

The First Magistrates of Potchefstroom

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Abstract

Although the history of Potchefstroom has been studied extensively already, not much is known about the early judicial officials appointed there. This contribution in honour of Professor Willemien du Plessis upon her retirement attempts to remedy this by taking a closer look at the various individuals appointed as the magistrates for Potchefstroom in chronological order from 1839 to 1862. The scope of this contribution does not allow for an in-depth discussion of each magistrate. Instead, the focus of this study is to determine who the first appointees were and to establish the starting and ending dates of each magistrate's term in office. Where possible, the discussion also includes some personal information and anecdotes about each individual magistrate in order to distinguish them from their predecessors and successors to give the reader a better idea of the personality behind the name. Important judicial (or political) events that took place during each individual's term in office are also highlighted.

Keywords

Legal history; Zuid-Afrikaansche Republiek; judicial officials; magistrates; Potchefstroom; Jacob de Clercq; Piet Louw; JH Grobler; Johannes Hendrik Visage; HS Lombardt; AA Smit; DH Botha; JDE Grimbeek; JC Steyn.

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1 Introduction

It was easy to choose a topic for a contribution to the special legal history edition dedicated to Professor Willemien du Plessis. She has been teaching at the North-West University in Potchefstroom for many years. I first met her at a gathering of legal historians a long time ago and have come to know her as a dedicated and well-respected scholar. Moreover, and probably more importantly, I found her to be one of those academics who is genuinely caring, friendly and approachable and who never hesitates to lend a helping hand, even to a young colleague like me whom she barely knew at the time. It was clear to me that my contribution dedicated to Willemien had to encompass her love for legal history, her affinity to Potchefstroom and her attention to the individual. Although much has been written about the history of Potchefstroom,¹ not much in particular has yet been said about its first judicial officials. This contribution therefore takes a look at the individuals appointed as magistrates for Potchefstroom during the early years of the Zuid-Afrikaansche Republiek (hereafter ZAR) from 1839 to 1862.

Potchefstroom² was one of the first settler towns³ north of the Orange River established by the Boer emigrants who had left the Cape colony during the 1830s to get away from British rule. The town gained prominence after the British annexation of Natal in 1843,⁴ and was established as the capital of the ZAR in terms of its 1858 Constitution.⁵

The scope of this contribution does not allow for a detailed account of the historical background of the ZAR during the period in question.⁶ However,

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¹ See, for example, Van der Walt *et al Potchefstroom 1838-1938*; Haasbroek *Geskiedenis van Potchefstroom*; Prinsloo *Potchefstroom 150*; Jenkins *A Century of History*.

² For more on the name of the town, see Haasbroek *Geskiedenis van Potchefstroom* 8-15; Badenhorst "Geskiedenis van Potchefstroom" 16-18.

³ The question whether Potchefstroom or Klerksdorp is the oldest settler town in the ZAR falls outside the scope of this study and is not discussed here. However, see the lively debate between Marx (the former curator of the Klerksdorp Museum) and Van den Bergh (a professor in history at Potchefstroom University for Christian Higher Education at the time) on this matter: Van den Bergh 1985 *Contree*; Marx 1986 *Contree*; and Van den Bergh 1990 *Contree*.

⁴ Badenhorst "Geskiedenis van Potchefstroom" 27-29; Wildenboer 2016 *Fundamina* 348 fn 2.

⁵ Pretoria was indicated as the seat of government. See art 17 of the 1858 Constitution published in Eybers *Select Constitutional Documents* 362-410 at 365. See, also, Haasbroek *Geskiedenis van Potchefstroom* 95-99; and, in general, Rex *Pretoria van Kerkplaas tot Regeringsetel* for the events and factors that preceded the decision regarding the location of the capital of the ZAR.

⁶ A vast body of work exists on the history of the ZAR. For an overview of the history of the ZAR, see, in general, Theal *History of South Africa: The Republics and Native*

as can be expected from any pioneer state, these early years of the Republic were tumultuous. Apart from the threat of military invasion and the subsequent disruption that followed each such event, the country also feared interference from Britain.⁷ The Republic relied on its leaders to guide them through these uncertain times. Unfortunately, the leadership structures themselves did not remain constant and were marked by division, political dissension and civil strife.⁸ Unsurprisingly, each new regime wanted to appoint their own supporters in important government positions. This naturally impacted on the appointment of government officials, including magistrates, as will become clear from the discussion below.

In addition to political tension, the magistrates had a lot to contend with. Their duties during these early years extended far beyond the administration of justice, which was by no means sophisticated and has been discussed elsewhere.⁹ Moreover, it should be kept in mind that none of the persons appointed during this period had any formal legal training, and that most of them had therefore little or no in-depth theoretical knowledge of legal principles.¹⁰ It is perhaps for this reason that the Volksraad in September 1853 decreed that all magistrates were "to apply themselves more to the laws contained in the Resolutions of the [Volks]Raad in order to be able to be of more assistance to the Raad".¹¹

The next paragraph attempts to describe how the first magistrates of Potchefstroom dealt with the numerous challenges they faced during each of their terms in office.

Territories from 1854 to 1872 25-47, 124-140; Theal *History of South Africa from 1795 to 1872* (vol 3) 370-440; Theal *History of South Africa from 1795 to 1872* (vol 4) 434-453; Wichmann 1962 *Argief-jaarboek vir Suid-Afrikaanse Geskiedenis* 20-255; Pelzer *Geskiedenis van die Suid-Afrikaanse Republiek*; Van der Merwe 2017a *Fundamina* 126-164; Van der Merwe 2017b *Fundamina* 119-128; Breytenbach and Pretorius *Volksraadnotule vol 1* xxii-xxvi.

⁷ Britain later acknowledged the ZAR's independence through the signing of the Sand River Convention in 1852. See, in general, Wichmann 1962 *Argief-jaarboek vir Suid-Afrikaanse Geskiedenis* 110-117. For a copy of the Convention, see Eybers *Select Constitutional Documents* 357-359.

⁸ See Pelzer *Geskiedenis van die Suid-Afrikaanse Republiek* 63-69.

⁹ See, in general, Wildenboer 2016 *Fundamina*; Wildenboer 2017 *Fundamina* 176-183. See, also, Haasbroek *Geskiedenis van Potchefstroom* 70-87.

¹⁰ Justice Kotzé, who was later appointed as the first Chief Justice of the ZAR from 1881, greatly deplored this state of affairs. See Kotze *Biographical Memoirs and Reminiscences* 440-442. See, also, Wildenboer 2011 *De Jure* 362. Formal legal education for attorneys and advocates was only required from 1877. See Wildenboer 2011 *De Jure* 341-349.

¹¹ Breytenbach *Volksraadnotule vol 2* 166-167, art 105 of the minutes of the Volksraad of 27 Sep 1853; translation as per Jeppe and Gey von Pittius *Statute Law of the Transvaal 1839-1910* 5. Non-compliance was liable to a fine of 25 riksdaalders. It is not sure how this law was enforced in practice or whether it had any impact on legal development within the various magisterial districts.

2 The first magistrates

This part takes a closer look at the various individuals appointed as the magistrates of Potchefstroom in chronological order from 1839 to 1862. Naturally, the limitations of an article such as this does not allow for an in-depth discussion of each magistrate. Instead, the research here attempts to establish the starting and ending dates of each magistrate's term in office. Where possible, the discussion also includes some personal information and anecdotes about each individual magistrate in order to distinguish them from their predecessors and successors to give the reader a better idea of the personality behind the name. Mention is further made of important judicial (or political) events during each individual's term in office.

2.1 *Jacob de Clercq*¹² (1839-1841)

Jacob de Clercq¹³ was appointed as the first magistrate of Potchefstroom.¹⁴ Interestingly, he was appointed by the Natal Volksraad on 7 September 1839¹⁵ for the territory west of the Drakensberg. At first, he sat not at Potchefstroom, but at Schoonspruit (later known as Klerksdorp and today known as Matlosana).

For political reasons,¹⁶ De Clercq's appointment met with resistance from the community who had settled at Potchefstroom. He eventually resigned from this position in October 1841,¹⁷ whereafter he moved to Natal. However, after the British annexation of Natal, he returned to the ZAR in 1846 and joined the Potgieter community at the newly established Ohrigstad,¹⁸ where he was elected as member of their council of

¹² The historical documentation uses various forms of spelling in referring to Jacob de Clercq. These include "De Klerk", "De Klercq" and "De Clerq". See, respectively, Breytenbach and Pretorius *Volksraadnotule vol 1* 79, art 3 of the minutes of the Ohrigstad Volksraad of 3 Feb 1848; 80, art 1 of the minutes of the Ohrigstad Volksraad of 4 Apr 1848; and 81, list of attendees of the minutes of the Ohrigstad Volksraad of 20 Apr 1848. Previously, I used the form "De Klerk" – see Wildenboer 2017 *Fundamina* 174-175. However, it is probably best to use the form indicated on his tombstone, namely "De Clercq", and this is thus the form used here.

