the Brown judgment having come upon the President and Executive quite unexpectedly, can not be accepted as satisfactory; and *secondly*, that had the Government taken a timely warning

and been properly advised to adopt the safe and constitutional course for altering the Gold Law, the collision caused after the Brown case could not have arisen. Why that course was not taken is a question which those concerned can best answer for themselves. The Court was bound to give a decision in the Brown case according to its lights and conscience. The reasons for the judgment have been fully set forth in the judgment itself; but the responsibility for the difficulty which arose after that decision entirely rests with the Government. The first and only duty of the Court is not to inform the Government, one of the parties to the suit, what its decision is going to be, but conscientiously and fearlessly to do justice.

That a Court or Judge may in a subsequent case decline to be bound by a previous decision, given between different parties under similar circumstances, goes without saying. Such is not, nor ought it to be, of frequent occurrence; but to say that such is never under any possibility to happen on a future occasion is to talk nonsense. We may just as well assert that, although men are fallible, Judges are not. But I prefer under present circumstances not to press my own views on this point, and will defer to the opinion of those who on more than one occasion have been a lamp unto my feet and a light unto my path, for it is at all times pleasant to travel in good company. Thus Chancellor Kent tells us that for very cogent reasons and upon a clear manifestation of error the Court should depart from its previously pronounced decisions; and Lord Hale thus expresses himself: "It is most certain that time and long experience is much more ingenious, subtile, and judicious, than all the wisest and acutest wits, co-existing in the world, can be. It discovers such varieties of emergencies and cases, and such inconvenience in things, that no man would otherwise have imagined." Hence, says Lord Eldon, if a Judge is honestly convinced that his previous decision was wrong, he should not hesitate to depart from it; and more recently in our own day the Court of Appeal in England in *re Hallett's Estate* set aside a whole series of previous decisions pronounced by itself.* A brother Judge, far removed from South Africa's troublous atmosphere, and well fitted by his experience and training to form an opinion, in addressing

* See this matter more fully discussed in *Brown vs. Leyds N.O.*, pp. 7-8, published by John Keith, Pretoria.—J.G.K.

me on the subject thus expresses himself: "You were deciding a question which, from your point of view, the Legislature could not deal with at all. In such a case the Court ought to disregard its former decisions if it thinks them wrong, because there is no other way of setting the law right. The Court, whose duty it is to interpret all laws, must have jurisdiction to determine whether a particular act of the Legislature was an infringement of the Grondwet. Your reasoning seems to me to be quite unanswerable. That your decision was in favour of good government is certain. In any young country it is most desirable, in the interests of constitutional freedom, that there should be a fundamental law by which the powers of the Legislature shall be defined, and that this, like any other law, shall be interpreted by the Courts when occasion arises." In the words of the Right Honourable Mr. Bryce, where the Court had "to choose between the evil of unsettling the law by reversing, and the evil of perpetuating bad law by following, a former decision, it may reasonably, in extreme cases, deem the latter evil the greater." Mr. Bryce also points out, as indeed every student of Constitutional Law is supposed to know, that the Supreme Court of the United States has on more than one occasion felt called upon to depart from its previous decision, but the state of confusion, anarchy and chaos, which is said to result from such a condition of things, has not manifested itself in the great and free Republic across the North Atlantic, the decisions of whose highest legal tribunal stand forth as among the greatest monuments of judicial learning and skill.

IV. Now, although the Government can not be absolved from responsibility in not having taken proper legislative and constitutional precautionary measures between 2nd May, 1895 (the date of the Hess judgment), and 22nd January, 1897 (the date of the Brown judgment), once the decision in Mr. Brown's case was given, and assuming the Government to have grounds for deeming itself placed in a difficulty thereby, its course was perfectly clear. When the High Court of the country gives a decision, that decision must be respected and enforced. It is, however, open to the Government, if it deems it in the interest of the State, to take the necessary steps to remedy or remove any difficulty or uncertainty which the judgment may have caused. The plain road to have travelled was the adoption

