

For a few dollars more: Overcharging and misconduct in the legal profession of the *Zuid-Afrikaansche Republiek**

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OPSOMMING

Vir 'n paar dollar meer: Oorvordering en wangedrag in die regsberoep van die *Zuid-Afrikaansche Republiek*

Die regslui van die *Zuid-Afrikaansche Republiek (ZAR)* is al beskuldig daarvan dat hulle gewetenloos en ondergekwalfiseerd was en ook buitensporige fooie gevra het van hul kliënte. Hierdie artikel ondersoek sekere van hierdie aantygings. Eerstens word daar gekyk na die regulasie van die kwalifikasies en toelatingsvereistes van lede van die regsprofessie, asook na verwante aangeleenthede soos die “dual practice” tradisie en die impak van die eksamenraad. Tweedens word die regulasie van regskostes bekyk. Derdens word enkele gevalle van wangedrag in die regsprofessie van die *ZAR* kortliks bespreek. Ten slotte maak die outeur sekere gevolgtrekkings en lewer kommentaar oor sekere aspekte.

The more I think about it, Old Billy was right Let's kill all the lawyers, kill 'em tonight.¹

-The Eagles *Get over it*

1 Introduction

The lawyers practising in the old *Zuid-Afrikaansche Republiek*² (*ZAR*) have been accused on more than one occasion of being unscrupulous

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1 <http://www.azlyrics.com/lyrics/eagles/getoverit.html> (2010-10-28).

2 The name “*De Zuid-Afrikaansche Republiek*” was officially adopted by a resolution of the *Volksraad* on 1853-09-19 and confirmed by art 1 1858 Constitution – see respectively Eybers *Select Constitutional Documents Illustrating South African History 1795-1910* (1918) 360 Doc no 179 and 363ff Doc no 182. (The name was at some point amended by another *Volksraad* resolution dated 1853-11-21 and changed to “*De Zuid-Afrikaansche Republiek Benoorden de Vaalrivier*”, but the original name was retained thereafter by the 1858 Constitution.) The use of the name later became a political issue when, after the British annexation ended in 1881 (see n 54 *infra*), the British authorities disapproved of the use of that name in official documents (Irish University Press Series *British Parliamentary Papers Colonies Africa* [hereafter *BPPCA*] Transvaal Vol 37 (1971) No 13 at

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and self-serving.³ In his autobiography, Sir H Rider Haggard remembered them as follows: To put it mildly, the lawyers who frequented the Transvaal courts were not the most eminent of their tribe. Indeed some of them had come thither because of difficulties that had attended their careers in other lands.⁴

In addition, the perception exists that this group of lawyers was not only under qualified, but also that they were infamous for overcharging.⁵

However, Kotze CJ sketched a contrary picture and remembered them quite differently:⁶

I still have pleasant recollections of my early experience on the bench during the period of annexation, and of the good service and loyalty of these old practitioners.⁷

62 and No 14 at 62). The then Attorney-General, EJP Jorissen, responded that the name “South African Republic” (the English translation) “is the old name of the country ... and regarded with affection by every burgher in the land” (*BPPCA Transvaal* Vol 37 (1971) No 31 at 101 Annexure 2 at 102-103). The British then pointed out that the Convention of Pretoria of 1881-08-03 (publ in Eybers 455-463 Doc no 200) referred to the “Transvaal Territory” and that the Transvaal and the South African Republic did not have the same boundaries (*BPPCA Transvaal* Vol 37 (1971) No 41 at 267). However, in the London Convention dated 1884-02-27 (publ in Eybers 469-474 Doc no 204), a subsequent treaty between Britain and the Transvaal State, Britain acquiesced and reverted to the use of the name “The South African Republic”. For purposes of this article, to avoid confusion with the later province of Transvaal and the Republic of South Africa after 1961, the original name, namely *Zuid-Afrikaansche Republiek* (or its acronym *ZAR*) will be used, also when referring to the period before the *Volksraad* resolution of 1853-09-19.

3 In a letter to his father dated 1878-04-07, H Rider Haggard mentioned that he had to deal with “a lot of gentlemen whose paths were the paths of self-seeking ...” (publ in Haggard *The Days of my Life: An Autobiography* (ed Longman) (1926) 114).

4 Haggard 108.

5 Haggard accused them of overcharging and of their clients being “mercilessly fleeced” (109). Hahlo & Kahn *The Union of South Africa. The Development of its Laws and Constitution* (1960) 231 n 70 further refers to Tromp *Herinneringen uit Zuid-Afrika ten tijde der Annexatie van de Transvaal* (1897) in this regard. However, it is submitted that this source is incorrectly cited there as Tromp merely stated that it was possible for the inhabitants of the Transvaal, in general, to become rich without much energy, knowledge or hard work (195) and that it was possible for attorneys in particular to earn a lot of money because of the litigiousness of the population (195-196). He was much more scathing towards members of the medical profession of that time, which he referred to as “*kwakzalver(s)*” with bills “*die bijna ongelooflijk zijn*” (196).

6 Kotzé *Biographical Memoirs and Reminiscences Vol 1* (date unknown, publ Maskew Miller, Cape Town) [hereafter Kotzé Vol 1] 540-541. Kotzé actually had a lot of praise for the local bar practising at the time of the creation of the high court in 1877. He mentioned that they “understood how to prepare their cases and conduct them with proper care and attention”, and that “[s]ome of them displayed quite good ability as pleaders, for they were anxious to learn, and were in earnest in their work” (540).

7 Kotzé Vol 1 541.

The purpose of this article is to investigate these opposing views on the reputation of the legal profession in the ZAR until 1900.⁸ This will be done by firstly setting out the matter of the qualifications of lawyers during this period and secondly, by examining possible evidence regarding the claims of overcharging and misconduct against this group.

2 Qualifications

2.1 Required Qualifications

The first statute⁹ dealing with the administration of justice in the ZAR was *De Drie en Dertig Artikelen* promulgated on 9 April 1844¹⁰ which was confirmed by a resolution of the *Volksraad* on 23 May 1849.¹¹ This statute contained general provisions¹² on “law sessions” (*teregtzittingen*) but did not mention legal representatives other than stating that a person could either plead his own case before the *Regtbank* or instruct another person to do so on his or her behalf.¹³

The stipulations regarding the administration of justice as contained in

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- 8 Apart from the period when the ZAR was first annexed by Britain (1877-1881), this paper deals only with the administration of justice in the ZAR while not under British rule. The Anglo-Boer War commenced on 1899-10-11 and ended on 1902-05-31 with the signing of the *Vrede van Vereeniging* treaty. Thereafter the ZAR became a British colony.
- 9 See also Koté “The administration of justice in the South African Republic (Transvaal)” 1919 *SALJ* 129.
- 10 As publ in Eybers 349ff Doc no 174.
- 11 As publ in Eybers 357 Doc no 175; See also Kotzé 1919 *SALJ* 129.
- 12 The general provisions dealt with matters such as public order at the law sessions (arts 2, 3); obstruction of justice (arts 4, 5); the crimes of treason (arts 9, 10), perjury (art 17), assault (art 18 used the terminology “wie iemand stouten of slagen”), slander or defamation (arts 19, 27), murder, patricide, infanticide, poisoning (art 20), theft (art 21) and other property related crimes (art 22), refusal to go on commando when summoned (art 23), opening of another’s letters (art 24), abduction of children (art 28); non-compliance with rules relating to building (art 26); the application of the *Hollandsche wet* (art 31); and the treatment of servants (art 33). For a general discussion on *De Drie en Dertig Artikelen*, see Kotzé Vol 1 436-437; Kahn “The history of the administration of justice in the South African Republic” 1958 *SALJ* 295-297; Scott “The administration of justice in the Transvaal 1836-1910” in Mellett, Scott & Van Warmelo *Our Legal Heritage* (1982) 91-92.
- 13 Art 16. The statute did, however, make provision (in art 6) for certain grounds that prevented a person from acting as a judge. These grounds made no mention of required qualifications, but dealt mostly with possible factors that could influence the impartiality of the judge. The terminology used in this provision referred to a “judge” (*regten*) despite the fact that the law sessions of that time were presided over by a *landdrost*. For a discussion of the duties of *landdrosts* before the 1858 Constitution, see Van der Westhuizen & Van der Merwe “Die geskiedenis van die regspleging in Transvaal (1835-1852)” 1976 *De Jure* 265.

the Constitution of 1858¹⁴ were more extensive and sophisticated.¹⁵ It made provision for the establishment of a *hof van den landdrost* in each district, with appeals to a higher *hof van den landdrost* with six or at least four *heemraden*. The highest court was the *hoog-geregtshof*¹⁶ which sat at least twice a year.¹⁷ To each court was assigned a clerk and a messenger.¹⁸ Although the Constitution even established *weesheeren* and a *weeskamer*,¹⁹ it made no mention of legal representatives or their required qualifications.²⁰ However, in *Bijlage No 3*²¹ to the 1858 Constitution, it was stipulated that a person could only use the title of *procureur* after acquiring an *acte van toelating* from the *Uitvoerende Raad* (Executive Council).²² A person had to apply for admission in writing to the Executive Council providing proof of membership of the *Nederduitsche Gereformeerde Gemeente* as well as proof of ability,

14 As publ in Eybers 363ff Doc no 182. For a general discussion of the provisions of the 1858 Constitution, see Kahn 1958 *SALJ* 302-306; Van der Westhuizen & Van der Merwe 1977 *De Jure* 95-96.