¹³ A portrait of him appears in Marx 1986 *Contree* 28. For a fascinating recount of De Clercq's life, watch Roux 2021 <https://www.youtube.com/watch?v=OK6BAGpZIFQ>. I am much indebted to Mr Riaan Roux, with whom I had an interesting conversation about Jacob de Clercq, and who very kindly and generously shared his sources with me, including a copy of De Clercq's death notice (see fn 20 below), some of which I have made use of here.

¹⁴ See Wildenboer 2017 *Fundamina* 174-175 and the sources cited there.

¹⁵ Although he is mentioned in the capacity of magistrate by as early as Jun 1839. See Van den Bergh 1985 *Contree* 5 and the sources cited there.

¹⁶ Wildenboer 2017 *Fundamina* 174-175. See, also, Marx 1987 *Restorica* 29.

¹⁷ Wildenboer 2017 *Fundamina* 174 fn 79.

¹⁸ Botha *Gemeente Klerksdorp* 6.

representatives in December 1847.¹⁹ De Clercq later moved to Lydenburg (today known as Mashishing) when Ohrigstad became untenable due to the prevalence of malaria in that area. After this, De Clercq²⁰ gradually withdrew from public life and increasingly focused on his farming activities.²¹ He should not be confused with his son, also Jacob, who was appointed as the magistrate of Lydenburg in 1850,²² but who predeceased his father in 1875.²³

2.2 Piet Louw (1841)

Piet Louw appears to have been appointed as magistrate of Potchefstroom in November 1841.²⁴ The earliest document referring to him in this capacity is dated 1 November 1841²⁵ and is signed by him as "P. J. Lou Landeros". Yet there does not appear to be any official documentation regarding his appointment, his taking the oath of office or his eventual resignation. As a result, not much is known about his term in office, nor of the reasons why he remained in office for such a short period.

What is clear from the evidence, however, is that the Volksraad later required Louw to give account of his activities as magistrate. In January 1850, the Volksraad requested Louw to appear before them in person to do just that.²⁶ When he failed to show up at their next sitting in May of that year, the Volksraad ordered that his property be confiscated and sold in execution to settle the amount still due to the state treasury for a farm that he had sold on behalf of the town of Potchefstroom in his capacity as magistrate.²⁷ The Volksraad repeated its request that Louw appear before it to provide details

¹⁹ Breytenbach and Pretorius *Volksraadnotule vol 1* 74, minutes of the Ohrigstad Volksraad of 15 Dec 1847.

²⁰ De Clercq was born in 1791 and died on 12 May 1881 at Lydenburg. He was buried with his wife and son (also Jacob – see fns 22 and 23 below) in the family cemetery on their farm, Welgevonden. See De Clercq's death notice (a copy of which is on file with the author); Marx 1987 *Restorica* 31. However, in 1986, the remains of De Clercq and his wife were exhumed and reburied at Klerksdorp as part of the city's one-hundred-and-fifty-year commemorative celebrations.

²¹ Marx 1987 *Restorica* 31.

²² Breytenbach and Pretorius *Volksraadnotule vol 1* 138, art 45 of the minutes of the Lydenburg Volksraad of 27 May 1850; 139, art 51 of the minutes of the Lydenburg Volksraad of 28 May 1850. His salary was set at 900 riksdalders. See Breytenbach and Pretorius *Volksraadnotule vol 1* 149, art 20 of the minutes of the Potchefstroom Volksraad of 16 Oct 1850. De Clercq Jr had earlier also been appointed as member of the *heemraden* for Ohrigstad. See Breytenbach and Pretorius *Volksraadnotule vol 1* 87, art 8 of the minutes of the Ohrigstad Volksraad of 7 Oct 1848.

²³ Marx 1987 *Restorica* 31. See, also, fn 13.

²⁴ Wildenboer 2017 *Fundamina* 175.

²⁵ R88/41 published in Pretorius, Kruger and Beyers *Voortrekker-Argiefstukke* 146.

²⁶ Breytenbach and Pretorius *Volksraadnotule vol 1* 114, art 16 of the minutes of the Volksraad of 23 Jan 1850.

²⁷ Breytenbach and Pretorius *Volksraadnotule vol 1* 128-129, art 24 of the minutes of the Volksraad of 22 May 2022.

on how he had dealt with the monies from the sale and added that if he again failed to report to them, he would lose all claims in this regard.²⁸ This ultimatum proved effective, because Louw indeed appeared before the Volksraad at their subsequent sitting in October 1850, where he submitted a report regarding the matter in question to the satisfaction of the Volksraad. In fact, it was then noted that Louw was still owed an amount of 294 riksdalders as part of his salary, which was then awarded to him. It was also agreed that the sale of Louw's properties would be postponed pending further investigation.²⁹

Louw apparently left the country in 1850, although it is not clear why.³⁰ In January 1851, the Volksraad received a petition signed by forty-one people, requesting that Louw's confiscated properties be restored to him.³¹ Unfortunately for Louw, this did not sway the Volksraad from their original decision, although they did indicate that once the properties had been sold at public auction, they would be willing to consider returning at least some of the monies to Louw.³² In July 1851, Louw himself wrote to the Volksraad, stating that he had fallen on hard times, especially since he had to pay a large amount to the British authorities for war expenses.³³ He pleaded with the Volksraad to return at least one of his two confiscated farms to him,³⁴ but to no avail. The public auction was planned for the first Wednesday in March 1851, subject to the selling price not being less than 5 000 riksdalders.³⁵ However, that auction seemed to have been unsuccessful,

²⁸ It is not clear from the minutes what the exact amount was. The evidence refers to 3 000 riksdalders that JA Beetge was in the process of collecting from Louw, but in the very next paragraph refers to the amount as being 2 000 riksdalders. See Breytenbach and Pretorius *Volksraadnotule vol 1* 220-221, art 2 of the minutes of the Ohrigstad Volksraad of 23 Sep 1846. Johannes Andries Beetge had been elected as administrator of estates for the district of Ohrigstad in Sep 1846. He was probably acting in this official capacity when collecting the amount from Louw.

²⁹ Breytenbach and Pretorius *Volksraadnotule vol 1* 147, art 6 of the minutes of the Volksraad of 16 Oct 1850.

³⁰ In two documents, it is stated that Louw had left the country (*die maatsch(a)ppey verlaaten*) without any further information as to why, when or where Louw had gone to. See Breytenbach and Pretorius *Volksraadnotule vol 1* 315-316, Bylaag 8, 1850; and Breytenbach *Volksraadnotule vol 2* 435-436, Bylaag 55, 1853.

³¹ It was signed by a few influential people, including none other than the Boer leader at the time himself, Andries Pretorius; his son (and future president of the ZAR), MW Pretorius; as well as a future magistrate of Potchefstroom, JH Visage (see below at para 2.4). The petition was published with the minutes of the Volksraad – see the next footnote.

³² Breytenbach *Volksraadnotule vol 2* 9-10, art 27 of the minutes of the Volksraad of 15 Jan 1851.

³³ Unfortunately, the letter didn't specify which war, although he may have been referring to the Battle of Boomplaats, in which British forces had won a victory over the Boer forces on 29 Aug 1848.

³⁴ Breytenbach *Volksraadnotule vol 2* 219, Bylaag 19, 1851.

³⁵ Breytenbach *Volksraadnotule vol 2* 17-18, art 70 of the minutes of the Volksraad of 15 Jan 1851.

as by August 1853, only one of the two farms had been sold.³⁶ At their next sitting in September 1853, the Volksraad again instructed the then magistrate to sell the remaining farm for not less than 5 000 riksdaalders.³⁷ Two years later, Louw again enquired about the matter.³⁸ In September 1855, the matter was finally resolved when the Volksraad decreed that the full amount of 4 500 riksdaalders received for the sale of the two farms³⁹ be repaid to Louw, but without any interest. He would also receive a further amount of 2 000 riksdaalders for his town property, which had also been confiscated. The government had to sell other public properties in order to raise the funds to repay Louw.⁴⁰ A financial report of 1860 confirmed that Louw received a total amount of 6 500 riksdaalders from the government in 1855.⁴¹

The lack of evidence regarding Louw's term in office is frustrating as many questions remain unanswered. The primary concern here, of course, is why Louw had failed to transfer the monies owed to the government in the first place. However, the fact that Louw was later granted not only his overdue salary, but eventually also the full amount received for both farms and his town property, seems to indicate that his name (and his debt) had been cleared at last. Unfortunately, nothing else is known about Louw's term as magistrate, but it can be assumed that he had done a good job if so many citizens had tried to intervene on his behalf in his absence.

2.3 JH Grobler (1841-1842)

Some authors regard Hans Grobler (also nicknamed "Ou Skikker" or "Hans Duikervoet")⁴² to have been the first magistrate of Potchefstroom.⁴³

³⁶ As is apparent from a letter by WJ Steyn, the field cornet, reminding the Volksraad of the unsold property. See Breytenbach *Volksraadnotule vol 2* 435-436, Bylaag 55 of 1853.

³⁷ Breytenbach *Volksraadnotule vol 2* 158-159, art 71 of the minutes of the Volksraad of 23 Sep 1853.

³⁸ Breytenbach *Volksraadnotule vol 3* 54, art 64 of the minutes of the Volksraad of 12 Jun 1855.

