

IN MEMORIAM

Rex Welsh QC

Rex Welsh was South Africa's most distinguished practising advocate.

His brilliant intellectual and extraordinary depth of learning had marked him as a prodigy while still a student at the University of the Witwatersrand. He was inevitably elected to a Rhodes Scholarship. He took up the scholarship only after the war, as immediately after taking his degree in 1942 he joined the South African forces and served in North Africa and Italy with the 4/22 Field Artillery Regiment until the end of the hostilities in Europe.

In 1945 he went up to Oriel College, Oxford, to read for the BCL degree. Among Oxford law students he stood out just as he had in South Africa. While working for his degree he had two major articles published in the *Law Quarterly Review* and in 1947 he shared the Vinerian Scholarship with Zelman Cowen, a future Governor-General of Australia. A First Class in his final examinations were never in doubt, but in accordance with Oxford custom (at least in those days) he was called to a viva voce examination.

Welsh's viva became a familiar anecdote and one which perhaps reflects the style of Oxford law studies in the 1940s. Presiding over the examiners was the formidable "Zulu", otherwise Francis de Zulueta, Regius Professor of Civil Law. "Mr Welsh," said the Regius Professor, "during my absence from my rooms, my enemy steals in and opens the door of my parrot's cage. It flies out across the quadrangle and Radcliffe Square and hovers over Brasenose College where it descends upon the pate of the Principal and pecks it. Would this, in Medieval English law, constitute an action in trespass or an action on the case?" "Sir, I have absolutely no idea," Welsh said. "Neither have I, Mr Welsh," de Zulueta replied. "The examiners desire to congratulate you on your papers."

Although called to the Bar by the Inner Temple in London, Rex Welsh returned to South Africa and began practice as an advocate at the Johannesburg Bar. His rise was rapid. He took silk in 1959, South Africa was still in the Commonwealth so that he received his patent as a Queen's Counsel. As a QC he almost at once established the leading practice in company, income tax and mining law. Until only weeks before his death he retained that dominant position. The lucidity of his thought and felicity of his language both in written opinions and in court would have taken him to the top of any Bar in the Commonwealth.

As both junior and QC Rex Welsh held a general retainer from the Anglo-American Corporation and De Beers. By one of those apparent contradictions of the apartheid years in South Africa, his professional connections with these and other large corporations in no way inhibited him from taking cases from a very different category of client. In 1959 he was one of the counsel for the leaders of the African National Congress, including Nelson Mandela, who were charged with, and eventually acquitted of, high treason. Some years later he



successfully defended a law professor charged with criminal contempt arising from his researches into racial discrimination in the passing of death sentences in South Africa. In 1988 he appeared on behalf of a group of women of the Ndebele tribe and persuaded the South African Supreme Court to quash a proclamation establishing a males only franchise in a black local government area – probably the first successful "gender-discrimination" case in South Africa.

Rex Welsh was essentially a private man. He took no active part in politics, but his abhorrence of the apartheid regime sometimes burst out in letters of sustained and devastating irony in the South African press. Although he had frequently acted as counsel for the government of Southern Rhodesia before UDI, he refused thereafter to appear before the judges who had gone over to Ian Smith. His views naturally did not commend him to the South African government and he was never appointed to the South African Bench. Few of his colleagues would doubt that under a different political dispensation Welsh would have become one of the greatest of South Africa's Chief Justices.

In 1967 Bill Williams, the Warden of Rhodes House, Oxford, persuaded Welsh to take on the Honorary Secretaryship of the Rhodes Scholarships in South Africa. Although Cecil Rhodes in his will had expressly directed that his scholarships should be awarded without regard to race there had up to that time been no person of colour elected to a South African Rhodes Scholarship. Under Welsh's direction this *de facto* colour bar was gradually abolished. Too gradually some would say, for the first Asian and African scholars from South Africa were elected only in the late 1970s. But those were the years of the most rigid apartheid, and one of the keystones of that policy was the imposition of the separate and deliberately unequal system of education upon the black population. Rex Welsh helped to bring about the change in scholarship selection by persistence and tact, while firmly maintaining the standards of the scholars elected.

Rex Welsh was baptised into the Presbyterian Church. In middle life he became an Anglican and, indeed Chancellor of the Diocese of Johannesburg. Some 20 years ago he left the Anglican Communion and joined no other until only a few months before his death (and before he had any intimation of his last incurable illness), he was received into the Roman Catholic Church.

Sydney Kentridge

Rex Simpson Welsh, lawyer: born Cape Town 2 January 1921; QC 1959; married Anne Feetham (two sons, two daughters); died Johannesburg 15 April 1994.

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