15 Arts 15, 127-170. See also Kotzé Vol 1 436-437.

16 Art 143. In *Bijlage 3* to the 1858 Constitution (see n 21 *infra*) the highest court was referred to as the "*Hoog Geregtshof*". The terms used to refer to the high court differed in the various official documentation and legislation. For purposes of this article, the term referred to in the document under discussion will be used. Furthermore, art 3 of *Bijlage 3* made provision for the election of a chairman of the *Hoog Geregtshof* by the *landdrosten* from among themselves (3 *landdrosts* had to preside at each sitting – see art 143 of the 1858 Constitution), and art 4 stipulated that the clerk of the *landdrost* of the place where the *Hoog Geregtshof* sat, would act as *griffier*.

17 Art 144. At each sitting, the order in which cases were heard, were determined as follows: criminal cases of first instance, appeals in criminal cases, and only then were appeals in civil cases heard (arts 1, 35 and 42 of *Bijlage 3* to the 1858 Constitution).

18 Art 143. A person wanting to be appointed as a clerk had to meet certain requirements: he had to be an enfranchised citizen, have not had any dishonouring sentences passed against him and be over 21 years of age (art 134). Furthermore, both clerks and messengers had to take an oath of office (arts 141 and 142 respectively).

19 Art 184.

20 The Constitution did, however, set minimum requirements for other judicial officers: *landdrosts* had to be enfranchised citizens for at least two years, as well as members of the Dutch Reformed Congregation, not have had any dishonouring sentence passed against them, be thirty years or older and own immovable property within the Republic (art 128); *heemraden* had to meet the same requirements as those for *landdrosts* with the exception of having to own immovable property within the Republic (art 129); jurors were expected to be enfranchised citizens, have had no dishonouring sentences passed against them and be thirty years or older (art 131). *Veldcornetten* were also appointed (arts 127, 145) and their duties were set out in a separate document, entitled *Instructie voor de Veldcornetten* promulgated on 1849-04-09 and approved by resolution of the *Volksraad* on 1858-09-17 (publ in Eybers 410ff Doc no 183). An oath of office had to be taken by *landdrosts* and *heemraden* (art 139 of the 1858 Constitution), jurors (art 140 of the 1858 Constitution) and *veldcornetten* (art 62 of the *Instructie voor de Veldcornetten*). See also n 18 *supra* regarding the oaths of clerks and messengers of the courts.

21 Approved by the *Volksraad* on 1859-09-20.

22 Art 50 *Bijlage 3*. Non-compliance was punishable with a fine of 100 rijksdaalders.

without defining what “ability” referred to.²³ An application was then granted by the Executive Council²⁴ after consultation with the State Attorney.²⁵ In 1876 this rule was extended to prohibit the use of the titles of *advocaat* (advocate), *notaris* (notary) and *agent* by persons not in possession of an *acte van toelating*, obtained from the Executive Council.²⁶ The requirement regarding membership of the *Nederduitsche Gereformeerde Gemeente* was also amended to include membership of any *Protestantsche church*.²⁷

Law 1 of 1874 was drafted by the State Attorney of that time, James Buchanan,²⁸ and provided for the regulation of civil and criminal procedures in cases before the *geregthoven van landdrosten* and the

23 Art 51 *Bijlage 3*.

24 Art 53 *Bijlage 3*. The *acte* was then signed by the President and the Secretary of the Executive Council as well as by the State Attorney. The applicant had to pay a fee of 100 rijksdaalders for the issuing of the *acte*. This means that at that time, the admission of attorneys (*procureurs*) were dealt with by the executive, and not by the judiciary.

25 Art 52 *Bijlage 3*.

26 Decision of the *Volksraad* of 1876-06-14 (art 219). Non-compliance was severely punished with a fine of £7 10s for each separate offence.

27 *Idem* (art 220). The wording erroneously referred to membership of the “Ned. Hervormde” church.

28 James Buchanan has been described as “a lawyer of ability” (Kotzé 1919 *SALJ* 133); as possessing “exceptional diligence and [a] brilliant intellect”, as “a conscientious jurist and an outstanding lawyer” (Moll *sv* “Buchanan, James” in *Dictionary of South African Biography* [hereafter *DSAB*] Vol II (2nd impr 1983) 95-96); and as a “sound lawyer and an eloquent speaker” (Kotzé Vol 1 275). He was born in Cape Town on 1841-09-21 and his law career commenced on 1865-02-01 when he set up practice as an advocate at the Cape Bar. He participated in the western circuit of the Cape circuit court until 1871. On 1872-12-09 he became Attorney-General of the *ZAR*, where he remained until 1875. During this brief period, he implemented changes to the administration of justice, one example being Law 1 of 1874, despite having only one clerk and no permanent office space. He also played a role in the establishment of the first police force in the *ZAR* and drafted legislation relating to insolvency matters, the latter which was never accepted by the *Volksraad* due to certain conservative elements (Kotzé 1919 *SALJ* 133). From 1876 to 1880 Buchanan was a puisne judge with the Supreme Court in the Orange Free State, whereafter he left for Kimberley where he was appointed as the recorder, and in Sep 1882 judge president, of the Supreme Court of Griqualand West, where he remained until his retirement in Sep 1887. During his law career, he was also the editor of the *Menzies Reports*, containing cases decided by the Supreme Court of the Cape of Good Hope, and authored *Precedents in Pleading: Being Forms Filed of Record in the Supreme Court of the Colony of the Cape of Good Hope* (1878) as well as a work on *Decisions in Insolvency* (1879). (It is interesting to note that in both the *Menzies Reports* as well as *Precedents in Pleading* he is mentioned as James L Buchanan, although Moll *sv* “Buchanan, James” in *DSAB* Vol II (2nd impr 1983) 95 refers to him merely as James Buchanan.) He furthermore translated several volumes of Johannes Voet’s *Commentarius ad Pandectas*. In addition to his law career, he was actively involved in politics, journalism and cultural matters. For more detail on the life of James Buchanan, see Moll *sv* “Buchanan, James” in *DSAB* Vol II (2nd impr 1983) 95-96; Kotzé Vol 1 275-276, with a portrait of James Buchanan opposite.

geregthoven van landdrosten en heemraden.²⁹ In addition to the already existing offices of clerks and messengers of the court, the Law further made provision for the judicial office of *griffier*.³⁰ However, with regard to legal representatives, the Law merely stated that no person, other than an attorney (*procureur*) properly admitted³¹ before the *hoogere geregthoven* could act as such.³² The Law unfortunately did not define what these requirements for proper admission entailed. Agents could also appear as legal representatives in the lower courts (*geregthoven van landdrosten* and *geregthoven van landdrosten en heemraden*) by acquiring a licence from a *landdrost*.³³ The only requirements for such a licence entailed the passing of an examination before the *Commissie van Examinatoren in de Rechtsgeleerdheid*³⁴ and being of a good character.³⁵

29 See the preamble to the Law. For example, regarding civil cases, the Law contained prescribed forms for *dagvaarding* (art 10 (*civiele zaken*) and art 6 (*crimineele zaken*)), *subpoena op getuige* (art 18 (*civiele zaken*) and art 7 (*crimineele zaken*)), *acte van securiteit* (arts 35, 47), *lastbrief ter executie* (art 43), *kennisgeving van beslag* (art 46), the certificate in appeals (art 52) and the *lastbrief* for arrest (art 16 (*crimineele zaken*)). (Unless otherwise specified, all references to arts in this Law refer only to provisions dealing with civil cases.)

30 Art 5 contained the prescribed oath of office to be taken by the *griffier*.

31 Persons applying for admission as an attorney or advocate in the high court, had to pay stamp duty in the amount of £30 (s 7 of Law 2 of 1871). Once admitted, a practitioner had to obtain a licence, renewable annually at a cost of £15 (s 5 of Law 2 of 1871). In 1882 this rule was amended by a decision of the *Volksraad* dated 1882-06-27 (despite an extensive search, I was not able to obtain a copy of this decision): henceforth licences could be obtained for periods of a year (for £25), six months (for £18 15s) or three months (for £10 10s).

32 Art 1 (*civiele zaken*) read as follows: “Niemand zal geregtigd zijn als procureur of agent voor eene partij optredende, eenige betaling te eischen als zoodanig volgens tarief, dan dezulken, die behoorlijk geadmitteerd zullen zijn, hetzij als procureurs voor de Hoogere Geregthoven of als agenten voor de mindere.” (The reference to the claim for payment according to tariff was omitted by an amended provision (art 216) accepted by a resolution of the *Volksraad* dated 1876-06-14.) It seems this prohibition applied only to legal representation in civil cases as there was no corresponding article in the section dealing with procedures in criminal cases. This further correlates with Law 2 of 1871 in terms of which tariffs charged by attorneys and law agents were regulated only with regard to civil matters; the costs in criminal matters could be determined by agreement between the attorney or law agent and his client (see n 113 *infra*). Regarding law agents, see n 76 *infra*.

33 Art 1. The stamp duty payable at admission was £12 (s 7 of Law 2 of 1871). Licences expired on 31 Dec and had to be renewed annually at a cost of £10 (s 5 of Law 2 of 1871).