³⁹ Deelkraal and Naauwpoort.

⁴⁰ Breytenbach *Volksraadnotule vol 3* 100-101, art 44 of the minutes of the Volksraad of 18 Sep 1855.

⁴¹ Breytenbach *Volksraadnotule vol 4* 364-377 at 373, Bylaag 38, 1860. The financial report was filed as addendum 2 to the report of the commission tasked with investigating the government finances, and appeared under the heading *Oude Schuld gemaakt voor de Grondwet of Constitutie* (old debt incurred before the Constitution).

⁴² For more on his life, see Du Plessis "Grobler, Johannes Hermanus" 364-365. Grobler's nicknames were due, respectively, to his role as negotiator during the impending civil war during the 1860s, and to a temporary limp caused during a hunting excursion when he had been injured by the horn of a duiker, a kind of small antelope.

⁴³ See, eg, Du Plessis "Grobler, Johannes Hermanus" 364; Badenhorst "Geschiedenis van Potchefstroom" 11-12; Haasbroek *Geschiedenis van Potchefstroom* 7, 70.

However, as is clear from the previous paragraphs, that is not correct.⁴⁴ Perhaps this oversight was due to the fact that De Clercq had his seat of office at Schoonspruit and not at Potchefstroom, and that Louw served for such a short term. Or, perhaps, the previous location of Potchefstroom was not deemed to represent Potchefstroom, the town being viewed by some as only being established once it was moved downriver, as explained below.

Whatever the case may be, Grobler, in his capacity as magistrate, oversaw the town planning in December 1841, when the original settlement at Potchefstroom was moved to a new location seven miles downriver after flooding had proven that the original location was not viable.⁴⁵ There is very little other documentation available regarding Grobler's term in office. I could find only one document, dated 30 November 1842, mentioning Grobler in his official capacity as magistrate of Potchefstroom.⁴⁶ However, other evidence suggests that, as part of his duties as magistrate, Grobler officiated at the wedding of another future president of the ZAR, Paul Kruger and his wife, Maria du Plessis, in 1842.⁴⁷ Seven years later, at a public meeting held at Derdepoort on 23 May 1849, Grobler was formally requested to hand over the "Lands Boek van Potchefstroom" (presumably the list of property titles of the Potchefstroom district) at the next sitting of the Volksraad.⁴⁸ From this scanty evidence, it therefore appears that Grobler was acting in the capacity as magistrate of Potchefstroom from December 1841 until at least the end of November 1842, although his term

⁴⁴ All three scholars in the previous footnote provide as reference for this assumption the same source, namely Grobler's obituary published in the ZAR newspaper, *De Volksstem* of 17 Sep 1892. The obituary actually appeared in that newspaper on Tuesday, 18 Sep 1892, and merely stated that Grobler had been the first person to have been appointed as magistrate in the ZAR (*De heer Grobler was de eerste persoon die de betrekking van Landdrost in dit land bekleed heeft*). Bearing in mind that this obituary was written nearly fifty years after Grobler's appointment, and that there was a lack of written evidence regarding the appointment of persons to the magistrate's office during those early years of the ZAR, one can forgive the newspaper editor for this oversight. However, as is clear from paras 2.1 and 2.2 above, Grobler was not the first, but indeed the third, person to have been appointed as magistrate of Potchefstroom.

⁴⁵ Badenhorst "Geschiedenis van Potchefstroom" 11-12; Du Plessis "Grobler, Johannes Hermanus" 364; Haasbroek *Geschiedenis van Potchefstroom* 7, 70.

⁴⁶ R103/42 published in Pretorius, Kruger and Beyers *Voortrekker-Argiefstukke* 176. The document is very brief and concerns a matter regarding the farm Vaalbank of one Daniel van Vuren (senior), that was situated north of the Vals River.

⁴⁷ Badenhorst "Geschiedenis van Potchefstroom" 26-27. Van der Vyver "Visage, Johannes Hendrik" 815 incorrectly states that the wedding was officiated by JH Visage, but that cannot be correct, since Visage was appointed as magistrate of Potchefstroom only three years later. (See para 2.4 below.) Krüger "Kruger, Stephanus Johannes Paulus" 465 confirms that the wedding indeed took place in 1842, but adds that Maria died a mere four years later, in 1846.

⁴⁸ R180/49 published in Pretorius, Kruger and Beyers *Voortrekker-Argiefstukke* 388-390. For more on Kruger's life, see Krüger "Kruger, Stephanus Johannes Paulus".

probably extended beyond that since the next name mentioned in that capacity only appeared three years later.

In 1845, Grobler left Potchefstroom for the newly established Ohrigstad (where former Potchefstroom magistrate De Clercq would also later reside), and he was promptly appointed as magistrate for that district. Grobler remained interested in political affairs and later served in various positions – sometimes reluctantly⁴⁹ – including as member of the Volksraad, of the Executive Council and as acting president⁵⁰ during MW Pretorius' absence in 1860. However, this latter appointment infuriated some political opponents. On 20 November 1860, an angry mob threatened Grobler and the government secretary, JHM Struben, resulting in them having to flee Potchefstroom the next morning.⁵¹ Both then tried to resign,⁵² but instead, were held to be in dereliction of their duties and the Attorney General was requested to investigate the case.⁵³ The matter was dragged out for four years, until October 1864, when both Grobler and Struben were honourably dismissed⁵⁴ from their previous positions, but only after the reinstated president Pretorius had intervened on their behalf,⁵⁵ and after they had been required to report on their activities during their respective terms in office.

After this, Grobler resigned from public office entirely and withdrew to his farm, Gemsbokheuvel, in the Ermelo district. He seems to have been a family man and to have been devoted to his first wife, Baltharina Johanna

⁴⁹ In May 1859, Grobler tried to resign as member of the Volksraad, citing personal problems and illness (*huiselyke omstandigheden en ziekte*). His request was denied on the basis of art 89 of the 1858 Constitution, which had been adopted the previous year. Article 89 provided for the requirements for eligibility as member of the Executive Council and stated that a person, once appointed, had to serve for three years. For Grobler's letter and the Volksraad's response, see respectively Breytenbach *Volksraadnotule vol 4* 245, Bylaag 13, 1859; and 5-6, art 7 of the minutes of the Volksraad at their extraordinary meeting of 3 May 1859. In Sep 1860, Grobler tried to resign as acting president when his temporary appointment of six months had expired and because Pretorius had returned and would be reinstated. Again, the request was denied, this time due to the political strife that had erupted in Pretorius' absence. For Grobler's letter and the Volksraad's response, see respectively Breytenbach *Volksraadnotule vol 4* 360-361, Bylaag 31, 1860; and 81, art 155 of the minutes of the Volksraad of 28 Sep 1860.

⁵⁰ For his first official address to the Volksraad in this capacity, see Breytenbach *Volksraadnotule vol 4* 38-39, art 2 of the minutes of the Volksraad of 3 Apr 1860.

⁵¹ Badenhorst "Geschiedenis van Potchefstroom" 70-71. See, also, fn 160 below.

⁵² Breytenbach *Volksraadnotule vol 4* 403-404, Bylaag 65, 1860; 408, Bylaag 72, 1860; 409, Bylaag 73, 1860.

⁵³ Breytenbach *Volksraadnotule vol 4* 114-115, art 67 of the minutes of the Volksraad of 11 Apr 1862.

⁵⁴ Breytenbach and Joubert *Volksraadnotule vol 5* 64 and 67, arts 205 and 217 of the minutes of the Volksraad of 5 Oct 1864; 188, Bylaag 49, 1864; 320, Bylaag 115, 1864.

⁵⁵ Breytenbach *Volksraadnotule vol 4* 503, Bylaag 30, 1863. This request was supported and signed by Paul Kruger, who would later become president of the ZAR.

Wagenaar, with whom he had sixteen children. Although he remarried after her death, he was later buried with Baltharina at Gemsbokheuvel in 1892.⁵⁶

2.4 Johannes Hendrik Visage (1845-1847)

The first mention of a new magistrate for Potchefstroom is in a document dated 11 June 1845 and is signed by Johannes Hendrik Visage in that capacity.⁵⁷ Two months later, Visage wrote to the military leader (*hoofdcommandant*) and the Volksraad regarding several points, requesting urgent guidance on aspects of his office, including legislation and instructions regarding the town's title deeds;⁵⁸ permission to establish a court of appeal consisting of twelve citizens;⁵⁹ clarity on the jurisdiction of the court of magistrate and *heemraden*; as well as advice on how to deal with persons refusing to recognise any judicial authority.⁶⁰ Visage pleaded for a speedy response, due to the general lawlessness.⁶¹ The eventual response almost three months⁶² later addressed all his queries, advising him to suspend any further sale of government land for the time being; and referring him to the Instructions issued earlier.⁶³ He was reminded that serious matters could only be heard by the Volksraad's court of appeal and that the court of magistrate and *heemraden* had no jurisdiction in such matters. The response didn't address the lawlessness, but instead reassured Visage that once again all was calm and peaceful in the country.

⁵⁶ Du Plessis "Grobler, Johannes Hermanus" 365.

⁵⁷ R108b/45 published in Pretorius, Kruger and Beyers *Voortrekker-Argiefstukke* 185-186.