of the constitutional course, viz., to cause all such Volksraad resolutions, as might be considered necessary, to be collected together and put *into the form of a law* and to have laid this law before the Volksraad for immediate adoption and promulgation in terms of Article 12 of the Grondwet. In the next place, the Government should have ceased from proposing and the Volksraad from sanctioning legislation by means of mere resolution, as being contrary to the Grondwet. Nor should the Volksraad have attempted altering the Grondwet in future by ordinary or hurried legislation, but steps should have been taken for introducing an amendment to the Constitution, providing how alone it can be altered by special legislation, and by proposing a draft measure to that effect for the special consideration and sanction of the people.* Instead of adopting this obviously constitutional method, the President and Executive presented a measure to the Volksraad, amounting to a direct attack upon the independence of the High Court in the discharge of its functions. This measure, which goes by the name of Law No. 1, of 1897, and distinctly violates the Grondwet and other laws of the land, was first considered in the Executive Council, one of whose members proposed that the Chief Justice should be called in to discuss the measure and the situation. The President and Dr. Leyds, however, successfully opposed this proposal. The measure, having passed the Executive, was brought by the President to the notice of the Volksraad in a secret session with closed doors, and on the Monday following, viz., the 22nd February, 1897, was openly laid on the table of the house. This was the first intimation which the Judges received of the intentions of the Government, and on the following day they addressed a document to the head of the State in which they declared themselves as follows :—

> " In all earnestness they wish to intimate to His Honour the State President and the Executive Council as their unanimous opinion that this measure infringes upon the independence of the High Court. In their opinion the measure can be postponed. At the pre-

* I admit that it is a weak spot in the situation, that the Grondwet does not state how it can be altered. It is plain, however, that it can not be altered except by the express notice and sanction of the people, who enacted it. It is also plain that this defect does not give the Volksraad the right to override or alter the Grondwet as IT pleases.—J.G.K.

sent moment there is no immediate danger of legal insecurity, which, however, might arise through the over hasty acceptance of the draft measure now on the table. Should the Honourable the First Volksraad decide to elect a committee from its midst to consider the difficulties of the matter and remove them, the Judges hereby offer their assistance, in the conviction that a satisfactory and friendly solution will be arrived at."

This letter from the Judges was not acted on, nor was any reasonable time allowed them to submit any solution of the supposed difficulty. In the shortest possible period, viz., three days, the measure was affirmed by the Legislature. The most extraordinary, far-fetched, and groundless arguments were used by the President and the State Secretary, in hurrying this measure through the Raad. It is impossible to read the discussions in the Raad without coming to the conclusion that these two men, placed in positions of the highest trust and responsibility, led on an attack upon the High Court under the guise of protecting rights and titles secured by Volksraad resolutions. And I regret to say that the discussions also show that the great bulk of the members of the Honourable the First Raad, were led away by this obscuring of the real issue involved. They were nearly all imbued with the notion that the High Court sought to set itself above the Volksraad, an idea which I trust I have shewn to be devoid of all foundation. There were a few exceptions, however, notably in the case of Mr. Loveday, who correctly grasped the situation, and who subsequently, in an able and elaborate address at Barberton, completely refuted most of the untenable arguments and contentions of the President and his supporters.*

To seek to justify this measure, known as Law No. 1, 1897, and with which I will deal later on, under the plea that titles and vested rights created by Volksraad resolution have been rendered insecure by the Brown judgment, will, upon a little reflection, appear to be nothing but a subterfuge. I think I may safely claim that in February, 1897, men looked upon the High Court as the protector of their rights and liberties in case of any illegal infringement thereof. If now hurried Volksraad resolutions can create titles and rights, it also follows that similar hurried Volks-

* This address of Mr. Loveday, which is published in the *Gold Fields News* of 12th March, 1897, will well repay perusal.—J.G.K.

raad resolutions can as easily put an end to and brush away these rights. Do not run away with the idea that such a thing is impossible or improbable. The Records of the High Court and of the Volksraad will show several instances where attempts have been made to interfere with and deprive men of their vested rights under existing laws by means of Volksraad resolutions. The only security in such a case, that the persons possessing the rights would have, would be the High Court, which could either protect these rights or award adequate compensation. But, if Law No. 1 of 1897, be law, and is to be enforced as such, the Court can not inquire into or test any of these Volksraad resolutions, and so the Government would be left free to introduce, and the Volksraad to take, any resolution depriving parties of rights already acquired, and the High Court wo ld be rendered completely powerless to protect the aggrieved parties. Again, it is a most extraordinary manner of seeking to uphold alleged rights acquired by Volksraad resolutions, to proceed to violate, as the so-called Law No. 1 of 1897 distinctly does, a whole series of fundamental laws by which the Judicial independence is guaranteed. The laws affirming that the Judges are appointed for life, and can only be dismissed from office after trial and judgment of guilty pronounced by a specially constituted Court, have at one blow been rendered nugatory and torn to pieces by this barbaric measure, for which President Kruger is directly responsible. The Constitution and laws that have been thus shametully violated contain certain guarantees for the independence of the Judiciary, viz., that the members of the Bench are absolutely independent in the exercise of their judicial functions; that they are appointed for life, and can only be dismissed after a proper trial by a specially constituted tribunal.* These guarantees, moreover, it has been well observed, have been introduced quite as much for the protection of suitors and the public as for that of the Judges themselves. What a mockery, therefore, to pretend to justify a measure which bears all the marks of

