should be heard *de novo* on 31 August at which meeting Dr Krause was invited to be present.

On the date of the next hearing on 31 August 1918 the following is recorded:

"I. Complaint against Dr Krause:

The Chairman animadverted to the resolution passed at a Council meeting held on the 29th June in connection with this matter (vide page 212). It was pointed out that such proceedings were most irregular, that if one Council meeting has the power to override the decision of another Council meeting, there would be no finality to any matter; and if such a precedent were now established it would be dangerous and make all complaints before the Council endless; that the correct procedure was that the matter should have been referred to a meeting of the General Council as the Court of Appeal in terms of the Rules.

The feeling of the meeting was in agreement with the view expressed by the Chairman, but in the particular circumstances of this case on the ground of convenience it was resolved that the previous proceedings in connection with this complaint be set aside and that on the correspondence before it the Council formulated the following charges against Dr Krause in terms of the resolution of the Council Meeting of the 15 June.

Dr Krause stated that he would raise no objection to this procedure.

The resolutions that were then passed were identical to those passed on the earlier occasion except for resolution 4 and were as follows:

I. It appears to the Council from the facts before it that the representation of Maningepoosa by Dr Krause emanated from Dr Krause himself. who made the suggestion in the interests of Wilson.

II. That no brief for M. was delivered to Dr Krause.

III. That there was an agreement by Dr Krause to represent M. for no fees.

IV. It was resolved that No. 4 of the charges formulated be dropped.

V. That there was no justification for Dr Krause's statement in Court that he appeared with Roberts as his junior for either Accused.

The Council is therefore of the opinion that Dr Krause's conduct is irregular, that such conduct meets with the disapproval of the Council, but that no further steps be taken by the Council in this matter."

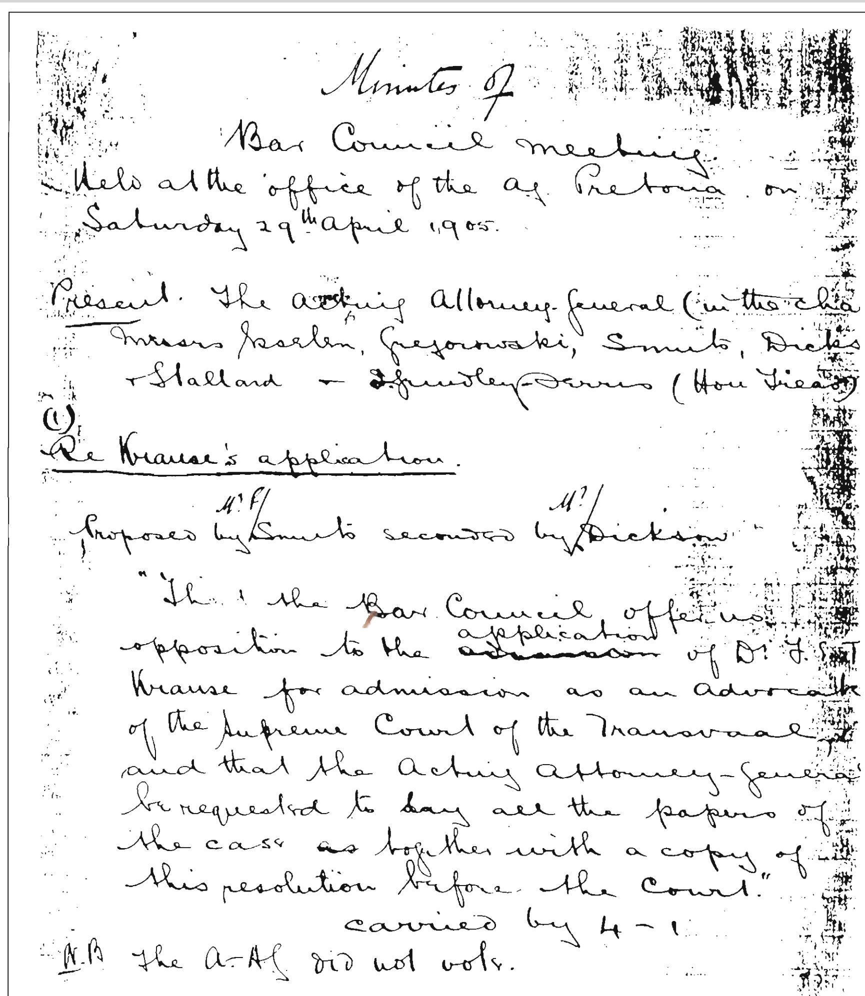
The concluding paragraph was in marked contrast to the earlier resolution that the matter be brought to the attention of the Supreme Court.

Those present on that occasion, apart from the Secretary and Treasurer, were Stratford (Chairman), C W de Villiers, Te Water, Ferris, Barry, Blakeway, Greenberg and Lucas.

Charge No 4, which was dropped, was that Dr Krause undertook the defence of M. without a junior and his assumption that Van Hees was his junior appears to the Council unjustifiable. One cannot help but have a suspicion that there was an element of plea bargaining on the second occasion.

The Bar Council had on 29 July 1905 passed a resolution that the application for admission to the Bar of Krause be not opposed. The relevant page from the Minute Book is reproduced on this page. The motion was proposed by [General] J C Smuts and was passed by a majority of four to one. Who it was who voted against the resolution is not stated, but having regard to his political views, the probabilities are overwhelming that it was Stallard. (Further as to Krause see Kahn, *Law, Life and Laughter* at 119.)

R L Selvan SC
Johannesburg Bar


Minutes of
Bar Council meeting
Held at the office of the A.G. Pretoria on
Saturday 29th April 1905.