⁵⁸ He stated that, at the very least, he required the "boek van dit dorp en erfe" (presumably the same *Lands Boek van Potchefstroom*, at that time still in the possession of the previous magistrate, Grobler) to be able to fulfil his duties. See fn 48 above. See, also, Haasbroek *Geskiedenis van Potchefstroom* 18 for a discussion of the procedure for the sale of government property.

⁵⁹ In terms of the 1841 Regulations (see fn 82 below), civil appeals were no longer heard by a court consisting of a magistrate and twelve jury members, but either by a court of appeal consisting of five members of the Volksraad or a special court appointed by the Volksraad. See Wildenboer 2016 *Fundamina* 359.

⁶⁰ Breytenbach and Pretorius *Volksraadnotule vol 1* 156-157, Bylaag 2, 1845.

⁶¹ He warned that without clear instructions, he would be unable to prevent lawlessness from completely taking over (*de ongeregeldheid neemt ganschelyk de overhand*).

⁶² Breytenbach and Pretorius *Volksraadnotule vol 1* 165-167, Bylaag 7, 1845. The letter was dated 27 Oct 1845 and sent from Ohrigstad, so it probably only reached Potchefstroom a few days later.

⁶³ Most probably referring to the 1841 Regulations, which confirmed the earlier 1838 Regulations with a few amendments. See fn 82 below. See, also, Wildenboer 2016 *Fundamina* 348-355. However, it is possible that this reference was to the instructions to magistrates, issued by the Volksraad in Sep 1849. These instructions have been lost. See Breytenbach and Pretorius *Volksraadnotule vol 1* 103, art 17 of the minutes of the Volksraad of 19 Sep 1849.

The last official documents mentioning Visage in the capacity as magistrate of Potchefstroom were dated 4 and 9 March 1847.⁶⁴

Johannes Hendrik Visage⁶⁵ would later serve in various other government positions, including as member of the Volksraad and as member of the Executive Council. He was also present at the signing of the Sand River Convention in 1852⁶⁶ – in which Britain confirmed the ZAR's sovereignty – and at the peace treaty negotiations between the Free State and the ZAR in 1857. He retired from public duties in 1863 due to ill health and spent his last years on his farm Swavelpoort, east of Pretoria (today known as Tshwane).

2.5 HS Lombardt (1847-1852)

It is not certain when HS (Stephanus) Lombardt⁶⁷ was officially appointed as magistrate of Potchefstroom. At a public meeting held over a period of several days in November 1847 at Magaliesberg and Potchefstroom, it was decided to appoint a magistrate and four *heemraden* for Potchefstroom.⁶⁸ However, the minutes of that meeting didn't mention the names of those appointed. The oldest document signed by Lombardt in his capacity as magistrate dates to 24 December 1847, a month later.⁶⁹ However, Lombardt later submitted a report on financial matters in his capacity as magistrate for Potchefstroom for the period from 12 July 1847 to 29 January 1850.⁷⁰ After Visage's resignation, Lombardt was probably appointed in a temporary position from as early as July 1847, and his position was made permanent only a few months later. This would have been a logical step, since Lombardt had been one of the *heemraden* when Visage had still been in office.⁷¹

⁶⁴ See, respectively, R120j/47 and R121/47 published in Pretorius, Kruger and Beyers *Voortrekker-Argiefstukke* 268-269 and 269. In the first of these, Visage was addressed as "J. Viegaege tans regeerend Landros ten Coeloenie Moeyrievier" (J Visage currently ruling magistrate of the Mooi River Colony).

⁶⁵ Visage was born in 1815 and died in 1884. For more on his life, see Van der Vyver "Visage, Johannes Hendrik" 815-816.

⁶⁶ See fn 7 above.

⁶⁷ Also referred to in the sources as "Lombard", "Lombaart" and "Lombaardt".

⁶⁸ Breytenbach and Pretorius *Volksraadnotule vol 1* 235, Bylaag 15, 1847. The meeting took place on 1, 4, 8 and 15 November; it was apparently chaired by the military leader (*hoofdkommandant*) and the minutes was signed by his clerk, CJ Rabe.

⁶⁹ Breytenbach and Pretorius *Volksraadnotule vol 1* 241-242, Bylaag 20, 1845. However, it should be mentioned that the document was drafted at "Fryburg", and although it was signed by "H. St. Lombardt, Landros", Lombardt didn't explicitly state that he wrote in his capacity as the magistrate of Potchefstroom.

⁷⁰ Breytenbach and Pretorius *Volksraadnotule vol 1* 291, Bylaag 1, 1850. The report was approved by the Volksraad. See Breytenbach and Pretorius *Volksraadnotule vol 1* 120-1211, art 57 of the minutes of the Volksraad of 23 Jan 1850.

⁷¹ See, eg, R121/47 published in Pretorius, Kruger and Beyers *Voortrekker-Argiefstukke* 269, dated 9 Mar 1847.

In May 1849, Lombardt wrote to the Volksraad, indicating that he planned to resign as magistrate in June for health reasons.⁷² However, from the abovementioned report it is clear that he nevertheless remained in office. He again indicated that he wanted to resign in January 1850. This time, the Volksraad pleaded with him to remain on for another year, and even approved his requested annual salary to the extravagant amount of 1333 riksdalders to sweeten the pot. He was required to take the oath of office there and then.⁷³ However, it appears that on two occasions an acting magistrate had to step in on behalf of Lombardt. In May 1850, N Grobler signed a document as acting magistrate of Potchefstroom⁷⁴ and a year later, Lombardt confirmed in a report that he had resumed his duties as magistrate and had taken over from the acting magistrate, JP Maree, on 16 April 1851.⁷⁵ Maree had been a member of the Potchefstroom *heemraden* since at least 1847.⁷⁶ He would therefore have been familiar with the judicial processes, and an obvious choice for standing in for the magistrate in his absence. Nevertheless, it appears that there was some animosity upon Lombardt's return, because Maree complained to the Volksraad that he felt offended that Lombardt denied him access to the magistrate's office even though he had agreed to act for Lombardt for a period of eight months. The Volksraad responded that Lombardt was entitled to resume his duties, and that Maree could always approach the court if he felt sufficiently offended.⁷⁷

Lombardt stayed on as magistrate until March 1852, when he again gave notice of his resignation. This time, his request was approved on condition that he remain in office until 15 April, when his successor, AA Smit, would

⁷² R177/49 published in Pretorius, Kruger and Beyers *Voortrekker-Argiefstukke* 384-385.

⁷³ Breytenbach and Pretorius *Volksraadnotule vol 1* 121, art 58 of the minutes of the Volksraad of 23 Jan 1850.

⁷⁴ Breytenbach and Pretorius *Volksraadnotule vol 1* 317-318, Bylaag 9, 1850. The letter was addressed to the Volksraad and was dated 1 May 1850.

⁷⁵ R268/51 published in Krynauw and Pretorius *Transvaalse Argiefstukke* 76.

⁷⁶ Maree is mentioned in his capacity as *heemraad* in the following two documents: Breytenbach and Pretorius *Volksraadnotule vol 1* 225-226, Bylaag 5, 1847 (document dated 9 Mar 1847); and 272, Bylaag 4, 1848 (document dated 22 Mar 1849). However, in another document, also dated 22 Mar 1847, one JP Maree was also mentioned in his capacity as field cornet. See Breytenbach and Pretorius *Volksraadnotule vol 1* 272-274, Bylaag 5, 1849. It is not clear why Maree acted in two different positions simultaneously. It is possible that the person who signed in the capacity as field cornet was probably a relative, possibly even his son. However, this would not explain why there were not two signatories of that name, as a few other signatories had signed in their capacity as *heemraden*. As I could not find any other documentation to shed some light in this regard, this matter remains unanswered.

⁷⁷ Breytenbach *Volksraadnotule vol 2* 25, art 7 of the minutes of the Lydenburg Volksraad of 5 May 1851.

take over.⁷⁸ Lombardt submitted a final financial report for the period from February 1850 until April 1852.⁷⁹

After his resignation, Lombardt was one of the officials involved in the first execution of the death penalty in the ZAR. A contemporary chronicler, one Stuart, gave an account of the case that took place in June 1852.⁸⁰ An elderly male citizen, one Andries Pietersen,⁸¹ had killed his cousin, Oosthuijzen, in a state of intoxication before handing himself over to the authorities. Pietersen was then prosecuted for murder before the court of magistrate and *heemraden*, and was found guilty of murder by a jury of twelve and sentenced to death. As required in terms of the 1838 and 1841 Regulations, the matter was then referred to the Volksraad for confirmation of the sentence.⁸² At the Volksraad hearing,⁸³ Lombardt acted as prosecutor, while Andries Pretorius himself (the Boer leader at the time) defended the accused. However, the Volksraad confirmed the conviction and the death penalty. This apparently created a moral and a logistical dilemma. Not only did the ZAR not have any existing gallows⁸⁴ or official executioner at the time, but nobody wanted to volunteer for this grim task

⁷⁸ Breytenbach *Volksraadnotule vol 2* 62, art 19 of the minutes of the Volksraad of 19 Mar 1852.