* The laws thus violated by the so-called law No. 1 of 1897 are The Grondwet (1858) §15 and §62. The law known as the Amended Grondwet of President Burgers in 1877, Ch. 5, §4. The Order in Council of Her Majesty dated at Windsor, 29th November, 1878, Art. 2. Both these instruments are ratified by the Convention of Pretoria, Art. 3; Law No. 3, 1881, §4 (Bylage tot de Grondwet). The Law commonly known as the Amended Grondwet of 1889, §115. The Law No. 2 of 1896, §15, §82, §86, and §139.—J.G.K.

a deliberate attack upon the Judiciary, by the flimsy pretence that its adoption was absolutely necessary to protect rights created by Volksraad resolutions! In its anxiety to protect these alleged precarious rights,* a measure is clandestinely drafted and discussed, and then openly forced and hurried through the Legislature by all sorts of far-fetched, stupid, and groundless assertions, which, in striking at the independence of the Judiciary, also strikes at the credit and stability of the State.†

V. I now propose to deal briefly with the so-called Law No. 1 of 1897 itself. I say briefly, for it is my intention of writing more fully on this subject, when I will show that for several years there has been a deliberate attempt to deprive the High Court of its independence, and will at the same time publish and comment upon all the documents in my possession with reference to the constitutional question. By this measure it is in the first place declared by the Legislature that the testing right does not exist and never did exist. Now here the Legislature went outside its province, and has asserted something quite contrary to well-accepted constitutional principles. When the Court declares that the testing right does exist, and has exercised it, no mere assertion by the Volksraad can undo or render nugatory the express declaration of the Court in its judgment; for it is an indisputable proposition, accepted as an axiom, that the interpretation of the Constitution is a Judicial Act, and the Government and Volksraad can only take measures, if they think it in the interests of the State, to get the people to declare in a constitutional way whether the testing right shall continue to exist or be abolished. It must be borne in mind, as I have already observed, that where the written Constitution of the country is silent there the Court necessarily possesses the testing power. The Volksraad, therefore, by asserting that no testing right exists, or ever did exist, virtually assumed judicial functions and constituted itself into a Court of Appeal. It is deplorable that the State has never yet had any member

* I say *precarious* advisedly, for I have shown that just as a Volksraad resolution may have created rights, a Volksraad resolution can at any time put an end to these rights.—J.G.K.

† I have by permission placed in an appendix a leading article from the *Transvaal Advertiser*, of 15th March, 1897, under the editorship of the venerable Dr. Scoble, which puts the various points I have touched upon above in a most clear and irrefutable manner. I commend it to the earnest attention of all right-thinking men.—J.G.K.

in its Executive who has exhibited even a rudimentary knowledge of the first principles of government and administration. This so-called Law No 1 of 1897 seeks to deprive the Judges of the testing right, authorises the President to put a certain question to the members of the Bench that they would not *arrogate* to themselves the so-called testing power, and empowers him to instantly dismiss the Judge or Judges from whom he receives no answer, or, in his opinion, an unsatisfactory answer. The Judges for the future are also subjected to a humiliating form of oath. This measure, it seems almost superfluous to observe, is no law. It alters the Constitution of the country without any previous reference to the people, and for the reasons given in the Brown case it is devoid of all legal validity. The five Judges, on the 1st March, 189 , unanimously issued a declaration, stating that by this so-called Law No. 1 of 1897 a vital violation of the independence of the Bench had taken place, and that the Judges were exposed in future to the suspicion of bribery. In fact, the nature and tendency of this measure are so immoral that one of the Judges openly said that no honourable man can occupy a seat on the Bench while Law No. 1 of 1897 remains on the Statute Book.

The question above referred to was duly put by the President to the Judges, who had unanimously signed a letter to the effect that they did not feel themselves at liberty to give any answer, when the Chief Justice of the Cape Colony arrived in Pretoria, and through his mediation, a written understanding was proposed by the Judges on 19th March, and accepted without any qualification by the President on the 22nd March, 1897. By the terms of this compact the Judges undertook not to test laws and resolutions of the Volksraad *on the distinct understanding* that the President would as soon as possible submit a draft Grondwet to the Volksraad providing how alone the Grondwet can be altered by special legislation in a manner analogous to the provisions contained in the Constitution of the Orange Free State on the subject, and incorporating the guarantees for the independence of the Judiciary. By these means the Judges intended to protect both the Constitution and the Bench against sudden surprises and attacks, such as for instance the oft-quoted measure known as Law No 1 of 1897. They did this to avert a crisis, and, in order to help the Government and Volksraad out of a diffi-