Present. The acting Attorney-General (in the chair)
Messrs Esselen, Gregorowski, Smuts, Dickson
& Stallard — Grindley-Ferris (Hon Treas)

(1).
Re Krause's application.

Proposed by Mr/Smuts seconded by Mr/Dickson

"That the Bar Council offer no opposition to the ~~admission~~ application of Dr F. E. T Krause for admission as an Advocate of the Supreme Court of the Transvaal and that the Acting Attorney-General be requested to lay all the papers of the case as together with a copy of this resolution before the Court."

carried by 4 – 1

N.B The A-AG did not vote.

Snippets from the past

Speed of justice wheels

"The wheels of justice turn slowly" is a well-known adage. One wonders who is responsible for the tortoise-like progress of the judicial administration and processes of this country. Fortunately South Africa is not unique in this regard!

On 24 July 1946 the late Arthur Suzman QC noted in a written memo-

randum to the General Council of the Bar (GCB), that it took almost 50 years to prompt the British Government into action to form the "Lord Chancellor's Law Revision Committee", which became the body to consider judicial decisions and legal maxims and doctrines and to recommend revision thereof for modern conditions. In 1887, in the case of *The Bernina* (12 P.D.89), Lord Lindley, dealing with the law relating to contributory negligence, said: "but why in such a case damages should not be apportioned, I do not profess to understand". This remark eventually bore fruit in the 8th Interim Report (1939) of the Lord Chancellor's Law Revision Committee, wherein it was recommended that liability should be apportioned in accordance with the degree of fault of each party.

Arthur Suzman in his report to the GCB dated 24 July 1946 then went on to recommend the establishment of a similar committee in South Africa. Well, it took only 27 years before this suggestion bore fruit in the establishment of the South African Law Commission in terms of Act 19 of 1973, which commenced on 1 September 1973. Maybe one can say that the administration of justice in South Africa moves at almost double the pace compared to England!

Finally, the Suzman family is well-known as staunch opponents of oppressive laws. It is therefore somewhat surprising to find the following recommendation from the pen of Arthur Suzman QC in regard to the duties of the proposed Law Revision Committee: "It should not be called upon to deal with matters involving political controversy (such, for example, as the *pass laws*), or matters involving major social changes, (such, for example, as the *legal disabilities of women*) – though it might well be requested to report on the existing state of the law in such cases"! (My italics)

Just for the record, as at 24 July 1946, the infamous apartheid regime had not yet taken its grip on South Africa!

Neels Claassen SC

Note: The South African Law Commission's predecessor, the Law Revision Committee, was established in 1950 – not by law but administratively by the Minister of Justice. Only three persons who were members of the Committee when it was dissolved in 1973 are still active in the legal world: Judge of Appeal E M Grosskopf, Prof Paul van Warmelo SC of the Pretoria Bar and Prof A C Cilliers of the University of Port Elizabeth. It is also interesting to note that our own Apportionment of Damages Act 34 of 1956 was initiated by this Committee. Another interesting point is that the laws removing the legal disabilities of women passed in recent years were initiated by the successor of the Committee proposed by Suzman QC. It would seem, therefore, that the wheels of our justice machine in fact turned at breathtaking speed in this particular instance! *– Editor*

Prof Paul van Warmelo SC

Qualifications of Judges

The qualifications for elevation to the Supreme Court Bench are dealt with in sections 96(2) and 104(1) of the Interim Constitution. It is stated that the judiciary shall be independent, impartial and subject only to the constitution and the law, and that judges shall be fit and proper persons for elevations to the bench.

The Judicial Service Commission may well take note of the qualifications for elevation to the bench formulated by the General Council of the Bar in a resolution dated 26 July 1946:

"*Resolution 1:* Appointments including acting appointments to the Supreme Court Bench should be made from among practising barristers of the highest standing.

(a) One of the most important qualifications for appointment to the Bench is a thorough knowledge of the administration of justice. This can only be gained by practical experience in the Courts extending over a considerable period.

(b) It is essential that the Bench should possess the confidence of the profession and the public. This is only secured by the elevation of those advocates to the Bench whose success at the bar, is the proof of the confidence of the public, the Side Bar and the Bar,

(c) It is essential that a judge should be capable of considering all questions and all points of view independent of prejudice and preconceptions. This judicial quality is developed in practice at the bar where all manner of people have to be dealt with and all manner of problems have to be considered from an unbiased and independent standpoint.

Resolution 2: The judiciary should be widely distinguished from the executive. Appointments to the Bench from the civil service would tend to identify the judiciary too closely with that service. This is extremely undesirable especially in view of the fact that the judges are constantly called upon to decide the differences between government departments and the general public.

Resolution 3: Employment in a legal capacity in the civil service cannot be regarded as conferring on members of the bar, so employed, the qualifications mentioned in Resolution 1."

If the contents of these resolutions are to be regarded as definitive of the norm that a judge is to be a "fit and proper person", one can readily extract therefrom the following qualities: A thorough knowledge of the administration of justice; practical experience in the courts over an extended period of time; enjoyment of public confidence; ability to consider all points of view without prejudice or preconception; lack of bias; independence from the civil service, government and/or the executive.

None of the aforesaid qualities would seem to conflict with the gravamen of the requirements set out in sections 96(2) and 104(1) of the Interim Constitution. Almost 50 years may have passed, but the inherent qualities of being a good judge never change.

Neels Claassen SC □

Note: See also "Qualities of ideal Judge" elsewhere in this edition *– Editor.*