⁷⁹ Breytenbach *Volksraadnotule vol 2* 318-323, Bylaag 15, 1852. The report was approved by the Volksraad at their next sitting with the exception of three matters. These concerns were not at all based on the way in which Lombardt had exercised his judicial duties, but instead revolved around political matters. One of these was the lamentable fact that precious gunpowder to the expense of 187 riksdalders had been used to announce the return of the party after the signing of the Sand River Convention in Jan 1852 (see fn 7 above). It is notable that nobody complained about the cost of the forty bottles of brandy (to the amount of 106 riksdalders) handed out during the same celebrations, also listed in the report. It must have been a memorable occasion.

⁸⁰ Stuart *De Hollandsche Afrikanen* 265-266, who is also cited by two later works: Badenhorst "Geschiedenis van Potchefstroom" 32; Haasbroek *Geschiedenis van Potchefstroom* 72-73.

⁸¹ The minutes of the Volksraad mentions him as "Johan(n)es Pieterzee".

⁸² The full title of the 1838 Regulations was the Regulations and Instructions for the Judge or Magistrate and the Ways of Judicial Administration for the Common Good of Port Natal and Environs; the full title of the 1841 Regulations was the Regulations and Instructions for the Magistrates and *Heemraden* of the Various Divisions or Districts in the Republic of Natal. Both these documents are discussed in more detail in Wildenboer 2016 *Fundamina* 348-355.

⁸³ The Volksraad heard the matter on 15 Jun 1852, gave its verdict a day later and set the date for execution for Friday, 25 Jun 1852 at 10 o'clock in the morning. The resolution was signed by twelve members of the Volksraad. See Breytenbach *Volksraadnotule vol 2* 71, art 7 of the minutes of the Volksraad of 15 Jun 1852.

⁸⁴ Interestingly, the magistrate at the time, Smit (see para 2.6 below), wrote to the Volksraad, suggesting that the prisoner be executed by firing squad. The Volksraad rejected this proposal. See Breytenbach *Volksraadnotule vol 2* 72, art 14 of the minutes of the Volksraad of 15 Jun 1852. See, also, the reference to Smit's letter numbered (aa) at xix; the letter itself could not be found and appears to have been lost.

either. After some deliberation, it was decided that the field cornets, responsible for law and order, would be in charge of the execution. Three field cornets were appointed by way of drawing lots, and the unhappy officials were exonerated of any future blame in the matter. The public was greatly upset by the trial and by the pending execution since Pietersen was well known in his community. The entire population of Potchefstroom visited him in the days before the execution to say their farewells and to pray for his delivery. On the day of the execution, Pietersen was accompanied to the appointed spot, where a rope was tied around his neck, with the other end hoisted over a tree branch. The field cornets then pulled the wagon from under his feet, killing him.⁸⁵ According to Stuart, Pietersen had accepted his fate and died peacefully.⁸⁶ The trial was also reported by a contemporary newspaper.⁸⁷

2.6 AA Smit (1852-1854)

Smit took on his duties with enthusiasm. Two months after assuming office, he wrote to the Volksraad, pointing out legal administrative matters that required attention, and suggesting ideas for improvement.⁸⁸ These suggestions included the implementation of measures to ensure a steady governmental income; the better regulation of deceased estates, especially those involving minor children; the possible taxation of public auctions; the possible taxation of private land sales; the establishment of a toll booth at the entrance to the town in order to raise funds for improving the terrible condition (*in zeer slegte staat zyn*) of the public roads; the setting of stamp duties for wills and title deeds; and the better regulation of liquor licenses to address the excessive use of alcohol (*veele buitensporigheden*).

The Volksraad seemed impressed by these suggestions and issued various resolutions in this regard. Regarding the matter of the deceased estates, it resolved to appoint in the interim both Smit and his predecessor, Lombardt, as Orphan Masters to investigate the administration of all existing and future estates, with the power to take over such estates as they deemed necessary.⁸⁹ It also appointed Orphan Masters for other districts,⁹⁰ issued new rules for the administration of deceased estates and approved

⁸⁵ The method of execution was later described by an eyewitness and is cited in Badenhorst "Geschiedenis van Potchefstroom" 32.

⁸⁶ Stuart *De Hollandsche Afrikanen* 266 (*en hij ging, door allen gerustgesteld, met een kalm gemoed de eeuwigheid in*).

⁸⁷ *Cape of Good Hope and Port Natal Gazette* (2 Jul 1852).

⁸⁸ Breytenbach *Volksraadnotule vol 2* 343-344, *Bylaag 28*, 1852. The letter was dated 16 Jun 1852.

⁸⁹ Breytenbach *Volksraadnotule vol 2* 80, art 65 of the minutes of the Volksraad of 15 Jun 1852.

⁹⁰ Rustenburg, Fredeburg and Lydenburg.

administrative fees to be calculated pro rata on the value of an estate.⁹¹ In response to Smit's suggestion regarding the public auctions, the Volksraad set down strict requirements for auctioneers, who henceforth had to have a valid license and provide security to the state. Auctioneers' fees were capped, and a percentage of their fees was forfeit to the state. Further, auctioneers for the sale of property in a deceased estate had to be appointed by an Orphan Master.⁹² The Volksraad implemented transfer fees for the sale of all immovable property, payable by the buyer within six months of a transaction.⁹³ With regard to the sale of strong liquor, it was decided that prospective vendors had to obtain a liquor licence at an annual cost of 200 riksdaalders; fines were payable for each instance of non-compliance.⁹⁴ However, this rule only applied to sales within town boundaries; those persons brewing and/or selling their own liquor outside the towns were exempted.⁹⁵ Nevertheless, the anticipated growth of state income necessitated some precautionary measures; the Volksraad thus resolved that a magistrate had to obtain prior approval from the Volksraad for any public expenses of more than 50 riksdaalders⁹⁶ and that payments to a magistrate had to be approved by the court of magistrate and *heemraden*.⁹⁷

Smit remained in office only for a short while and in November 1852 gave notice of his resignation. His request was approved on condition that he submit a comprehensive report on his official activities at the next sitting of the Volksraad. David Botha was appointed in an acting capacity from December 1852 until a new magistrate could be assigned (see para 2.7 below). The Volksraad expressed the hope that a competent person would be elected from among the older and more sensible citizens.⁹⁸ Upon request, Smit then submitted a detailed account of his activities from 15 April to 1 December 1852.⁹⁹ The report was approved with the exception of an

⁹¹ Breytenbach *Volksraadnotule vol 2* 80-81, arts 66-68 of the minutes of the Volksraad of 15 Jun 1852.

⁹² Breytenbach *Volksraadnotule vol 2* 81, arts 69-70 of the minutes of the Volksraad of 15 Jun 1852.

⁹³ Breytenbach *Volksraadnotule vol 2* 81-82, arts 72-73 and 76 of the minutes of the Volksraad of 15 Jun 1852.

⁹⁴ Breytenbach *Volksraadnotule vol 2* 81-82, art 74 of the minutes of the Volksraad of 15 Jun 1852.

⁹⁵ Breytenbach *Volksraadnotule vol 2* 82, art 75 of the minutes of the Volksraad of 15 Jun 1852.

⁹⁶ Breytenbach *Volksraadnotule vol 2* 82, art 77 of the minutes of the Volksraad of 15 Jun 1852.

⁹⁷ Breytenbach *Volksraadnotule vol 2* 82, art 78 of the minutes of the Volksraad of 15 Jun 1852.

⁹⁸ *De Raad wil hope dat een eider weldynkend perzoon zal kiezen van de oude en verstandigige inwoonders*. See Breytenbach *Volksraadnotule vol 2* 92-93, art 9 of the minutes of the Kommissieraad of 20 Nov 1852.

⁹⁹ Breytenbach *Volksraadnotule vol 2* 358-362, Bylaag 39, 1852.

amount paid to HS Lombardt in August for his services rendered as prosecutor in the *Pietersen* case (see para 2.5 above). The Volksraad objected to this payment on the basis that Lombardt had not been officially appointed for the trial and requested that Lombardt repay the full amount.¹⁰⁰

However, this was not the end of Smit's magisterial duties. In March 1853, the Volksraad received a petition signed by eighty persons, requesting that he be reinstated. The petition stated that during his term in office, the district had been peaceful, but that after his resignation, the district had become a hotbed for discord and unrest.¹⁰¹ The petition did not elaborate on the reasons for the unrest. The Volksraad considered the petition along with the votes received for the election of a new magistrate for Potchefstroom. Surprisingly, Lombardt had received thirty-one votes and Smit only twenty-two. However, the Volksraad vetoed Lombardt's appointment on the basis of a matter pending against him, and promptly appointed Smit for a second term.¹⁰²

In December 1853, Smit's predecessor, Lombardt, wrote to the Volksraad with complaints against Smit, and requested clarity on seven issues pertaining to the powers of a magistrate.¹⁰³ The Volksraad appointed a special court consisting of seven members¹⁰⁴ to investigate these complaints.¹⁰⁵ The hearing took place the very next day, on 2 December 1853.¹⁰⁶ Both Lombardt and Smit were allowed to present their arguments to the court, and to call witnesses to the stand. The special court heard the seven complaints separately. The first complaint concerned the question whether a magistrate had the right to order a person to pay the legal costs if he had won a civil case. On the evidence presented, the court found that Smit had indeed contravened the relevant rule, but that he had done so due to ignorance and not to partiality; the court fined Smit 50 riksdalders and ordered him to pay the costs of the current court hearing. The second complaint accused Smit of allowing a convict to walk about freely.¹⁰⁷ Upon

¹⁰⁰ Breytenbach *Volksraadnotule vol 2* 110, art 71 of the minutes of the Volksraad of 20 Mar 1853.