culty of their own creation, placed themselves under a temporary obligation upon the faith of the President as speedily as possible complying with his portion of the understanding. By this understanding the Judges also offered their services in aiding to draw up a draft Grondwet, and this offer was likewise accepted by the President. It is perfectly clear that the President had himself to take the initiative, and in consultation with the Judges submit the draft to the Volksraad, which would then have to reject, approve, or amend it. The President was moreover in honour bound to use his utmost influence to get the Volksraad to adopt the draft, in which case there can be no reasonable doubt that the Legislature would have met the wishes of the President. In the event of the Volksraad adopting the draft, it would in the ordinary course have referred the matter to a commission out of its number, which was at liberty to call in the Judges, who had also in the understanding expressed their readiness to aid the Volksraad if desired. The commission would then have made its report to the Volksraad, and the draft Grondwet would have been discussed and provisionally settled by the Volksraad, and ordered to be published for the people's information and sanction. This was all to be done as speedily as possible, that is to say, in the ordinary session commencing on 3rd May, 1897. The draft Grondwet, thus provisionally settled by the Volksraad, would, after due publication for the information and sanction of the people, have come up for final consideration in the ordinary session of 1898 and at once come into operation. If the President and the Volksraad had been so disposed, the matter could even have been finally considered in a special session of the Legislature, convened for the express purpose, before the ordinary May session of 1898. With the coming into force of the new Grondwet the so-called Law No. 1 of 1897 would have been consigned to oblivion. Instead, however, of himself submitting the draft after consultation with the Judges, the President, on the 31st May, 1897, without any consultation or recognition of the Judges, asked the Volksraad to appoint a commission from among its number to draw up a draft Grondwet, and to collect together into one systematic whole all the laws of the land. The Volksraad agreed to the request of the President, and appointed a commission from among its number as desired. It will at once be seen that in several important particulars the President, at the outset, departed

from the terms of the compact between himself and the Judges. In the first place, he did not, before going to the Volksraad, consult the Judges, as they, regard being had to the terms of the understanding, had every right to expect; secondly, instead of himself directly and in the first instance submitting the draft Grondwet, the President asked the Volksraad to appoint a commission to do, *inter alia*, what he had himself undertaken to do; and thirdly, instead of submitting this draft Grondwet as speedily as possible, the proposal of the President, that the Volksraad Commission was also to collect all the laws of the land into one systematic whole, clearly showed that the time-limit "as soon as possible" occurring in the understanding had been departed from, for it would take even a commission of qualified experts AT LEAST from two to three years to properly systematise all the local laws. When the proposal of the President, and its adoption by the Volksraad, became known, the Judges had several consultations, and although there was no difference of opinion among us as to the fact that the President had departed from the terms of the understanding, my colleagues were not, at that stage, disposed to join me in pointing out to the President that he had not kept to the terms of the compact. They said they preferred to wait until the session of the Volksraad had terminated before taking any steps. To this view I could not agree, for the simple reason that I deemed it my duty to point out to the President in what respects he had departed from the terms of the understanding, for if I had waited until the session, which would probably last till October (as a matter of fact it continued until the 17th of November, 1897), had terminated and then approached the President, he might very naturally have blamed me for not having apprised him of the state of the case, and allowing a whole session to pass without pointing out to him that he had not kept to the compact. His Honour would very probably have expressed his regret, and added that he was very sorry that I had not approached him sooner, and that nothing could now be done until the following May session of 1898, and so a whole year would have been lost. To have observed silence at that moment seemed to me equivalent to saying that the Judges had intended to mislead the public when they entered into the understanding of March 1897, by allowing Mr. Kruger to do exactly as he pleased. I therefore deemed it my duty to speak. As

we all read and understood the terms of the understanding, which I maintain created a mutual obligation solemnly entered into, and to be carried out by the President as speedily as possible, I could not honourably be a party to any departure from its terms. Accordingly, on the 8th of July, 1897, I, as Chief Justice, addressed a letter to the President pointing out how in my opinion he had departed from his undertaking. I received a reply from the State Secretary, on behalf of the President, to the effect that His Honour did not share my views, although he admitted that a revision of the Grondwet need not necessarily wait for the codification, or rather the bringing into a systematic whole, of the laws of the country. In answer to this reply I wrote to say that I adhered to the views expressed in my letter of 8th July.