34 See par 2 3 *infra*.

35 Art 2. This article also specified the procedure to be followed before the granting of a licence.

On 18 May 1877, after the annexation of the ZAR by Britain,³⁶ a proclamation was promulgated by the new administrator of the colony, Sir Theophilus Shepstone. This proclamation met with the approval of the press³⁷ and dealt with aspects of the administration of justice with particular regard to matters involving the high court. In addition to, among others, the establishment of the said court,³⁸ provision for the appointment of one judge,³⁹ one *meester en griffier* and one *baljuw*,⁴⁰ as well as the seat⁴¹ and jurisdiction⁴² of the court, the proclamation specifically dealt with the admission of lawyers. All *advokaten* (advocates), *procureurs* (attorneys), *notarissen publiek* (notaries) and *ontwepers van acten* (conveyancers) were from that time approved, registered and admitted by the high court.⁴³ Persons who had been practising as advocates and attorneys before the promulgation of this proclamation could be admitted as such by the high court.⁴⁴ It was also possible for the following persons to be admitted to practice: persons who had been admitted as members of the bar in the United Kingdom, or in the colonies of de *Kaap de Goede Hoop*⁴⁵ or Natal and who had not been refused admission or become incompetent⁴⁶ could be admitted as advocates; persons who had practised as attorneys or solicitors at the *Griffie Hoven* at Westminster or Dublin, or in the ecclesiastical courts in

36 Britain annexed the ZAR by a proclamation issued on 1877-04-12: as publ in Eybers 448ff Doc no 198. See also the *Gazette Extraordinary (ZAR)* of 1877-04-12.

37 *De Volksstem* (1877-05-23) "The High Court – Official changes". However, a few weeks later, the same newspaper was quick to point out some of the shortcomings of the proclamation (see *De Volksstem* (1877-06-06) "Het Hoog Geregtshof" and (1877-06-13) "Andermaal het Hooge Hof").

38 Art 1 of the Proc (see n 36 *supra*).

39 Art 2. JG Kotzé was appointed as the first judge of the high court of the ZAR in 1877 by Sir Theophilus Shepstone. In 1881 he was appointed as Chief Justice and served in that capacity until his dismissal by Pres Kruger on 1898-02-16 as a consequence of the constitutional crisis. Much has been written about the constitutional crisis, but due to space constraints, this will not be discussed here. For more on this topic, see Kew *John Gilbert Kotzé and the Chief Justiceship of the Transvaal, 1877-1881* (MA dissertation 1979 UNISA) *passim*; Hahlo & Kahn 107-110; *Paul Kruger and the Transvaal Judiciary* Vigilance Papers 3 (1900) *passim*.

40 Art 8.

41 Art 3.

42 Arts 4 and 5. Art 4 excluded jurisdiction in disputes between *inboorlingen*, while art 5 determined jurisdiction in all appeals and reviews from the lower courts.

43 Art 9.

44 Art 10.

45 In the Cape, admission to the legal profession at that time was regulated by Act 12 of 1858 (Cape). Advocates had to obtain a certificate of merit, as well as a certificate of the higher class in law and jurisprudence (s 2 Act 12 of 1858). From 1873 it was also possible to gain admission by acquiring a Bachelor of Law degree from the newly established University at the Cape of Good Hope (s 20 Act 16 of 1873 (Cape)). For a critical analysis of the quality of the training involved for this degree, see Pont "Die opleiding van die juris in Suid-Afrika" 1961 *Acta Juridica* 68-70, 73-75.

46 "[E]n die niet afgewezen of op eene andere wijze onbevoegd zijn geworden ..."

England or Ireland, or were members of The Society of Writers to Her Majesty's Signet in Scotland⁴⁷ or attorneys of the high courts of the Cape⁴⁸ or Natal and who had never been struck from the roll of any of these courts or suspended from practice could be admitted as attorneys; persons who were admitted to practise as notaries or conveyancers in the colonies of the Cape⁴⁹ or Natal and who had not been suspended or become incompetent⁵⁰ could be admitted as notaries or conveyancers respectively.⁵¹ The rules for admission were the same as those applicable at the Cape in 1876.⁵² These stipulations meant that thenceforth all persons wishing to be admitted as advocates or attorneys had to have been admitted as such elsewhere and therefore had to have obtained the relevant required legal training. Furthermore, members of the legal profession could then be suspended or have their privileges revoked by the high court if necessary.⁵³

Four years later, soon after the British annexation came to an end,⁵⁴ the new government issued a proclamation confirming that all members of the legal profession who had been practising as such at the time of the proclamation, could continue to practise provided that they take a

47 For more on the history of the Society, see Robinson, Fergus & Gordon *European Legal History Sources and Institutions* (1994) 240; Society of Writers to H.M. Signet (Great Britain) *A History of the Society of Writers to Her Majesty's Signet: With a List of the Members of the Society from 1595 to 1890 and an Abstract of the Minutes* (1890) ix-lxv [hereafter referred to as Society of Writers]; as well as the official website of The Society of Writers to Her Majesty's Signet available at <http://www.thewssociety.co.uk/index.asp?tm=14> (accessed 2010-11-24). This Society developed by association with the King's Secretary through their duty of drafting official documents and applying thereupon the royal private seal (Signet) of the early Scottish Kings. The clerks of the Secretary's office became known as "writares to the signet" (Society of Writers xvii). Although the first use of the Signet was recorded in 1369, the Society was officially established only in 1594. In addition to their work in the Secretary's office, they also acted as clerks of court and were closely linked to the College of Justice (*idem* xvii-xviii). To become a member of the Society, a person had to have some knowledge of business matters, the law and conveyancing, Latin as well as "a mastery of the art of penmanship" (*idem* xvii). An apprenticeship and passing an examination were also requirements (*idem* xlvi, xxv).

48 Attorneys had to obtain a certificate of merit and serve articles for three consecutive years (s 3 of Act 12 of 1858 (Cape)).

49 The admission of notaries in the Cape was regulated by ss 4 and 5 Act 12 of 1858 (Cape).

50 "... *en die niet geschorst of op andere wijze onbevoegd zijn geworden.*"

51 Art 9.

52 *Ibid.* Regarding the admission to the legal profession in the Cape, see nn 45, 48 and 49 *supra*.

53 Art 11.

54 In terms of The Convention of Pretoria, dated 1881-08-03 (publ in Eybers 455-463 Doc no 200), Britain granted the Transvaal "complete self-government, subject to the suzerainty of Her Majesty" and certain reservations and limitations. Proc 1881-08-08 (as publ in Eybers 463-464 Doc no 201; also publ in Jeppe (ed) *De Locale Wetten der Zuid Afrikaansche Republiek 1849-1885* (rev Kotzé 1887) 1010) mentioned 1881-08-08 as the date that independence was granted.

prescribed oath.⁵⁵ They were still subject to suspension or revocation of privileges by the high court should “een wettelijk oorzaak” exist.⁵⁶ This applied to advocates, attorneys, notaries and conveyancers.

In accordance with Proclamation 14 of 1892, attorneys or solicitors of any of the courts of record in London or Dublin, Writers to Her Majesty’s Signet or law agents⁵⁷ admitted to practise in the Supreme Courts in Scotland, or attorneys admitted to practise in the Cape could be admitted to practise in the ZAR provided that no order of suspension applied to any of them.⁵⁸

For admission as an attorney, notary and conveyancer, the High Court Rules of 1887⁵⁹ required successful completion of the second-class examination in law and articles of three consecutive years.⁶⁰ To be admitted as an advocate, a person had to pass the first-class examination in law. Persons who had been admitted to the Bar in the Cape, or who had qualified as an advocate at one of the *hoogescholen* (or universities) in the Netherlands could be granted admission to practise as an advocate in the ZAR. All other persons who had received their legal training abroad had to pass a supplementary examination. Furthermore, a qualified advocate could be permitted to practise as an attorney, although not in a dual capacity.⁶¹

55 Art 6 Proc of 1881-08-09 *Staats-Courant der ZA Republiek* of 1881-08-18 (publ in Jeppe 1011-1013). This proclamation was ratified, confirmed and added to by s 1 Act 3 of 1883 which dealt with the administration of justice and the proper composition of the *hoog gerechtshof* and the circuit courts.

56 Art 7 Proc of 1881-08-09.

57 In 1902 the secretary of the Incorporated Society of Law Agents in Scotland, JW Barty, complained to the Undersecretary of State for Colonies regarding the inconvenience caused by the related formalities in this regard. Law agents admitted in Scotland, and who had not signed the roll of the Supreme Court in Scotland, were required to return to Edinburgh in person to pay stamp duty of £30 and sign the roll: see TAB [refers to the Pretoria Archives Repository] GOV Vol 22 GEN 614/02 3-4, letter dated 1902-07-26 enclosed in despatch from J Chamberlain to Milner, 1902-08-12.

58 S 11 Proc 14 of 1892.

59 Proc of 1887-08-29 *Staats Courant der ZAR* of 1887-09-14 *Bijvoegsel* [hereafter referred to as the High Court Rules 1887].

60 S 75 High Court Rules 1887. The articles could be served with a practising attorney, notary or conveyancer. Alternatively, the person could have served as clerk to the State Attorney or one of the judges of the high court, or as the registrar or assistant-registrar.

61 S 75 High Court Rules 1887.

The High Court Rules of 1899⁶² also contained requirements regarding admission. Advocates had to obtain a certificate of the first class in law from the board of examiners.⁶³ Advocates who had been admitted in foreign jurisdictions, were no longer admitted at random,⁶⁴ but had to pass an examination in subjects determined by the court. As before, attorneys (and notaries)⁶⁵ had to obtain a relevant certificate⁶⁶ from the board as well as complete articles for a period of three successive years.⁶⁷ Although conveyancers, too, had to obtain a certificate from the board, they were not required to do articles.⁶⁸ Persons who had been admitted in foreign jurisdictions as attorneys, notaries or conveyancers had to pass a supplementary examination and attorneys and notaries had to serve the required period of articles.⁶⁹ Such persons could further only be admitted if the requirements for admission in the foreign jurisdiction were the same or “more favourable” than in the ZAR.⁷⁰ All advocates, attorneys, notaries and conveyancers had to take a prescribed oath upon admission.⁷¹ Interestingly, although women could become advocates, they were barred from the professions of attorneys, notaries and conveyancers.⁷² Lastly, although the 1899 High

62 Rules and Regulations (1899) of the High Court of the South African Republic (hereinafter referred to as the High Court Rules 1899)(publ in Barber, Macfayden & Findlay *The Statute Law of the Transvaal* (1901) 1118-1154). Regulations for the lower courts were promulgated as Law 11 of 1892. S 9 Law 11 of 1892 stipulated that an advocate was allowed to appear in the lower courts only when instructed to that effect by an admitted attorney or law agent. S 101 also provided that a law agent was not allowed to appear in the lower courts without a certificate proving he had passed the necessary examinations.

