Judge Rogers draws on a wealth of published and archival material to present a lively, occasionally provocative, account of the lawyers caught up in the Jameson Raid – in the dock, at the bar, on the bench, behind the scenes. Was Kotzé CJ as faithful to Kruger as he would have us believe? Did the Pretoria bar’s future leader, Ewald Esselen, belong to an anti-Kruger Boer fifth column? Was Johannesburg’s Jim Leonard QC part of the conspiracy’s inner core or an innocent latecomer? And how should we judge his brother Charles, a leading attorney, who managed to evade trial? These and other questions are explored in a work full of drama, incident and anecdote.

Since the subject of judicial misconduct hearings is topical, readers may be interested in the following instances from our distant past which I came across in the course of researching a book on the lawyers caught up in the Jameson Raid. Before the establishment of the Judicial Service Commission in 1994, there were, to the best of my knowledge, only two judicial impeachment hearings in South Africa, both dating back to the last decades of the 1800s.

The first was an enquiry into the conduct of James Coleman Fitzpatrick. This likeable Irishman, father of the more famous Sir Percy, began his judicial career in Australia’s Gold Coast. Such had been the effects of this territory’s insalubrious climate on his predecessors that when asked by the authorities whether he had any requirements before taking up the position, he remarked that he thought it not unreasonable that his funeral expenses be paid in advance. But he survived, and in 1861 he relocated to South Africa as the judge of a colony with King William’s Town as its capital. In 1865, with the establishment of the Eastern Districts Court, he was transferred to Grahamstown and in 1869 to Cape Town.

In 1878 he became the first South African judge to face impeachment. The complaints against him were many: intemperance, falling asleep in court, confusing the facts of the various cases he was trying, delaying a judgment for more than a year, directing a jury that on a count of assault they could convict the prisoner of murder, and more. The most recent charge of
misconduct concerned his behaviour in early June 1878. On 25 June the Cape parliament established a select committee to enquire into the matter. The nine-man committee was headed by the attorney-general, Thomas Upington. It delivered its report on 30 July, having heard oral evidence from 38 witnesses and received affidavits and documents. The witnesses for and against the judge were a who’s who of the Cape’s professional world, including several future judges. A majority of the committee dismissed all the serious charges, and Fitzpatrick was allowed to continue in office, but he resigned in 1879 and died in 1880.

The second case was an 1896 enquiry into the conduct of Benedict de Korte, a judge in Kruger’s South African (Transvaal) Republic. The republic’s chief justice was J G Kotzé, later a judge in Grahamstown, Cape Town and the Appellate Division. De Korte was an unintended victim of the Jameson Raid. Among the documents seized by the prosecuting authorities in the course of their investigation into the Raid was a letter-book belonging to one of the conspirators, a mining magnate, which revealed that De Korte had drawn bills on a mining house which he could not honour. Lionel Phillips, the magnate in question, wrote to his correspondent: ‘The spectacle of a judge crying in one’s office over his misdeeds is novel, and I hope never to have to witness it again.’

As soon as the trial of the Jameson Raid conspirators was done (this was late April 1896), the state attorney, Herman Coster, brought the letter to the attention of the government. De Korte said he wanted to have the matter resolved without delay. A tribunal headed by Kotzé was set up. Coster prosecuted while De Korte was represented by John Wessels, later a chief justice of the Union. Proceedings got underway on 10 June. After taking the evidence of five witnesses, including De Korte and Phillips (who was still in prison), the Tribunal issued its decision on 19 June. It found that De Korte should get the benefit of the doubt, with the result that the charge of judicial misconduct was found not to have been proved, though his behaviour was said not to have been compatible with his judicial position (a contradiction in terms, one would have thought).

De Korte, claiming the outcome as a victory, promptly resigned and returned to the bar. He was responsible for a memorable put-down of his former counsel. After the Boer War, De Korte was on circuit with Wessels, by that time a Transvaal judge. Wessels complained that he was feeling poorly on account of a severe head cold. De Korte commiserated, ‘No doubt, a cold always strikes at the weakest spot’.

Those interested in reading more about these and other legal curiosities will be able to do so in Judge Rogers’s book, Lawyers in Turmoil: The Johannesburg conspiracy of 1895, to be published later this year.

A lively, at times provocative, account of the Jameson Raid lawyers.

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