¹⁰¹ Breytenbach *Volksraadnotule vol 2* 400-401, Bylaag 28, 1853.

¹⁰² Breytenbach *Volksraadnotule vol 2* 110-111, art 74 of the minutes of the Volksraad of 20 Mar 1853. Unfortunately, the minutes didn't specify the nature of the matter pending against Lombardt.

¹⁰³ Breytenbach *Volksraadnotule vol 2* 495, Bylaag 109, 1853.

¹⁰⁴ The panel consisted of C Botha (who was the presiding official), JJW Prinsloo, MA Goetz, JS Potgieter, RW Schikkerling, JP Fürstenberg and A van der Wald.

¹⁰⁵ Breytenbach *Volksraadnotule vol 2* 183, arts 81-82 of the minutes of the Volksraad of 1 Dec 1853.

¹⁰⁶ Breytenbach *Volksraadnotule vol 2* 513-517, Bylaag 130, 1853.

¹⁰⁷ However, this was not surprising, since the first prison in Potchefstroom was only built years later, although it is uncertain exactly when. Badenhorst "Geschiedenis van Potchefstroom" 33 speculates that the prison was built in 1864, but Haasbroek *Geschiedenis van Potchefstroom* 71 argues that it was probably only later. The prison,

the evidence, the court found that Smit had indeed omitted to detain P van Wyngaard after he had been found guilty by a court of law; again, the court fined Smit, this time only 10 riksdalders, and ordered him to pay the costs. On the third complaint, namely that Smit had returned to Pieter Gous the money he had been fined by Smit, the special court found Smit not guilty on the basis of lack of evidence, and instead fined Lombardt to the amount of 10 riksdalders and ordered him to pay the costs. The fourth and sixth complaints were referred back to the Volksraad.¹⁰⁸ The special court found Smit not guilty of the fifth complaint – regarding the method of measuring immovable property – again, on the basis of lack of evidence, and fined Lombardt 10 riksdalders and ordered him to pay the costs. The seventh complaint was dismissed without costs. The decisions of the special court were ratified by the Volksraad a few days later.¹⁰⁹ The Volksraad considered the fourth complaint, regarding procedural rules in the granting of an appeal, and found Smit not guilty.¹¹⁰

It is not clear why Lombardt had felt the need to report Smit's transgressions to the Volksraad. One can only speculate as to the reasons for this. Perhaps Lombardt felt protective of his recently evacuated office and kept an eye on the doings of the new magistrate to make sure that he didn't let standards slip. Or perhaps some citizens had complained to Lombardt about the way in which Smit handled certain legal matters, and Lombardt then felt compelled to report this. It is also possible that a rivalry had developed between the former and the new magistrate, perhaps because Lombardt kept poking his nose into business that no longer concerned him. It is clear from the election a few months earlier that although both men enjoyed a measure of support within the community, there were a number who considered Lombardt to be a better fit for the important office of magistrate. This perhaps contributed to the growing animosity between the two.

Whatever the case may be, it appears that Smit had indeed neglected at least some of his official duties. In December 1853, the Volksraad wrote to Smit, asking him to urgently respond to four matters referred to him during their sitting six months earlier. One of the matters concerned the monies paid to Lombardt for his services as prosecutor during the *Pietersen* case.¹¹¹

when eventually built, was tiny and not sufficient for its purpose. For more on the details of this prison, see Haasbroek *Geskiedenis van Potchefstroom* 71-72.

¹⁰⁸ Lombardt later withdrew the sixth complaint.

¹⁰⁹ Breytenbach *Volksraadnotule vol 2* 187-188, art 106 of the minutes of the Volksraad of 5 Dec 1853.

¹¹⁰ Breytenbach *Volksraadnotule vol 2* 188, art 107 of the minutes of the Volksraad of 5 Dec 1853.

¹¹¹ Breytenbach *Volksraadnotule vol 2* 535-536, Bylaag 141, 1853.

Smit later submitted two official reports on his official duties, namely for the periods from 6 April 1853 to 31 July 1853,¹¹² and from 1 August 1853 to 20 November 1853.¹¹³ Both reports were approved by the Volksraad.¹¹⁴

It is not certain when Smit's term finally came to an end (see para 2.7 below). However, in September 1855, he was required to submit a further report, which was ultimately approved by the Volksraad.¹¹⁵

2.7 DH Botha (1854-1857)

As mentioned earlier, David Botha¹¹⁶ was appointed in an acting capacity in December 1852, where he remained until Smit's reappointment in March 1853. Botha's temporary appointment did not sit well with Smit, as is clear from a report of the first court hearing shortly after Botha's initial appointment.¹¹⁷ The clerk of the court reported that Smit vehemently refused to take the oath as *heemraad* since Botha was only appointed in an acting capacity. A long debate followed, until HS Lombardt declared that if Botha did not bring the court to order, he (Lombardt) would leave. This seemed to have the desired effect – Smit consented and took the oath as *heemraad*.¹¹⁸

Botha gave a full account of his activities during this period, although there seemed to have been some uncertainty regarding his salary for his services rendered.¹¹⁹ It appears that he officially took over from Smit a year later, in April 1854, as his next report covered the period from 8 April 1854 to 28

¹¹² Breytenbach *Volksraadnotule vol 2* 522-526, Bylaag 135, 1853.

¹¹³ Breytenbach *Volksraadnotule vol 2* 526-530, Bylaag 136, 1853.

¹¹⁴ Breytenbach *Volksraadnotule vol 2* 177, art 41 of the minutes of the Volksraad of 26 Nov 1853; 192, art 130 of the minutes of the Volksraad of 6 Dec 1853.

¹¹⁵ Breytenbach *Volksraadnotule vol 3* 100, art 43 of the minutes of the Volksraad of 18 Sep 1855. The report itself seems to have been lost, but is mentioned in Breytenbach *Volksraadnotule vol 3* xviii under the list of missing documentation as (bb).

¹¹⁶ In one document he mentioned his first names as "Davd Hercs". His full names were probably David (or Dawid) Hercules. See Breytenbach *Volksraadnotule vol 3* 296. Botha had been sworn in as *heemraad* on 1 Oct 1851. See R283/51 published in Krynauw and Pretorius *Transvaalse Argiefstukke* 87-89.

¹¹⁷ R471/52 published in Krynauw and Pretorius *Transvaalse Argiefstukke* 283-284. The letter was written by J van Eyk, who officiated as clerk of the court on the day of the hearing, which took place on 1 Dec 1852, and was addressed to Commandant-General Pretorius.

¹¹⁸ The report hints at a heated and emotional debate and is worth quoting here: *De heer [Smit] heeft hem deftig tegengezet omdat [Botha] provisioneel was aangesteld en weigerde provisioneel te zweren voor zyn ampt ... na een lange debat treed de heer HS Lombaard voorwaarde en zeide drifting indien de heer D Botha niet de stoel beklom dat hy dan 't hof bedankte. Eindelyk legte de heer Smit zyn ampt af, en streeks 12 uur nam de heer Botha de Landdrost als ou Heemraad aan.*

¹¹⁹ Breytenbach *Volksraadnotule vol 2* 392-394, Bylaag 21, 1853. The report was approved by the Volksraad: see at 109-110, art 68 of the minutes of the Volksraad of 20 Mar 1853.

May 1855.¹²⁰ In addition, he submitted a further report in which he referred three cases to the Volksraad for approval, namely Johannes le Roes' conviction of rape; one J Raymond's conviction of theft of gunpowder; and Piet Steynman's conviction of being in possession of stolen gunpowder. After some deliberation, the Volksraad ratified the sentences in all three cases, although it did overturn the exile of Le Roes, and mitigated it to a fine of 500 riksdalders, payable to the victim.¹²¹

In June 1855,¹²² Botha gave notice of his intention to resign, complaining that his salary did not sufficiently compensate him for his vast array of duties and responsibilities. The Volksraad agreed that his salary was insufficient and promptly raised his annual remuneration from 1 333 riksdalders to 2 000 riksdalders on condition that Botha would remain in office indefinitely.¹²³ This apparently persuaded him to stay on, because a few months later, in September 1855, he took the oath as magistrate of Potchefstroom.¹²⁴

However, shortly after, he was appointed as a member of the committee tasked with drafting a constitution for the ZAR. The committee would commence with their duties on the first Monday in October 1855.¹²⁵ It is interesting to note that HS Lombardt was also appointed as one of the members of the committee, but that AA Smit was not. Botha's name appeared in two of the constitutional drafts, submitted in November 1855 and January 1857 respectively.¹²⁶ His duties as member of the drafting

¹²⁰ Breytenbach *Volksraadnotule vol 3* 296-306, Bylaag 13, 1855. The report was approved by the Volksraad. See at 75, art 136 of the minutes of the Volksraad of 16 Jun 1855.