63 For more on the board of examiners, see par 2 3 *infra*.

64 S 102 High Court Rules 1899.

65 S 103(b) High Court Rules 1899. A notary could only serve articles with a practising attorney. A person already admitted as an attorney only had to serve articles of one year before applying for admission as a notary.

66 Although the provision did not explicitly state which certificate, it most probably referred to a certificate of the second class in law.

67 S 103(a) High Court Rules 1899. The articles could be served as a clerk or pupil with a practicing attorney (in which case the contract had to be registered at the high court and with the Law Society), or as a clerk of the State Attorney, or as a clerk to a judge of the high court, or as registrar or assistant registrar, or as taxing officer.

68 S 103(c) High Court Rules 1899.

69 S 103(d) High Court Rules 1899.

70 *Ibid.*

71 S 107 High Court Rules 1899.

72 See ss 102, 103(a), (b) & (c) High Court Rules 1899. Although this discrepancy is interesting, it was probably merely an oversight of the Legislature, especially since advocates were allowed to be admitted as attorneys (s 104 of the 1899 Rules). Furthermore, there were no known female advocates at that time. The first challenge to the all male-rule was the case of *Schlesing v Incorporated Law Society* 1909 TS 363, in which the female applicant applied for admission as an attorney (and not an advocate). From the comments by the court in its judgement, it is clear that at that time, ten years after the promulgation of the 1899 High Court Rules, the ZAR legal fraternity still viewed the profession as exclusive to males. It is therefore unthinkable that the High Court Rules 1899 could have intended to

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Court Rules acknowledged law agents,⁷³ it did not deal with their admission requirements since they did not have right of appearance in the high court.

2 2 Dual Practice

It should be borne in mind that until 1877, dual practice was permitted in the ZAR. This meant that attorneys could perform the duties of advocates and *vice versa*.⁷⁴ As mentioned before,⁷⁵ a third, lower branch of the profession consisted of law agents.⁷⁶ Kotzé CJ himself was very critical of the dual practice system,⁷⁷ despite opposition from the legal profession⁷⁸ and the press.⁷⁹ Probably due to his insistence it was

open the advocacy profession to females. Women were only allowed to be admitted as legal practitioners from 1923 (Act 7 of 1923). Regarding gender stereotyping by the courts in this regard, see Wildenboer “Through rose coloured glasses: gender stereotyping in the South African courts” 2008 1 *Speculum Juris* 32-35.

73 S 110a High Court Rules 1899 only mentioned law agents regarding the exceptional circumstances in which an attorney could share his fees for work done in the high court with a person who was not a qualified and practising attorney.

74 Kotzé 1919 *SALJ* 134. For a legal historical overview of the divided legal profession, alternatively dual practice, in South Africa, see Wildenboer “The origins of the division of the legal profession in South Africa: A brief overview” 2010 2 *Fundamina* 199-225.

75 See nn 32 and 33 *supra*.

76 Law agents were only permitted to appear in the lower courts and had no *locus standi* in the high court: Kotzé 1919 *SALJ* 134. After 1877 they had to pass an examination known as a third class certificate in law: see Kotzé 1919 *SALJ* 138; see also nn 33-35 *supra*, as well as n 91 *infra*.

77 Kotzé Vol 1 422-424; *Ex parte Auret* (1888) 2 SAR 228 where Kotzé CJ stated that “it is undesirable that a practitioner should constantly be changing from an advocate to an attorney and *vice versa*” (229). He then continued by instituting a new rule which required a minimum of two terms lapsing between having one’s name removed from one roll and applying to be admitted on the other roll (*ibid*). See also Van der Westhuizen & Van der Merwe 1977 *De jure* 245.

78 In separate, albeit similar letters dated Jan 1878, two members of the legal profession addressed the government on the subject of separating the office of attorney from that of advocate. SJ Meintjes, signing his letter “Attorney” (TAB SS Vol 262 R220/78, letter to the Government Secretary Transvaal dated 1878-01-22) and JC Preller, signing his letter “Adv. Atty” (TAB SS Vol 263 R237/78: although the letter is undated, a pencil inscription on the original document stated that it was “Recv Jan 23”). Interestingly, these letters show an almost word-for-word similarity which gives me reason to believe that both letters were written and delivered, if not on the same date, then within a few days of each other.) refer to the last session of the high court where the judge (Kotzé) indicated that he was drafting new rules of court in this regard. They then pointed out, first, that the judge himself had said, in the case of *O’Leary v White*, that the dual practice system “worked well” in Natal because it was “less expensive to the community” and, secondly, that their privilege to practise as both attorney and advocate, was guaranteed in terms of the Annexation Proclamation and confirmed by a certificate from the high court when readmitted to practise as such. They did, however, acknowledge that at a later stage (30 to 35 years from then) it might be “advisable” to reconsider the dual practice system.

79 *De Volksstem* (1878-01-01) “Regterlijk”.

decreed in 1877 that the legal profession was to be divided and that admission to one branch would prevent admission to the other, although persons who had been permitted to practise in both branches before that date could still continue to do so.⁸⁰ Even this concession was later retracted by the 1884 High Court Rules⁸¹ which prohibited a person from practising in the dual capacity of an advocate and an attorney. From that date the *ZAR* had a truly divided legal profession. Nevertheless, a qualified advocate could be admitted as an attorney on the condition that he had not practised as an advocate in the six months prior to his application.⁸²

Although there were very specific requirements for admission to the profession, it said little about the actual legal knowledge of practitioners. The next question therefore concerns the extent of the legal knowledge expected of them.

2 3 The Board of Examiners⁸³

A major change that affected the qualifications of legal professionals was implemented in 1878. Earlier, a board of examiners responsible for testing potential legal practitioners consisted of four members, namely three local attorneys and the chairman, Mr NJR Swart.⁸⁴ Mr Swart had no qualifications and the other members of the board were locally qualified.⁸⁵ Moreover, the fact that Dr EJP Jorissen, a theologian with no legal knowledge, was able to pass this examination after a mere three months of study, casts some doubt on the standard of the examination.⁸⁶

80 Art 9, 10 Proc of 1877-05-18 publ in Jeppe 703-707. See also Van der Westhuizen & Van der Merwe 1977 *De Jure* 245.

81 S 75 Proc *Staatscourant ZAR* of 1884-02-21 [hereafter referred to as the High Court Rules 1884]. This provision was repeated in subsequent amendments: see s 75 High Court Rules 1887; s 104 High Court Rules 1899.

82 S 104 High Court Rules 1899.

83 The official name of the board was the "Board of Examiners in Law and Jurisprudence" (see s 1 Rules published as GN 76/1878 *Transvaal GG* of 1878-06-04). However, for purposes of this article, it will merely be referred to as the "board of examiners".

84 Nicolaas Jacob Reinier Swart was a theologian before accepting the position of government secretary of the *ZAR* on 1871-11-08. He also acted as State Attorney from Oct 1875 to Jun 1876. For more on the life and career of Swart, see Spoelstra *sv* "Swart, Nicolaas, Jacob Reinier" in *DSAB* Vol I (1968) 817-818. Interestingly, Swart himself was of the view that advocates should not be examined in the *ZAR*, but rather receive their training at a university (see the inter office note made by Swart on a letter from Kotzé to Swart in his capacity as Acting Secretary to Government dated 1877-08-01 – TAB SS Vol 242 R2835/77 24).

85 Kotzé Vol 1 528; Kew 87.

86 Van der Westhuizen & Van der Merwe 1977 *De Jure* 259 notes that Jorissen had privately studied the works of Van Leeuwen, Van der Linden and Grotius before passing the required examination on 1876-05-31 (see also Kotzé Vol 1 528). See also Jorissen *Transvaalse Herinneringen 1876-1896* (1897) 8 for his personal memories of that examination. See also Kotzé *Memoirs and*

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Justice Kotzé found the lack of legal training intolerable as it ruined his ideal of a trained and knowledgeable legal profession. In response to his request,⁸⁷ the members of the board would in future include the judge of the high court⁸⁸ and the Attorney-General⁸⁹ in their official capacities, as well as two advocates of the high court,⁹⁰ to be nominated by

Reminiscences Vol 2 (1949) (hereinafter Kotzé Vol 2) 114-115 who described the examination in the local statute law as “an easy matter” and mentioned that the examination itself was conducted in Dutch to test the language abilities of the candidates.