Here I must state that during the month of July and after my letter of 8th July had been received by the President, the Volksraad Commission by letter asked me, as Chief Justice, to nominate one or more of the Judges to attend and assist the commission in its labours with regard to revising the Grondwet. There was great diversity of opinion among the Judges on this point, whereupon I invited each of my colleagues to give me his views in writing. Judges Morice, Gregorowski, and Esser were agreeable to the request of the commission. Judge Ameshoff, however much he was disposed to help the commission, regretted that it was at present not open to him to do so, in that the President had not set to work in a manner which he (the Judge), regard being had to the understanding, had expected. Judge Jorissen preferred to have a complete draft Grondwet submitted to him before he would be in a position to give any advice. As far as I was concerned I took my stand entirely upon the written understanding of March, and regretted that for this reason and the fact that certain legal gentlemen, jointly responsible for the drafting and passing of Law No. 1, 1897, had been added to the commission as advisory members, I could not personally attend the commission. This latter reason was also given by Mr. Justice Ameshoff. I, however, added that I was prepared to give the commission the benefit of any advice they might require on any points in writing. I adopted this course for the following reasons: I could not act inconsistently and depart, by my presence on the commission, from the terms of the written under-

standing, and secondly, I had to avoid laying myself open to the charge that I had declined to help in, whatever the circumstances might be, bringing about a possible good work. My advice was not sought by the commission during its sittings in 1897. On the 12th November, however, the chairman of the commission wrote to me and regretted that the commission had not been able to present a report, and informing me that the commission hoped to resume its labours in the following February session of 1898, I was also desired to favour the commission with the views of the Judges in writing with regard to the necessary provisions to be inserted in the Grondwet concerning the Judiciary. After the session of the Volksraad had closed on the 17th November, I spoke to my colleagues Ameshoff and Jorissen on the subject of nothing further having been done during the long session from 3rd May to 17th November. Meanwhile Judge Morice had sailed for England, and Mr. Gregorowski had left the Bench and become State Attorney. Judges Ameshoff and Jorissen were, however, not disposed to move in the matter, I therefore on the 15th December wrote the President the following letter:

> "Your Honour,—Regard being had to the agreement arrived at between you, as Head of the State, and the Judges in March last, and to my letters of July 8, and September 10, 1897, addressed to Your Honour, I now have the honour to call your attention to the fact that the session of the Honourable the First Volksraad has come to a close without, in terms of the said understanding, any draft measure having been submitted to the First Volksraad for its preliminary approval, pending the further confirmation thereof by the people. I will be much obliged to Your Honour to be informed of the reasons for departing from the understanding concerning a draft Grondwet, and what Your Honour now proposes to do in order to return to the course originally indicated."

To this letter, written by me in my capacity of Chief Justice, no reply whatever was sent by, or on behalf of, the Head of the State. I, therefore, felt myself compelled and in honour bound to take some definite step, and on the 5th February, 1898, I wrote to the President stating that I did so in continuance of my letters of 8th July and 15th Dec.,

1897, and pointed out that, although I had patiently awaited the performance of the understanding, no draft Grondwet had, in terms of the understanding, been submitted to the First Volksraad during its session from 3rd May to 17th November, 1897, nor had any steps been taken for removing the measure, which bears the name of Law No. 1, 1897. I also added that as long as this does not take place the existing legal uncertainty remains, and the violation of the independence of the Judiciary continues. I further deemed it my duty again to remind the President that the understanding come to in March, 1897, with the Judges was of a reciprocal nature, and binding upon both parties, and that the only protection which I, as Judge, possessed, and the only honourable and constitutional course which I could adopt, was to consider the understanding of March last as having lapsed and no longer existing. I also wrote to the Chairman of the Volksraad Commission in answer to his letter of 12th November, stating that now that my vacation was over, and the commission hoped to resume its labours during the session commencing on 14th February, 1898, I must point out that the position had become changed since July, 1897, when the Chairman first approached me, in that the written understanding of March, 1897, between the President and Judges had, in my opinion, ceased to exist. I, however, intimated that I was at all times personally prepared to give a commission of the Volksraad, where such was possible, my advice in writing, and I enclosed a short outline of the provisions which, in my view, a Grondwet should contain so far as the Judiciary is concerned.

I have somewhat digressed, perhaps, in introducing the relations which existed between myself and this Volksraad Commission. I have, however, done so in order that there should be no misunderstanding of the correct position. The commission I could not, and did not, recognise as having been appointed under and in terms of the written understanding of March, 1897, upon which alone I have taken my stand, and by which alone I considered myself bound. In my attitude in this respect, and towards the President, I may frankly state that I have been perfectly logical and consistent throughout.