¹²¹ See, respectively, Breytenbach *Volksraadnotule vol 3* 74-75, arts 133-135 of the minutes of the Volksraad of 16 Jun 1855.

¹²² Also in Jun 1855, the Volksraad received a petition signed by thirty-six persons, requesting that HS Lombardt be reappointed as magistrate. The request was denied. See Breytenbach *Volksraadnotule vol 3* 66-67, art 106 of the minutes of the Volksraad of 14 Jun 1855.

¹²³ Breytenbach *Volksraadnotule vol 3* 75-76, art 137 of the minutes of the Volksraad of 16 Jun 1855. In order to raise the funds for his salary, the Volksraad authorised Botha to arrange for the public sale of the farm Palmietfontein. See 102, art 55 of the minutes of the Volksraad of 18 Sep 1855.

¹²⁴ Breytenbach *Volksraadnotule vol 3* 96-97, art 19 of the minutes of the Volksraad of 13 Sep 1855.

¹²⁵ Breytenbach *Volksraadnotule vol 3* 104, art 68 of the minutes of the Volksraad of 18 Sep 1855.

¹²⁶ Breytenbach *Volksraadnotule vol 3* 380-422, Bylaag 54, 1855 (referred to as "The Stuart Constitution of 1855" by Van der Merwe); 439-471, Bylaag 1, 1857 (referred to as "The Pretorius Constitution of January 1857" by Van der Merwe). Lombardt was the chairman of the committee of this latter draft. For an in-depth discussion of the drafting process as well as of the various constitutional drafts, see Van der Merwe 2017 *Fundamina* 139-163. For purposes of this current study, it should merely be mentioned that the drafting process led to political unrest and civil strife. As a result of this, the public demanded that the various drafts be reworked and

committee must have kept Botha so busy that he had no time for his magisterial duties, because in November 1855, the Volksraad referred to him as "the former" (*gewezen*) magistrate, and simultaneously mentioned RW Schikkerling (who had acted as magistrate before)¹²⁷ in an acting capacity.¹²⁸ A few months later, in April 1856, an invitation was extended to A du Toit, the then magistrate at Pretoria, to accept the position as magistrate of Potchefstroom instead.¹²⁹ Du Toit declined the invitation, and the Potchefstroom position remained vacant, although documentary evidence indicates that Schikkerling administered at least some of the magisterial duties in July and September 1856.¹³⁰

Botha was officially sworn in as magistrate in January 1857 as soon as the drafting commission's work allowed.¹³¹ Various documents indicate that Botha fulfilled his magisterial duties until at least June 1857,¹³² despite an attempt to resign in March of that year. The Volksraad instructed him to remain in office until further notice.¹³³

It should perhaps also be mentioned here that another Botha, one Cornelius, at certain times acted for David Botha. It appears that Cornelius had officiated for a while at the end of 1856.¹³⁴ Six months later, when the position was once more vacant, Cornelius, who was one of the *heemraden*

amended. The final version was eventually accepted in Feb 1858. For a copy of the 1858 Constitution, see Eybers *Select Constitutional Documents* 362-410.

¹²⁷ Schikkerling received payment of 32 riksdalders for eight days' service as acting magistrate during Jun 1854. See Breytenbach *Volksraadnotule vol 3* 296-306, Bylaag 13, 1855.

¹²⁸ Breytenbach *Volksraadnotule vol 3* 118, arts 82-83 of the minutes of the Volksraad of 19 Nov 1855.

¹²⁹ TAB SS R1028/56 (reference is to the National Archives Repository (Pretoria) followed by the relevant document series).

¹³⁰ See TAB SS R1141/56 (correspondence dated 17 Jul 1856); TAB SS R1200/56 (correspondence dated 17 Sep 1856). Schikkerling was a man of many talents and interests. He had obtained a three-month liquor licence in Jun 1854, as well as a year-long merchant license (*Winkel Lisentie*) in Mar 1855. This may explain why he was not keen on taking on the magisterial duties, as it probably interfered with his other business interests. See Breytenbach *Volksraadnotule vol 3* 296-306, Bylaag 13, 1855 at 298 and 301.

¹³¹ TAB SS 14 R1269/57. Botha was one of several officials who took the oath on that day, the others being the president, three members of the Executive Council and the commandant-general. For a description of the events of 5 and 6 Jan 1857, see Haasbroek *Geskiedenis van Potchefstroom* 95-97; Theal *History of South Africa: The Republics and Native Territories from 1854 to 1872* 36-37.

¹³² See, for example, TAB SS 17 R1835/57 (correspondence dated 6 Feb 1857); Breytenbach *Volksraadnotule vol 3* 482-485, Bylaag 6, 1857 (peace treaty dated 1 Jun 1857, of which Botha was one of the many signatories, signing in his capacity as "Land." and elsewhere as "Landdrost").

¹³³ TAB SS 17 R1835/57 (correspondence dated 13 Mar 1857).

¹³⁴ TAB SS R1269/57 (correspondence dated 6 Jan 1857). However, the Volksraad requested him to give account of his activities during his term in office. See TAB SS 14 R1269/57 (correspondence dated 6 Jan 1857).

at the time, was requested to act as magistrate for the time being.¹³⁵ He accepted, as is clear from at least one surviving document.¹³⁶

2.8 JDE Grimbeek (1857-1858)

JDE Grimbeek was sworn in as magistrate of Potchefstroom on 21 July 1857.¹³⁷ At the time, he had been acting in this position for at least a month.¹³⁸ He fulfilled his duties for about a year, until he resigned due to ill health.¹³⁹ He died shortly thereafter, as there is a reference to the estate of "nu wylen den heer JDE Grimbeek" a few months later.¹⁴⁰

During his short term in office, Grimbeek had to deal with two noticeable matters worth mentioning here. First, he issued town regulations in November 1857 for the purposes of maintaining law and order in Potchefstroom.¹⁴¹ These made provision for the appointment of a ward master to ensure compliance with the new regulations regarding waste management, the keeping of livestock within the town limits, as well as water usage. Transgressors had to be reported to the magistrate and were liable for fines.¹⁴²

The second matter of importance, and an even more controversial one at the time, concerned the newly appointed teacher for Potchefstroom, Abraham Scheurkogel, who hailed from the Netherlands and had previously taught in Java.¹⁴³ He was appointed on 6 July 1857¹⁴⁴ to fill an important gap in the education of the Potchefstroom youth, who had not received any

¹³⁵ TAB SS R1590/57 (correspondence dated 11 Jun 1857).

¹³⁶ TAB SS R1597/57 (correspondence dated 16 Jun 1857).

¹³⁷ TAB SS R1649/57 (correspondence dated 20 Jul 1857).

¹³⁸ TAB SS R1611/57 (correspondence dated 24 Jun 1857).

¹³⁹ See TAB SS R2115/58 (correspondence dated 10 Jun 1858, written by the acting magistrate at the time, C Lombard, referring to Grimbeek's serious illness (*ernstige ziekte*)).

¹⁴⁰ See Breytenbach *Volksraadnotule vol 4* 364-377, Bylaag 38, 1860 at 375.

¹⁴¹ As discussed in Badenhorst "Geschiedenis van Potchefstroom" 98-99; Haasbroek *Geschiedenis van Potchefstroom* 75-76. These regulations were published in the *Staats Courant* of 6 Nov 1857. Despite my best efforts, I was not able to obtain a copy of that publication. The regulations were never officially approved by the Volksraad, but were nevertheless applied, not only in Potchefstroom, but also in the other towns throughout the ZAR.

¹⁴² In Sep 1859, the magistrate, JC Steyn (see para 2.9 below), notified the public that the amount of these fines would vary between 5 and 40 riksdalders. See Haasbroek *Geschiedenis van Potchefstroom* 75.

¹⁴³ He was born in 's-Hertogenbosch on 1 Dec 1823 and arrived in South Africa in 1853. He was a qualified teacher. He died in Oct 1884 at the age of sixty-three on his farm near Lydenburg. For more on Scheurkogel's genealogy, see Geni 2022 <https://www.geni.com/people/Abraham-Scheurkogel/6000000013004112871>.