- 87 TAB SS Vol 242 R2835/77 24-27, letter by JG Kotzé to the Acting Secretary to Government dated 1877-08-01. This letter contained preliminary regulations drafted by Kotzé which addressed issues such as the composition of the board, the regularity of examinations, the three classes of certificates and the contents to be prescribed as study material for each certificate. See also Kew 87 n 49.
- 88 At that time, Kotzé himself.
- 89 At that time, EJP Jorissen. Ironically, Jorissen also had no legal qualifications (Kotzé Vol 1 526-528; see also n 86 *supra*. For a discussion of Kotzé’s role in exposing Jorissen’s lack of insight into legal matters, as well as other factors contributing to the subsequent dismissal of Jorissen, see Kew 79-83). Jorissen had received training as a theologian in the Netherlands and was appointed as State Attorney on 1876-07-09 at the behest of Pres Burgers (Jorissen 7-10; Ploeger *sv* “Jorissen, Eduard Johan Pieter” in *DSAB* Vol II (1972) 353). On 1878-10-01 he was succeeded by CG Maasdorp (Kew 83), after which Jorissen remained in practice as a dual capacity lawyer (Kotzé Vol 1 537). According to Kotzé, Jorissen’s lack of legal training did not prevent him from earning £600 annually as Attorney-General of the ZAR before the British annexation (Kotzé Vol 1 415). However, in 1883 when the salary was raised to £1000 per year, it was also stipulated that the State Attorney had to have the required qualifications (VRR 1883-07-04, publ in Jeppe 1216). Jorissen, despite his protests, subsequently lost his position (Kahn “The history of the administration of justice in the South African Republic” 1958 *SALJ* 407; Jorissen 129-130. For a description of the duties of the Attorney-General at that time, see Scott in Mellett, Scott & Van Warmelo 97). In 1890, however, he was appointed as judge of the high court (Ploeger 355).
- 90 HWA Cooper and SJ Meintjes were the first to be appointed (GN 79/1878 *Transvaal GG* of 1878-06-18; Kew 88 n 51). Both these appointments were made on the recommendation of Kotzé with the purpose of involving, and thereby acquiring the cooperation of, the existing profession (Kew 88). See also TAB SS Vol 285 R1926/78 128-129 for Kotzé’s letter to Osborne dated 1878-06-10 where he writes: “Again altogether to pass over the old boys will not do...” and that an appointment should “show the old practitioners that they are not forgotten”). Interestingly, Meintjes had been a member of the board of examiners a few years earlier as well and had resigned from that position on 1869-08-21 (TAB SS Vol 112 R763/69 85). The reason given for his resignation concerned Meintjes’ confession of inadequacy in performing his duties. However, despite his own reservations, he was later reappointed since his name appears again in that capacity in an official notice dated 1871-12-16 (TAB SS Vol 112 R326/71 257). Also interesting is the fact that Meintjes himself had no formal legal training. He settled in Pretoria after a reward of £50 was offered by the Cape government in June 1864 for his capture. He had previously left Graaff-Reinet under a cloud when some businesses suffered bankruptcy, allegedly as a result of his actions. However, since he had been declared insolvent earlier in 1858, his creditors never succeeded in recouping their losses from him. For more information on SJ Meintjes’ life, see Thornhill *sv* “Meintjes, Stephanus Jacobus” in *DSAB* Vol III (1977) 594-595.

government. Also, three categories of certificates to be awarded to successful candidates were identified and the syllabus for each published.⁹¹ From that time onwards, advocates had to obtain a first-class certificate;⁹² attorneys, notaries and conveyancers a second-class certificate; and law agents a third-class certificate.⁹³ Examinations could be taken twice annually⁹⁴ and operated on a points system. For example, one Max Fleischack was found worthy of admission as a law agent during the examination held on 31 March 1885 as he was awarded 384 points out of a maximum of 600 for his knowledge of Van der Linden, and 359 points out of a maximum of 600 for his knowledge of the local legislation.⁹⁵ As a result, he received a third-class certificate.⁹⁶

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- 91 GN 76/1878 *Transvaal GG* of 1878-06-04 and 1878-06-11. Agents were examined on the local laws and on Van der Linden's Laws of Holland. Attorneys, notaries and conveyancers were examined on the same, as well as Roman law, English law and notarial practice. Advocates were examined on jurisprudence (Austin and Maine), Roman law (the Institutes, as well as parts of the Digest), the local laws, Van der Linden, Grotius, Van der Keessel, and English law (law of contracts, torts, evidence, criminal law, equity). Amended syllabi were published in 1887 (GN 229 *Transvaal GG* of 1887-09-07 *Bijvoegsel*) [hereafter referred to as the Examination rules 1887]. Although some amendments had been made, the basic structure of the syllabi remained the same. In terms of the Examination Rules 1887, advocates were now additionally expected to have knowledge of the works of Voet and Van Leeuwen, and to have studied Dutch criminal law. Likewise, attorneys, notaries and conveyancers were expected to study Grotius, Van Leeuwen, Van der Keessel, Pothier and the rules of the high and lower courts.
- 92 See also Proc of 1895-05-31 (publ in Barber, Macfadyen & Findlay 722-723).
- 93 See also Kew 87.
- 94 Report by the *Commissie van Examinatoren in de Rechtsgeleerdheid* to the Government Secretary dated 1858-04-02 (TAB SS Vol 1051 R1678/85 208); see also the notice of such an examination: TAB SS Vol 1184 R1018/86 117. S 2 Law 16 of 1896 provided that examinations in law and jurisprudence would be held on the first Tuesday in the months of April and October. Examinations were taken between 09h00 and 12h00, and between 14h00 and 17h00 (s 6 Supplement to Law 6 of 1895, publ in Barber, Macfadyen & Findlay 599-603).
- 95 TAB SS Vol 1051 R1678/85 208. From the same document it appears that a candidate only passed the examination if he obtained a minimum of 300 points or more in each section of the examination. It is unclear whether this points system was used before the changes made in 1878. However, in two separate earlier documents of the board of examiners, no mention was made of points earned by the successful candidates, nor of the subjects covered in the examination. In each document it was merely stated that the candidate concerned had sufficient knowledge to practise as an attorney (the candidate in question was William Emil Hollard: TAB SS Vol 132 R326/71 257 – for more on Hollard, see the text to n 127/ff) or had completed “een voldoende examen” (the candidate in question was GA Roth: TAB SS Vol 211 R1797/76 301).
- 96 TAB SS Vol 1051 R1678/85 210. A possible relation, Albert Reinhold Fleischack, passed the examination as a conveyancer a year later. However, the report of the examination board did not state the points earned by this candidate (TAB SS Vol 1197 R1553/86 148).

In 1887 additional requirements were set.⁹⁷ Candidates wishing to take one of the three examinations in law first had to obtain other basic certificates.⁹⁸ Also, candidates that had received their training abroad could be required to sit for a supplementary examination.⁹⁹ Examinations were taken orally and in writing.¹⁰⁰ The fees payable for each examination were also stipulated.¹⁰¹

Some eight years later it was determined¹⁰² that the requirements for examinations had to correspond to those of neighbouring states and colonies in South Africa to enable the mutual recognition of diplomas and degrees.¹⁰³ Further, the syllabi for each certificate were once again published¹⁰⁴ and a separate examination for conveyancers was introduced.¹⁰⁵ Candidates who were caught making use of “unfair aids” during the examination could be prohibited from taking examinations for a period, or ever again.¹⁰⁶

It is apparent then that during the early years of the *ZAR*, qualifications and training were not considered a prerequisite for entrance into the legal profession. Instead, measures were put in place to exclude unwanted persons from the profession, namely an undefined “ability” as well as objective proof of White Afrikaner morality in the form of

97 See n 91 *supra*.

98 S 11 Examination rules 1887. Candidates of the third-class examination first had to have obtained a third-class teacher’s certificate, alternatively have passed satisfactorily in certain subjects. Likewise, candidates of the second-class examination first had to have obtained a first-class teacher’s certificate, alternatively have passed satisfactorily in certain subjects. Candidates of the first-class examination first had to have passed an examination on literature and science, which included study of languages (Dutch, English, Latin as well as a choice between Greek, French or German), history, accounting, mathematics and chemistry. With the exception of a few minor changes, these requirements remained mostly the same with the promulgation of new provisions in 1895: see s 14 Supplement to Law 6 of 1895 (publ in Barber, Macfadyen & Findlay 599-603) [hereafter referred to as the Examination rules 1895].

99 S 13 Examination rules 1887. This was reiterated by s 16 Examination rules 1895. In *Ex parte A Morice* (1895) 5 Off Rep 264 an applicant who had been admitted as a solicitor by the Supreme Court of England and who had passed the separate examinations for attorneys and conveyancers, and had later been admitted as an attorney in the *ZAR*, received permission from the court to take the entrance examination for notaries.

100 S 3 Examination rules 1887; s 3 Examination rules 1895.

101 The fees varied between £8 and £15 per examination (s 7 Examination rules 1887 and s 9 Examination rules 1895).

102 Law 6 of 1895.

103 S 8 Law 6 of 1895.

104 The various syllabi remained mostly unchanged. One change concerned the first-class examination which thenceforth consisted of two separate parts which had to be taken at least one year apart.

105 The required subject knowledge was the same as for the third-class examination, with additional knowledge of conveyancing practice.

106 S 7 Examination rules 1895. The corresponding provision (s 6) in the Examination rules 1887 merely mentioned the possible removal of the candidate’s name from the examination list.

membership of the Dutch Reformed Church. Although this untenable position was addressed from 1877 onwards, persons who had been admitted under the old regime were unaffected and could continue to practice. As a result, the last two decades of the nineteenth century saw two groups emerge in the legal profession: the older practitioners with little or no formal training, and the new legally trained practitioners.