To my letter of 5th February, I on the 16th February last, received an answer stating that the written understanding come to with the Judges in March, 1897, was

absolute and irrevocable so far as the Judges are concerned, and not conditional so far as the President is concerned; that the President considered my letter to him as a virtual refusal to answer, or as an insufficient answer to the question which he had put me on the 4th March, 1897, and he therefore regretted that he was compelled to give me a dismissal from my office of Chief Justice, to take immediate effect. At the same time I may add, Mr. Gregorowski had been instantly sworn in as Acting Chief Justice. On the same day (16th February), I acknowledged the receipt of this last letter from the President, and pointed out that the President was in error when he states that the Judges were absolutely bound and that the understanding was not conditional upon his undertaking from his side to do certain acts. I also pointed out and insisted that the measure under which the President had acted, the so-called Law No. 1 of 1897, was illegal and unconstitutional; that my appointment was for life and that I could only be dismissed from office after a proper charge framed, and trial by a proper Court. Until this happens, I am and remain Chief Justice The President's reply to this is that he abides by what he has done.

VI. Such is a concise and correct account of the proceedings, which have led up to the perpetration of undoubtedly the most illegal and despotic act which the Head of the Republic—a civilized and Christian State—can possibly commit. After more than twenty years of unremitting and faithful service, and in spite of my appointment for life, and of the law which declares that a Judge can only be dismissed after due trial by a properly constituted Court, the high-handed and violent act of summarily dismissing me from my office as Chief Justice, and casting me adrift, is attempted and carried out. You, the inhabitants of the Republic, among whom I have laboured, have now the facts before you, and I appeal to you for justice. Why have I been thus dismissed? What has been my offence? I ask you, are the Laws and Constitution to be thus shamefully violated in order that under cover of an illegal measure a Judge, the Head of the Bench, may be attacked and punished because he had the courage and the conscience to to do his duty? Is this scandalous attack upon the independence of the High Court, in total disregard of Laws and Constitution, which safeguard it, to go unnoticed, uncondemned, and unpunished? Are we men or slaves in the

land? Because I have respected and sought to maintain the Constitution which the founders of the State have framed, and the people have created, and which lays down as essential requisites of its very existence the fundamental doctrines—

> "The Republic desires itself to be considered by the world as a free and independent people" (Art. 3),
>
> "All those, who find themselves within the territory of the Republic, have equal claim for the protection of their persons and rights" (Art. 6),
>
> "The people claim the greatest possible social freedom, and expect this from the observance of their religion, the performance of their obligations, and their adherence to law, order, and justice, and the maintenance of the same" (Art. 8),

—because (I say) I have attempted to respect and enforce these and other principles of our Constitution, and have done so in the discharge of my sacred functions, and in protection of those who seek naught but justice, am I to be dismissed and punished without trial?

We live in what the Constitution declares to be a free Republic, and we have come to a most critical point in its history. It is now for you to say whether you wish it to be a Constitutionally-governed country or subjected to an autocrat's will, with the more than probable danger that a factious majority, it may be of but one vote in the Legislature, persuaded thereto by a despotic President, can by means of a simple Volksraad resolution do with your rights and liberties, your investments and capital, whatever it pleases. With the loss of its independence, the Court becomes powerless to protect the citizens, whose rights have been invaded, for unless the Court can enforce the Constitution, as being of higher and superior sanction, and so protect the rights of the minority, there will speedily be an end to liberty and justice. It is not the first time that I have been called upon to raise a warning voice, and I repeat here what I have unfortunately before now had occasion to say: "The independence of the High Court is inseparably connected with the independence of the Republic." Remember that the guarantees provided by the Constitution and the ordinary law for the independence of the Judiciary have been introduced not merely for the protection of the members of the Bench, but also for the pro-

tection of every man, woman, and child in the country. By applying, in the exercise of my judicial functions, the testing right; in other words, by declaring that the Constitution must be respected, and that laws and resolutions in conflict therewith can not be enforced in the particular case before the Court, I have simply respected and protected your rights and liberties. This was displeasing to the head of the State, for it prevents him exercising his autocratic will, and compels him to conform to the terms of the Constitution. By the recent violation of the Constitution your rights as well as mine have been invaded. I, therefore, call upon you to aid and support me by all just and constitutional means in your power, in order to remedy the great evil that has befallen the country. Principles not men, a Constitution broad based upon a people's will and not tyranny, is what I have sought to honour and maintain. I call upon you to insist with me upon justice being done in my case; to insist upon my being put upon my trial by a competent and independent tribunal; to insist upon the immediate repeal of the so-called Law No. 1 of 1897, which is a blot in the history of the land; to insist upon the immediate amendment of the Grondwet, so that both the Constitution and Judiciary shall be protected against all sudden surprises and assaults. I have no hesitation in saying that unless these matters are speedily attended to and carried out, the gravest evils are bound to ensue. In striking a blow at the independence of the High Court, a blow has likewise been struck at the credit and stability of the State. I would be wanting in my duty if I did not raise my voice and point this out. It is for you now to say and decide whether you will stand by me and support me in the present crisis, and whether justice shall be maintained and prevail.