¹⁴⁴ TAB SS R1639/57 (correspondence dated 6 Jul 1857).

formal education for the past three years.¹⁴⁵ The last teacher, Hendrik van der Linden, had closed the school and left Potchefstroom in 1854 due to unresolved conflict with the church authorities there.¹⁴⁶

Scheurkogel was allowed to use the church building for teaching purposes, and he was granted the use of a house to live in. However, the peace was not to last. The new teacher was strict on discipline and apparently fond of using a cane to enforce it among his pupils. A few months later, none other than the State Attorney, J Visage (being a former magistrate himself), complained to Grimbeek that Scheurkogel had mistreated his daughter¹⁴⁷ by beating her in class. This resulted in Scheurkogel's immediate dismissal. He appealed to the Executive Council, but to no avail.¹⁴⁸ He left Potchefstroom and resurfaced again a few years later in Marthinus Wessels Stroom (Wakkerstroom), where he was appointed as teacher in 1865. However, his disciplinary practices once again seemed unpopular, causing him later to retire from teaching and take up farming.¹⁴⁹

2.9 JC Steyn (1859-1862)

A new magistrate for Potchefstroom in the person of Johannes Christoffel Steyn¹⁵⁰ was only appointed one year after Grimbeek's retirement, on 5 May 1859.¹⁵¹ Steyn's period in office coincided with especially tumultuous times politically.¹⁵² Unfortunately, he took sides in the political tug-of-war at the time and this eventually resulted in his dismissal three years later, in April

¹⁴⁵ With all the free time on their hands, the youth naturally entertained themselves, sometimes causing such annoyance that it resulted in legislative intervention. See, in general, Haasbroek *Geskiedenis van Potchefstroom* 52-53.

¹⁴⁶ Haasbroek *Geskiedenis van Potchefstroom* 40.

¹⁴⁷ In the correspondence, she is not named, but merely referred to as Visage's little girl (*dochtertjie*). See TAB SS R1784/57 (correspondence dated 12 Nov 1857). Visage had three daughters, all born between 1841 and 1845, meaning they would have been between the ages of sixteen and twelve in 1857. It remains unclear which one of the daughters was beaten by Scheurkogel. For genealogical information on Visage, see WikiTree 2022 <https://www.wikitree.com/wiki/Visagie-184>.

¹⁴⁸ TAB SS R1785; TAB SS 17 R1834/57 (both correspondence pieces dated 13 Nov 1857); Coetzee "Geskiedenis van die Onderwys in Potchefstroom" 134-135; Haasbroek *Geskiedenis van Potchefstroom* 40. Scheurkogel had to appear before the Executive Council on 16 Nov, but his pleas obviously had no effect as he was dismissed the very same day. See TAB SS 17 R1834/57 (correspondence dated 16 Nov 1857).

¹⁴⁹ See Geni 2022 <https://www.geni.com/people/Abraham-Scheurkogel/6000000013004112871>.

¹⁵⁰ Steyn was born in Swellendam in 1799 and died at Pretoria in 1887. For more on his life, see Ferreira "Steyn, Johannes Christoffel (Hans)" 776-777.

¹⁵¹ Breytenbach *Volksraadnotule vol 4* 8-9, art 22 of the minutes of the Volksraad of 5 May 1859. However, the evidence suggests that Steyn had officiated since at least Feb of that year. See, for example, TAB SS R2569/59 (correspondence dated 1 Feb 1859); TAB SS R2658/59 (correspondence dated 14 Mar 1859).

¹⁵² For a brief summary of the political turmoil from 1858 to 1864, see Bulpin *The Golden Republic* 106-120.

1862. The Volksraad suspended him after finding him guilty of perjury and for failing in his magisterial duty to acknowledge the authority of the Volksraad.¹⁵³ His case was then referred to the State Attorney for investigation in terms of section 93 of the 1858 Constitution. The State Attorney then referred it to a court of justice, who found Steyn guilty of perjury, of neglecting his magisterial duties and of treason.¹⁵⁴

This was not the first time that Steyn had gotten into some trouble with the Volksraad. Less than a month after his appointment, he and the entire *heemraden* of Potchefstroom had been suspended for unknown reasons.¹⁵⁵ However, at the time, the State Attorney had then intervened, stating that the suspension was unconstitutional since the procedure prescribed in section 93 had not been followed.¹⁵⁶ Steyn (and probably the *heemraden* as well) was restored to his position. But in 1860, he ran into trouble again when he prevented the government printer and the postmaster from performing their duties (both positions filled by H Jeppe).¹⁵⁷ Shortly after, Steyn was summoned to Pretoria to submit his three-monthly report.¹⁵⁸ When he failed to appear on the appointed date, he was informed by the Government Secretary (Struben) that none other than the acting president, JH Grobler (himself a former magistrate – see para 2.3 above), would visit Steyn's office the next day on 21 November to inspect the magistrate's

¹⁵³ Breytenbach *Volksraadnotule vol 4* 140-141, art 125 of the minutes of the Volksraad of 24 Apr 1862. The Volksraad found him guilty of breaking his oath and duty as magistrate in terms of the Constitution, by not recognising the Volksraad as the highest authority of the country (*verbreking van zyn eed en pligt als Landdrost volgens Grondwet, door de niet erkenning van den door de Volksraad, als hoogste gezag des lands, aangestelde ambtenaren*).

¹⁵⁴ Breytenbach *Volksraadnotule vol 4* 471-475, Bylaag 28, 1862 at 474. The court's verdict was similar to that of the Volksraad, with one addition. He was found guilty of breaking his oath and duty as a magistrate in terms of the Constitution by not recognising the highest authority of the members of the Volksraad as appointed officials (*verbreking van zyn Eed en pligt, als Landdrost volgens Grondwet, door de niet erkenning van de door de Volksraad als Hoogste Gezag des lands aangestelde ambtenaren*) and of insurrection against the Constitution and the laws of the nation of the ZAR (*opstand tegen de Grondwet en de Regten van het Volk der ZA Republiek*). According to Badenhorst "Geschiedenis van Potchefstroom" 75-76, Steyn and his co-accused were exiled and their property confiscated. However, it appears that these penalties were either not enforced, or didn't last long, since Steyn's name was regularly mentioned in public petitions in the years after.

¹⁵⁵ Neither Steyn's complaint regarding the unlawfulness of the suspension, nor the response from the president of the Executive Council have survived. These documents were discussed by the Volksraad during their sitting in May 1859. See, respectively, Breytenbach *Volksraadnotule vol 4* 6, art 7 of the minutes of the Volksraad of 3 May 1859; and 8-9, art 22 of the minutes of the Volksraad of 5 May 1859.

¹⁵⁶ For the State Attorney's report, see Breytenbach *Volksraadnotule vol 4* 305, Bylaag 26, 1859; and for the Volksraad's consideration of the report, see 11, art 7 of the minutes of the Volksraad of 13 Sep 1859.

¹⁵⁷ Breytenbach *Volksraadnotule vol 4* 398-399, Bylaag 54, 1860.

¹⁵⁸ Breytenbach *Volksraadnotule vol 4* 399-400, Bylaag 56, 1860.

financial books.¹⁵⁹ That never happened, because that very day an angry mob threatened both Struben and Grobler, who were forced to flee Potchefstroom early the next morning.¹⁶⁰

After his final dismissal, Steyn retired from public life. Yet this was not the end of his woes. In 1863, an inspection of the financial books dating to his term in office revealed that everything was not in order.¹⁶¹ A commission was appointed to look into the matter, but it is unclear what their finding was.¹⁶²

It appears that Steyn was embittered after these events. In 1877, he expressed his disdain with the ZAR government by raising the Union Jack during the British annexation.¹⁶³ This probably made him even more unpopular, as the annexation was heavily condemned by the ZAR government.¹⁶⁴

3 Conclusion

The Potchefstroom magistrate's office was greatly impacted by political unrest and lobbying during the period under discussion. Personal and political views played a significant role in appointments and resignations. The duties of the magistrates were extensive, encompassing much more than their judicial responsibilities, and were often ill-defined and vague. In the absence of clear guidelines, insufficient public support and a lack of resources, individuals appointed to the office often had to exercise discretion when executing their duties.

Although these professional challenges explain at least in part the quick succession of appointments, one should also bear in mind the personal challenges faced by these individuals. Although the position naturally ensured an additional income, most individuals didn't remain in office for long, due to the strenuousness of the work (sometimes even affecting their health); the lack of revenue and the uncertainty of receiving regular payments; the threat of resistance and complaints from the public, which

¹⁵⁹ Breytenbach *Volksraadnotule vol 4* 402, Bylaag 62, 1860.

¹⁶⁰ See fn 51 above.

¹⁶¹ Breytenbach *Volksraadnotule vol 4* 161, art 38 of the minutes of the Volksraad of 26 May 1863; and 491-492, Bylaag 17, 1863.

¹⁶² I could not find any further documentation in this regard.

¹⁶³ Ferreira "Steyn, Johannes Christoffel (Hans)" 777.

¹⁶⁴ The resistance eventually culminated in the First Anglo-Boer War, ending in peace negotiations after the British defeat at Majuba Hill in Mar 1881. On 3 Aug 1881, the Convention of Pretoria was signed, restoring "complete self-government" to the ZAR, but "subject to suzerainty of Her Majesty". For the text of the Convention of Pretoria, see Eybers *Select Constitutional Documents* 455-463. A vast body of work exists on the First Anglo-Boer War, but is not mentioned here since it falls outside the scope of this article. However, for a brief synopsis of the course of the war, especially as it affected Potchefstroom, see Badenhorst "Geschiedenis van Potchefstroom" 77-97.

sometimes escalated to litigation; as well as the political instability that in a few cases resulted in threats to their very person. Most of these men were farmers at heart, merely stepping in to serve their country when called upon to do so. They probably did the best they could, given the circumstances.

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List of Abbreviations

ZAR Zuid-Afrikaansche Republiek