3 Overcharging

In response to a public request,¹⁰⁷ the first¹⁰⁸ official tariff of costs pertaining to legal practitioners was laid down by Law 2 of 1871. This Law regulated the fees that could be charged by attorneys in the high court,¹⁰⁹ distinguishing between *illiquide* and *liquide zaken*. The Law also regulated costs of law agents,¹¹⁰ notaries¹¹¹ and transactions passed by the *registrateur van acten* or *landdrosts*.¹¹² In criminal matters, however, the fees could be determined by agreement between the attorney or law agent and his client and was therefore not regulated.¹¹³ Notaries were required to submit their accounts for taxation.¹¹⁴ In 1877 the Acting Attorney General requested the government that all fees payable in public offices be converted to stamp duty. Among the reasons for this request was that it would “be a safer way of collecting ... the payment of fees”.¹¹⁵

More than ten years later the Legislature deemed it necessary to promulgate more extensive provisions regarding tariffs of costs. Act 8 of

107 The request, however, dated back five years to 1866 and was addressed to the President and the Executive Council (Kahn “The history of the administration of justice in the South African Republic” 1958 *SALJ* 308).

108 See Van der Westhuizen & Van der Merwe 1977 *De Jure* 256 who mention, after such a request by the *landdrost* of Potchefstroom, a *Volksraadsbesluit* of 1839 fixing costs regarding *landdrost en heemraden*. However, this was ‘n decision by the Natal *Volksraad*, and can therefore, strictly speaking, not be classified as ZAR legislation.

109 S 13 Law 2 of 1871. In terms of a decision of the *Volksraad* on 1873-06-11, the reference to practice in the high court was thenceforth omitted (see Jeppe 437 n 2). As a consequence, attorneys could then charge the same fees for work done in the high and lower courts.

110 S 14 Law 2 of 1871. S 15 provided for fees due regarding debt collection and operated on a sliding scale.

111 S 16 Law 2 of 1871.

112 S 7 Law 2 of 1871. The fees related to, among others, transactions regarding the transport of immovable property, the execution of estates as well as ante nuptial agreements. All fees were payable as stamp duty.

113 Ss 13 & 14 Law 2 of 1871. See also the resolution of the *Volksraad* of 1870-06-21 (Art 211) (publ in Barber, Macfadyen & Findlay 90) which stipulated that unless ordered otherwise by a court, costs in criminal cases had to be borne by Government.

114 S 16 Law 2 of 1871. The taxation was done by the *landdrost* of the region in which the notary resided.

115 TAB SS Vol 249 R3698/77 37. See also Haggard 109-110 who cited one of the reasons for the implementation of stamp duty as the large percentage of fees on taxed bills of costs payable to the Treasury which was still unpaid.

1883¹¹⁶ contained detailed specifications regarding costs and from that time onwards fees were calculated per page.¹¹⁷ The 1883 Act provided that if an attorney's bill of costs was taxed down by more than a quarter of the total amount of the bill, that attorney had to pay all the costs relating to the taxation, including the drafting of the bill, the attendance at the taxation master as well as the relevant stamp duty due.¹¹⁸ Unlike the 1871 Law, the 1883 Act also specifically regulated the fees of advocates.¹¹⁹ This suggests that overcharging had occurred on a regular enough basis to warrant state regulation of fees.

The 1887 High Court Rules made the taxation of all bills of costs (between party and party, and between attorney and client) compulsory. Non-compliance could result in the relevant attorney being suspended or struck from the roll.¹²⁰

The regulation of bills of costs was further streamlined by Law 12 of 1899 which determined that all bills of costs in lawsuits in the high court and the lower courts had to be taxed.¹²¹ The taxing master could then demand proof that the services claimed for in the bill, had indeed been rendered.¹²² Furthermore, an advocate could no longer charge for more than five consultations per bill,¹²³ and, in the case of postponements of

116 Publ in Jeppe 1200-1209.

117 Eg, whereas in terms of Law 2 of 1871 an attorney could charge anything between 3s and 5s per letter, the same attorney could now charge 5s for the first page of every letter of demand (or other letters) and an additional 2s 6d for every following page. Act 8 of 1883 also required a minimum amount of words (75) per folio (see s 1 *Bijgaande regels voor het tarief voor procureurs* of Act 8 of 1883, publ in Jeppe 1201-1202).

118 S 2 *Bijgaande regels voor het tarief voor procureurs* of Act 8 of 1883, publ in Jeppe 1201-1202.

119 Eg, an advocate was entitled to charge £1 1s for each unopposed application, and £2 2s for each opposed application. Interestingly, Kotzé remembered that, during his time at the Cape Bar less than ten years earlier, junior counsel was allowed to charge five guineas when briefed for a trial (Kotzé Vol 1 175). It is not clear whether this fee was all inclusive or whether it was merely the allowed daily fee. He further mentioned that he earned less than £100 during his first year of practice and £160 during his second and that he had to do some freelance writing for the press to supplement his income (*ibid*). It is noticeable that the income he received as a freelance writer (£100 - £120 annually) was almost worth double what he then earned at the Bar.

120 S 86 High Court Rules 1887.

121 S 1 Law 12 of 1899. However, the taxing of all bills of costs for lawsuits in the lower courts had already been compulsory since 1892 (s 51 Law 11 of 1892). It appears as if this provision was not always followed as closely as it should have been, because by 1899 the legislator felt it necessary to add a penal clause: S 13 Law 12 of 1899 provided that an attorney or agent, practising in the lower courts, who received payment for a bill of costs without having it taxed, were to be suspended from practice or struck from the roll.

122 S 4 Law 12 of 1899.

123 In a bill of costs between party and party (s 7 Law 12 of 1899).

exceptions or appeals, could only charge for the term that an exception or appeal was on the roll for the first time.¹²⁴

The taxation of bills of costs in legal disputes was first suggested¹²⁵ in 1877 by H Rider Haggard during his term as master and registrar of the high court. He deemed this necessary after it had become known that certain advocates and attorneys took to agreeing to each other's bills of costs which were then not sent for taxation. Not surprisingly, Haggard pointed out that such a practice was potentially very harmful to clients as this meant that the lawyers could charge what they wanted. He recalled¹²⁶ that one of the first bills of costs brought to him for taxation, was for an amount of around £600. He taxed it down by half.

State intervention to curb overcharging by legal professionals came as a welcome relief to the public of that time, especially the *Boers*, who were considered "extraordinarily litigious".¹²⁷

4 Misconduct

Misconduct and unethical behaviour among members of the legal profession in the *ZAR* were not uncommon. Due to the constraints of this article, only a few interesting examples will be discussed.

William Emil Hollard¹²⁸ practised as an attorney during the 1870s and 1880s. Stories and rumours about Hollard's life abound, although most of these have not been proven conclusively for lack of documentary evidence. Apparently Hollard came from Danzig, West Prussia, where he had been a painter and a soldier. Without any apparent legal training, he

124 S 8 Law 12 of 1899.

125 In a letter to the Colonial Secretary dated 1877-12-05: TAB SS Vol 258 R4625/77 170-171.

126 Haggard 109. According to Haggard, the lawyers then appealed against his decision, but was only granted very little in addition to the amount allowed by himself.

127 "In those days the Boers were extraordinarily litigious; it was not infrequent for them to spend hundreds or even thousands of pounds over the question of the ownership of a piece of land that was worth little" (Haggard 109). *Contra* Juta *Reminiscences of the Western Circuit* (undated, Cape Town) 86: "It is sometimes said that the farmers of certain districts are a litigious class, but there does not seem to be any good ground for this statement." And at 88: "Though not litigious they are extremely tenacious of what they consider to be their rights." Juta then tried to illustrate this point with an example. He told of a certain farmer who had instituted legal action in the hope of regaining a mule worth £25 that he had previously bought for his son; in the end his legal costs were more than £300 (88-91). Arguably however, this example serves to illustrate precisely what Juta attempts to refute.

128 For more on Hollard, see Van Warmelo *sv* "Hollard, William Emil" in *DSAB* Vol IV (1981) 241-242; Roberts "The Bar in Pretoria" in *Pretoria (1855-1955)* (ed Engelbrecht)(1955) 173-194; Scott "*Weatherley v Weatherley: dramatis personae*" 1979 1 *Codicillus* 13.

was admitted as a law agent in 1870¹²⁹ and as an attorney in the following year.¹³⁰ He practiced in dual capacity and is considered to have been one of the founding members of the Pretoria Bar.¹³¹ However, he was also a fugitive of the law on more than one occasion and was accused of crimes such as theft, prison-break, murder and fraud, although never convicted of any of them.¹³² For example, in 1876 he was struck from the roll of attorneys and prohibited from acting as sworn translator or as conveyancer.¹³³ This was surely linked to the *lastbrief tot apprenhentie* for Hollard issued on the same date because of an alleged crime of *falsiteit en bedrog* allegedly committed on 20 March 1873.¹³⁴ Haggard most probably referred to him in his autobiography as one of the lawyers of the ZAR who “was reported to have committed a murder and to have fled from the arm of justice”.¹³⁵ It is furthermore rumoured that Hollard once, during cross-examination, angered a witness in the famous divorce case of *Weatherley v Weatherley*¹³⁶ so much so that he was challenged to a duel.¹³⁷ Despite his lack of legal training and poor language skills,¹³⁸ he had a successful practice as partner in Hollard & Keet¹³⁹ and was able to afford one of the most expensive houses in Pretoria.¹⁴⁰

Not only the practitioners, but also government officials were guilty of behaviour unbecoming to their positions, one of which was AJ Munnich¹⁴¹ who was dismissed from his position as Attorney-General on

129 On 1870-04-06: GN 305 in *Staats Courant der Zuid-Afrikaansche Republiek* of 1870-04-12. On the same date he was also appointed as translator: GN 303 in *Staats Courant der Zuid-Afrikaansche Republiek* of 1870-04-12.