I am,

Your obedient Servant,

J. G. KOTZÉ,
Chief Justice.

APPENDIX.

[TRANSVAAL ADVERTISER, *15th March, 1897.*]

While there is yet time, we should fail in our duty to the people of this Republic if we did not urge upon the Government the propriety and wisdom of re-considering the vitally important subject of the position assumed towards the Judges of the High Court. Efforts have been unceasingly made for some time past to obscure the issues in the case, and to impress upon the ignorant and easily-led burghers of this Republic that it was necessary to restrain the Judges of the High Court in the performance of those duties which are imposed upon them by virtue of their office. Under an circumstances, the time has arrived when it is necessary, once for all, to answer the misleading statements which have been put forth in defence of the action of the Government, notably by the *Volksstem*, the *Press*, the *Standard and Diggers' News* here, and *Ons Land* in the Cape Colony. The object of the Government organs has been to obscure the nature of the attack upon the High Court by the adoption of tactics which every right-minded man must know are meant to cover the misdeeds of the Government and Legislature. The Chief Justice has been assailed upon the matter of the "Brown" judgment, both as to its legal soundness and to the time and circumstances under which it was pronounced. It has been made to appear that it was delivered for a personal and political purpose, and under that guise the important constitutional questions raised by it have been discreetly kept in the background. It is not necessary to refute this attempt to lower the status of the Chief Justice and his colleagues, as it is abundantly clear that if they had acted in the mode alleged, they would have done their best to defeat their own ends. It is not our purpose, however, to call attention to side issues in this important matter, but to state as simply and clearly as we can the facts of the case and their bearing upon the future of the Republic. In the "Brown" judgment the Court laid down the principle of its right to test laws made by the Volksraad by a reference to the written Constitution of the country. The legal advisers of the President, Messrs. Coster and Leyds, doubtless, finding that the establishment of such a principle would go far to make the position assured by the President and his obedient Legislature untenable, probably forced upon His Honour the necessity for direct legislation upon the matter. The Law No. 1, 1897, was consequently brought in, discussed in secret session, and passed through the Volksraad in the shortest possible time, viz., three days. That this action of the Government and the Legislature was ill-advised and dangerous to the people of this Republic, is shown by the universal condemnation which it has met, not only by the independent Press of South Africa, but also of Europe, both France and Germany having joined in the denunciation of the object of the so-called law.

It cannot too often be impressed upon the public that for the present the soundness or unsoundness of the "Brown" judgment has nothing to do with the present position of affairs. As a civilised nation, and, as is boasted, an independent State, the Transvaal is bound to respect the judgment of its own High Court. Should it be considered by the Government or the Legislature that the law or Constitution, as expounded and interpreted by its own High Court in any particular case, are found detrimental

to the interests of the State, they are within their right, the one to propose and the other to adopt measures in a legal and constitutional method, for bringing about a change either in the law or the Constitution. Instead, however, of adopting this safe course, one in which the Judges would probably have been willing, as well as competent, to give the benefit of their advice, a drastic measure was secretly drafted, considered, and suddenly placed before the Volksraad, and rushed through its stages in the shortest space of time. The plea of urgency was alleged in explanation of this precipitate action, as, according to the President, the newly proposed law could not brook an hour's delay. Under this guise of necessity a fatal step has been taken which has aggravated the evil, and, beyond question, has endangered the rights, liberties, and lives of every inhabitant in this State. This was done while there was yet time to recede, and against the solemn and unanimous advice and warnings of the Judges that there exists at present no real danger and no necessity for taking immediate steps. The wise counsels of the Judges against hasty legislation, and their assurance that the matter could be calmly and satisfactorily settled in the ensuing May session of the Volksraad were ignored, and the letter of the five Judges was not even officially placed before the Volksraad, as they had requested. Just as the Volksraad was rushed, a similar attempt was made to rush the Judges, who wisely refused to be a party to hasty legislation, which had for its aim the complete removal of the stability and independence of the Judiciary. It is this very measure, proposed by the President and his advisers, and sanctioned by the Volksraad, that forms the real ground for all the uncertainty and anxiety which at present exist. It is this fatal step, and not the "Brown" judgment, which has agitated men's minds to their very depths, and both in and out of South Africa has shaken confidence in the Transvaal as a civilised State. It is not difficult to account for this state of things. Under the plea of necessity, and under the plea of uncertainty, which has been used as a kind of Government scarecrow, a state of chaos and confusion has been created. Instead of calmly and with dignity setting to work to remove what might be considered objectionable in a legal and constitutional way, a measure is adopted which virtually amounts to an attack both on the Judges individually and on the independence of their high office. The Volksraad, contrary to the Constitution or Grondwet, practically changes itself into a Supreme Court of Appeal, and declares that the Judges in the "Brown" judgment—a judgment which by the law and Constitution of the land is final, and from which there is no appeal—have wrongly declared the law. Here the Volksraad clearly went beyond its own province and powers. It may just as logically reverse the "Brown" judgment. It is perfectly clear that until the Grondwet has been duly amended, the interpretation of the Grondwet by the High Court must be accepted by every person and every department of State in the country. The Volksraad may, in the exercise of its legislative functions, interpret the Constitution for itself, but it cannot interpret the Constitution so as to bind the Court. It is the exclusive right and duty of the High Court to interpret the Grondwet or Constitution for itself whenever, in any given case before it, it becomes necessary so to do. Again, the new measure—we cannot consider it law—is a distinct breach and violation of the numerous laws which guarantee to the members of the Bench their office for life. It is also a distinct breach and violation of the law which safeguards the Judges against any interference on the part of the Executive or Legislature, and which provides that the dismissal of a Judge can only take place after a proper charge brought before, and duly investigated by, a specially-constituted tribunal, and after its verdict of guilty, and none other. All these constitutional and necessary guarantees have been blown to the winds, and all these safeguards have been ruthlessly destroyed. It is, therefore, nothing but natural that men should

fear and tremble, and ask themselves the question—What next? The spectacle of independent Judges being summarily dismissed at the dictation of the President, in violation of their appointment for life, and cast adrift, converts the Republic into an uncivilised and barbarous country. It is an act of injustice and unrighteousness which might be expected from a despot, but which will inevitably bring appropriate punishment upon a country which boasts of its civilisation and Christianity. It is this which has made the capitalist more than uneasy about his investments in properties of all descriptions It is this that has created distrust in the mind of the poor and industrious man who has invested his modest savings in some form or other in the country, and who no longer feels safe as to the security of such investment. The argument advanced by one of our local contemporaries, that the recent action of the Government and Volksraad is to be justified because many rights on the goldfields are secured by mere *besluiten*, or resolutions of the Volksraad, is thus seen to be a hollow sham. Men naturally enquire—when the independent and highest Judges of the land are treated in this summary, illegal, and drastic manner by the simple brushing away of the laws which guarantee their position for life, and protect them against improper interference and dismissal—of what account are we and our belongings—we who are simple burghers or unenfranchised inhabitants of the land? It is a mockery to tell us that, in order to secure our rights, the rights of the Judges of the land, clearly and solemnly guaranteed, must be swept away—rights and guarantees, moreover, established quite as much for the protection of the public and the gold industry as for the Judges themselves. The public have a right to insist on the dignified, impartial, and independent administration of justice. To deprive the people of this right is a palpable invasion of their liberties. It is a natural inference that what has happened to the Judges to-day may happen to the burgher to-morrow. This is the *real issue* and the true position of the question. It is that which has created the terrible tension. It is that which makes men marvel at the astoundingly dangerous feats performed recently by President Kruger. It is not to be forgotten that he has boasted frequently of late that the principles of the Republic and of himself were that "Right is might," and not the converse, "Might is right."

We may just refer to a statement which has been much made of by the apologists for the Government, viz., that the honoured Chief Justice of the Cape Colony "is heartily at one" with the attitude adopted by the President and his legal advisers with regard to the Judges. It is scarcely probable that so eminent and experienced a jurist would give such an opinion, and we prefer to wait until Chief Justice De Villiers himself authorises such a declaration. In the meantime we must protest against the attempt to identify that gentlemen with the sentiments of Messrs. Coster and Leyds in the development of this miserable and fatal business. The Government have sown the wind, and of a certainty will reap the whirlwind, and no man possessing a sense of responsibility can dare approve of the attack made upon the independence of the Judges in the exercise of their judicial functions. A measure which reduces the Judges to the level of mere servants of the President, who shall have the right at any time to interpellate them on pain of instant dismissal, even when a case may be pending against the Government, endangers the liberty of the citizen and the State. This, we repeat, is the issue, and it behoves all men who have interests in this country, or wish well to the Republic, to avoid being led away by the shallow defences made by the apologists of the Government for an attack upon the sacred liberties of the people.

PRETORIA, TRANSVAAL.