130 On 1877-07-20. The official documentation of the board of examiners stating that he had passed his attorneys' examination is dated 1871-03-16 (TAB SS Vol 132 R326/71 257). The document was signed by SJ Meintjes, JC Preller and M Clevens, who were most probably his examiners.

131 Roberts 180-182.

132 *Idem* 186 n 37.

133 On 1876-09-19: GN 272 in *Staatscourant Zuid-Afrikaansche Republiek* of 1876-09-20.

134 GN 271 in *Staatscourant Zuid-Afrikaansche Republiek* of 1876-09-20.

135 Haggard 108.

136 1879 (2) Kotzé 66.

137 Vlok “Glimpses of life in early Pretoria” in *Pretoria (1855-1955)* (ed Engelbrecht)(1955) 40; Kotzé Vol 1 513; Scott 1979 1 *Codicillus* 17. Duels had been declared illegal in terms of a GN of 23 Jul 1863 (publ in Jeppe 147), but this did not prevent Hollard from accepting the challenge (Kotzé Vol 1 513).

138 Roberts 187 n 40; Van Warmelo *sv* “Hollard, William Emil” in *DSAB* Vol IV (1981) 242. Kahn describes Hollard as one of the “weaker brethren of the ‘old guard’” (Kahn “The history of the administration of justice in the South Africa Republic” 1959 *SALJ* 46).

139 Roberts 190.

140 Roodt-Coetzee “Die Republikeinse Pretoria: kultureel en sosiaal” in *Pretoria (1855-1955)* (ed Engelbrecht)(1955) 140-141.

141 There seems to be some confusion as to the spelling of Munnich's surname. The spelling used by scholars and in official documentation vary between “Munnich”, “Munnick” and “Munnik”. However, Munnich himself used the spelling of “Munnich” (see his letter to the Chairman and members of the *Volksraad* dated 1866-08-15 publ in Breytenbach *Suid-Afrikaanse*

18 October 1866. Complaints¹⁴² of dereliction of duty prompted an investigation which revealed that this had occurred on at least two occasions.¹⁴³ In addition, he had accepted a gift from an accused on trial in exchange for the withdrawal of charges. Notwithstanding, this did not mean the end of Munnich's legal career. In 1876 he was one of EJP Jorissen's examiners¹⁴⁴ and in 1877 he was offered a position as puisne judge by President Burgers.¹⁴⁵

The bench itself doesn't have a spotless history. Justice Benedictus de Korte¹⁴⁶ had to resign his office as criminal law judge in 1896¹⁴⁷ after allegations of partiality and professional misconduct. The first allegations were made by the press two years earlier and new information continued to be published regularly after that. It was alleged that because of personal debt, De Korte had inappropriately involved himself with the administration of justice on more than one occasion, had dishonoured a cheque, had mortgaged his immovable property to two different persons and had failed to settle an account for official travel expenses in spite of receiving a travel allowance to that effect.¹⁴⁸ A special court, consisting of five members of the *Volksraad* and three members of the judiciary,¹⁴⁹ found De Korte not guilty of official misconduct but held that he had

Argiefstukke: Notule van die Volksraad van die Suid-Afrikaanse Republiek 1866-1867 Transvaal Part 6 (1956) (hereafter Breytenbach *SA Argiefstukke*) Annex 31 at 114). This will therefore be the spelling used for purposes of this article.

- 142 In a letter to the President and members of the Executive Council dated 1866-07-10, it was requested that Munnich immediately be suspended for the reason "dat hij volgens 's lands wetten zijn plicht niet betracht". The writers of the letter feared divine justice in that "de vloek der Voorzienigheid op land en volk" might affect everybody if Munnich was permitted to stay on in his position (TAB SS Vol 78 R679/66 146).
- 143 Notice of the State Secretary dated 1866-10-22 publ in Breytenbach *SA Argiefstukke* Annex 55 155-156.
- 144 Kotzé Vol 1 417.
- 145 Roberts 180. Munnich was not able to take up the judgeship because of the British annexation that followed shortly after.
- 146 For more about De Korte's life and career, see Van Warmelo *sv* "De Korte, Benedictus" in *DSAB* Vol IV (1981) 118-119.
- 147 His letter of resignation to Kotzé CJ is dated 1896-06-28 (TAB SS Vol 5425 R6146/96 133-134). *Contra* Van der Merwe "Skuld en skandaal in die hoogeregshof van die ZAR" 1979 *De Jure* 251 who dates the letter to two days earlier, namely 1896-06-26.
- 148 According to the charge-sheet, De Korte was officially charged with misconduct ("wangedrag") based on three grounds. The first ground concerned De Korte's acquisition of 100 shares of the company Eckstein & Co far below its market value; the second ground concerned two bills of exchange drawn by De Korte on Eckstein & Co, knowing that the company did not owe him any money and that the company did not have the funds to honour the second bill of exchange; the third ground concerned a payment made by Eckstein & Co to De Korte with the implication that this was done as an appreciation of De Korte's granting of an application by Eckstein & Co. See TAB SS Vol 5425 R6146/96 153.
- 149 Kotzé was the chairman of the special court. See TAB SS Vol 5425 R6146/96 116.

acted contrary to the dignity expected of a member of the bench.¹⁵⁰ It was this finding that prompted De Korte's letter of resignation. He then practised in a private capacity.¹⁵¹

The magistrate's clerk of Marthinuswesselstroom in the district Wakkerstroom, one J Vos, was dismissed from his position by the *Volksraad* after he was found to have acted improperly by illegally registering 120 farms.¹⁵² Vos responded that he was unfairly dismissed and demanded to be reinstated.¹⁵³

In 1892¹⁵⁴ a professional body, the *Orde van Procureurs en Notarissen in die Zuid-Afrikaansche Republiek* (hereafter referred to as the *Orde*), was established to regulate the attorneys' profession.¹⁵⁵

150 The details and complications of the allegations are explained in Van der Merwe 1979 *De Jure* 242-251.

151 Anonymous "Editorial" 1896 *Cape LJ* 241.

152 Decision of the Executive Council dated 1866-08-29 and the letter to J Vos publ in Breytenbach *SA Argiefstukke* Annex 85 at 228. It is interesting that the letter dismissing Vos from his position was dated more than a month (1866-07-23) before the Council's decision. See also TAB SS Vol 78 R728/66 260-262 for a list of the mentioned farms.

153 Undated letter from J Vos. I was not able to find this document, but it is referred to in Breytenbach *SA Argiefstukke* xvii (w) as one of the documents that came under consideration by the *Volksraad* during 1866. Of interest is a letter from the office of the Attorney-General to the State President dated 1867-04-25, stating that there were not sufficient grounds for prosecution ("geene genoegsame gronden bestaan") (TAB SS Vol 78 R730/66 278).

154 Although rumours to that effect circulated as early as 1887 (Anonymous 1887 *Cape LJ* 120). An Incorporated Law Society for the Cape had already been established a few years earlier in terms of Act 27 of 1883 (Cape). In 1878 LP Ford, on behalf of the practicing members of the Bar of the High Court of the ZAR, wrote a letter to the Secretary to Government stating that it was their intention to establish themselves into a society such as the one in Natal (TAB SS Vol 260 R50/78 156). However, it is unclear whether this "society" was intended for advocates only, or for dual practitioners, since Natal followed the dual system of practice at that time (Wildenboer 2010 2 *Fundamina* 217-218). Although the ZAR followed the practice of a divided legal profession since 1877, practitioners who had been admitted before that date could still practice in dual capacity (see par 2 2 *supra*).

155 In terms of GN 371 of 1892-10-13 (*Staatscourant* of 1892-10-19) (publ in Van Niekerk *Die Prokureursorde van Transvaal Eeufees* (1992) 4-6). Van Niekerk dates the establishment of the *Orde* to 1892-10-19 (Van Niekerk 3). This original body was replaced by the Incorporated Law Society of the Transvaal in terms of s 1 of Proc 18 of 1902. However, three years earlier, the High Court Rules 1899 (see n 62 *supra*) already made use of the translated term, namely the "Incorporated Law Society" (ss 103(a), (b) and s 106 High Court Rules 1899). Similar to the 1899 High Court Rules (s 106), the Proc of 1902 required candidates applying for admission to practice at the high court, to give written notice thereof two weeks in advance to the Law Society (s 7). This requirement did not apply to practitioners who had already been admitted. It is submitted that the purpose of this provision was to extend the monitoring function of the Law Society so that it not only kept an eye on its existing members, but also on potential new members since the Society could screen the persons admitted to the profession.

Membership was compulsory.¹⁵⁶ However, it seems that not all the members of the profession were ecstatic about a regulatory body. This is evident from the case *Ingelyfde Orde van Procureurs en Notarissen in De Zuid Afrikaansche Republiek v Buskes & 45 Anderen*¹⁵⁷ in which the *Orde* claimed outstanding subscription fees from its members. At least one attorney, William Thomas Hyde Frost, countered that he did not owe the monies because he did not want to be a member of the *Orde*. Frost argued that he had been admitted to practice before the *Orde* was established, and that its *Reglement* therefore did not apply to him as it did not have retrospective effect. He furthermore stated that he did not want to be a member of the *Orde* because of its “peculiar apathy in protecting the interests of the profession”¹⁵⁸ and mentioned three reasons that, in his view, illustrated this apathy. All three these reasons concerned the profession’s tolerance of the law agents.¹⁵⁹ Lastly he complained that there were no privileges to being a member of the *Orde*, and that the promised law library had not yet materialised.¹⁶⁰ Despite these arguments, the court found in favour of the *Orde* and instructed the respondents to pay the outstanding moneys.¹⁶¹

From its inception, the *Orde* viewed high standards in training as crucial in the existence of the legal profession. Whereas the *Orde* at first had no input in the examinations set for attorneys and notaries by the board of examiners, it was decided on 17 May 1894 to request a higher standard of examinations for attorneys and notaries.¹⁶² In addition, the *Orde* vigilantly guarded the dignity of the profession¹⁶³ and took swift action against any of its members whose behaviour was thought to bring disrepute to the profession. For example, in the case of *De Ingelyfde Orde van Procureurs en Notarischen in de ZAR vs PM Fitzgerald*,¹⁶⁴ the respondent was said to have acted contrary to the dignity and the duties of his profession.¹⁶⁵ The application was nevertheless dismissed.¹⁶⁶

156 Art 2 *Reglement* of the *Orde* (publ in Van Niekerk 4-6) stated that all the admitted attorneys and notaries in the *ZAR* were *ipso jure* members of the *Orde*.

157 TAB ZTPD Vol 8/601 Ref 10612/1899 237ff.

158 See Frost’s letter to Edw. Mawby Esq. dated 1894-07-19: *idem* at 254.

159 His three reasons were first, that law agents, who could only appear in the lower courts, were allowed to brief counsel regarding both civil and criminal matters in the high court; second, that certain attorneys in Pretoria afforded some “facilities” and “allowance for work” to law agents; and third, that some law agents had attorneys in their employ and performed high court work in the names of those attorneys (*idem* at 254-255).

160 *Idem* at 255.

161 A few respondents were granted extension to oppose the application: see the handwritten judgement issued on 1898-12-12 (*idem* at 237).

162 Van Niekerk 6. On 1894-09-20 the board of examiners accepted a secrecy policy, to which the only outsider privy to this knowledge, was the secretary of the *Orde* (*ibid*). This further illustrates the involvement of the *Orde* with matters previously handled by the board of examiners alone.

163 See also ss 25 & 26 *Reglement* (n 156 *supra*).

164 TAB ZTPD Vol 8/384 Ref 6560/1893 347ff.

165 See the affidavit of Edward Rooth dated 1893-08-14 (*idem* at 351-352).

166 On 1893-11-06.

5 Conclusion

At the start of this article, two opposing views of the lawyers of the old ZAR were presented, namely that of Sir H Rider Haggard¹⁶⁷ and that of Chief Justice Kotzé.¹⁶⁸ Perhaps a little background information is appropriate to put these views into context. Despite his lack of legal training,¹⁶⁹ Haggard was appointed as master and registrar of the high court of the ZAR in 1877. He resigned a year later in May 1878.¹⁷⁰ In contrast, Sir John Gilbert Kotzé¹⁷¹ was a trained lawyer¹⁷² and had practised as an advocate¹⁷³ before being offered a position on the bench of the ZAR. His judicial career in the ZAR spanned from 1877 to 1898, seventeen years of which he held the position of Chief Justice.¹⁷⁴ Therefore, when considering these two opposing views, one should keep in mind that Kotzé spent considerably more time dealing with the lawyers of the ZAR than Haggard did. Secondly, it should be noted that Haggard has been accused, by none other than Kotzé himself, of distorting fiction with fact.¹⁷⁵ When weighing the opposing views against each other, it would seem that, from the outset, the scales are slightly tipped in favour of that of Kotzé.

Nevertheless, there seems to be some truth to the perception that the lawyers practising during the early years of the ZAR were unqualified. The first legislation prescribing at least some legal training was only promulgated in 1874.¹⁷⁶ Before that, specific religious affiliation and

167 See nn 3, 4, 5 *supra*.

168 See nn 6, 7 *supra*.

169 At a later stage, Haggard did read for law at Lincoln's Inn upon his return to England in 1881. However, at the time of his appointment as master and registrar of the high court of the ZAR, he did not have any legal training. For more on Haggard's life and career, see Goedhals *sv* "Haggard, Sir Henry Rider" in *DSAB* Vol I (1968) 340-341.

170 TAB SS Vol 341 R1777 218-221. In accepting the resignation, the Colonial Secretary's Office stated that it regretted losing the "services of an officer who has performed difficult duties so satisfactorily" (*idem* at 221).

171 Kotzé was baptised as Johannes Gysbert Kotzé, but chose to make use of the anglicised version, namely John Gilbert, throughout his life. See Hiemstra *sv* "Kotzé, Johannes Gysbert" in *DSAB* Vol I (1968) 458.

172 He completed the matriculation examination of the University of London, and in 1872 received the LLB degree, also from the University of London. He was called to the Bar of the Inner Temple in London on 1874-04-30 and was admitted as an advocate of the Cape Bar on 1874-08-18. See Hiemstra 458; Kotzé Vol I 109, 112, 136, 156, 170.

173 At both the Cape Bar and that of the Eastern Districts Court (Hiemstra *sv* "Kotzé, Johannes Gysbert" in *DSAB* Vol I (1968) 458; Kotzé Vol I 166-209).

174 Kotzé Vol I 425, 702; Hiemstra *sv* "Kotzé, Johannes Gysbert" in *DSAB* Vol I (1968) 458-460. See also n 39 *supra*.

175 He wrote: "Those who knew Haggard recognized in him a man of honour and truth. But his was an extraordinary mind. He was emotional and much given to romancing. His imagination impelled him into a world of fancy which for the time had complete hold of his sense, and hence he described as fact what was mere fiction" (Kotzé Vol I 488 n 1).

176 Hahlo & Kahn 234 agrees that the stricter regulation of the profession as well as the judiciary after 1877 improved the standards of "pleading and

mere ability were considered sufficient qualifications for a would-be lawyer. By the end of the nineteenth century, however, admission to the legal profession was more strictly regulated and specific requirements for admission were applied.

Worse than the state of the legal profession, was the state of the bench (referring to the *landdrosts*) of that time.¹⁷⁷ Kotzé wrote that the *landdrosts* were all “laymen, frequently uneducated, and none of them had received any legal training”.¹⁷⁸ He named a few individuals who, in his opinion, were “men of common sense and character”,¹⁷⁹ but this clearly could not compensate for the lack of legal knowledge on the part of those supposed to administer justice.¹⁸⁰ Even worse was the fact mentioned that a few of these *landdrosts* were illiterate and as a result, the clerk or registrar of the court who prepared the judgement, often influenced the decision handed down by the court.¹⁸¹

With regard to the misconduct of legal professionals, the ZAR undoubtedly had its share of shysters and charlatans. However, this is

adjudication”.

- 177 This dilemma was not limited to the ZAR only: for a criticism of this dilemma, see Pont 1961 *Acta Juridica* 65-66. Judicial duties were not the only responsibilities of *landdrosts* in the ZAR: these also included farm inspections, administration of schools, postal and traffic matters, as well as the collection of taxes. In fact, the first *landdrost* of Pretoria resigned after less than three years after being appointed, not only because of frustration with the lack of support from the government, but also because of health reasons. (For a description of the duties and hardships of the first *landdrost* of Pretoria, see Breytenbach “Andries Francois du Toit: sy aandeel in die Transvaalse geskiedenis” 1942 2 *Argief-Jaarboek vir Suid-Afrikaanse Geskiedenis* 22.) This matter was considered serious enough to merit legislation relieving at least the *landdrost* of Pretoria of the duty of collecting taxes and other related duties (Law 9 of 1881).
- 178 Kotzé Vol 1 440; see also Kahn 1958 *SALJ* 309. This was partially a result of the lack of required legal training for *landdrosts* and *heemraden* in, for example, the 1858 Constitution (see n 20 *supra*). Hahlo & Kahn 235 notes that even after 1881, the bench, with a few exceptions, was “undistinguished” and appointments were made not necessarily as much on the grounds of career excellence, than on nepotism and favoritism. In addition, most judges were appointed at a relatively young age (see also Van der Westhuizen & Van der Merwe 1977 *De Jure* 246 n 59) and they did not remain on the bench for long, but left for other official posts or the lure of private practice.
- 179 Kotzé Vol 1 440. The incompetence and impartiality of *landdrosts* seems to have been an issue even as late as 1882 (see *De Volksstem* (1882-05-24); see also Van der Westhuizen & Van der Merwe 1977 *De Jure* 100).
- 180 Kahn 1958 *SALJ* 310 also ascribes the weak position of the bench at that time to lack of a statute book and law reports; see also Van der Westhuizen & Van der Merwe 1977 *De Jure* 99.
- 181 *Ibid.* Kotzé described an amusing incident in which a clerk of the court, presiding in the absence of the *landdrost*, after hearing arguments from counsel, dismissed them with the words “Ik versta er geen bliksem van” (“I do not understand a damn thing” (my translation)). When pressed about an order as to costs, he responded that they had to decide that amongst themselves, but that he definitely was not going to pay it (Kotzé Vol 1 441).

certainly true of all legal societies, both past and present.¹⁸² Moreover, such cases were individually addressed in the *ZAR* and later a regulatory body was established to monitor potential as well as existing practitioners.

Notwithstanding, it should be borne in mind that the *ZAR* was a young and developing state. The administration of justice was still in its infancy and not a primary concern of the newly-appointed rulers. In general, there were other more immediate concerns that needed the attention of the state. It was probably for these reasons that any person with merely an interest in law was permitted to fulfil the functions of the early legal professionals.¹⁸³

182 See eg *I 4 13 11(10)* which referred to infamous procurators; Anonymous "The brotherhood of the Bar" 1890 *Cape LJ* 148 who referred to the "black sheep" of the English Bar: "men whose sole aim and object in life is to secure advancement by any pitiful device within their reach."

183 See also Wildenboer 2010 2 *Fundamina* 224.