

# Some recollections

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*Johannesburg Bar*

I entered the legal profession through the unhallowed door of the “articled clerk” in April 1927. I qualified as an attorney and opened my own practice in Johannesburg in November 1930, with a view to acquiring the BA LLB degrees so as to enable me to practise at the Bar. I duly acquired these degrees by private study, and I had my name removed, at my own request, I hasten to add, in February 1945, and was admitted as an advocate on 26 September 1945\* and have practised as such at the Johannesburg Bar ever since, taking silk in 1959.

During the course of this long odyssey – one year short of the biblical span of the life of man of seventy years – through the corridors of all these aspects of the profession – the articled clerk, the attorney and the advocate as well as the silk, I came into contact with many magistrates, judges, colleagues, litigants, witnesses, interpreters, and the other *dramatis personae*, the tales surrounding whom and the eccentricities of whom, all make up the legends of the profession. Your editor has asked me to share some of my recollections of these with the readers of *Consultus*, and I do so gladly.

## “Christmas number”

Chronologically, the first story that comes to my mind is that when I had been an articled clerk for about three days in a building occupied by some five other attorneys, one of the senior clerks for one of the firms “popped” into my office and asked me if I could possibly do him a favour – he needed a Government Gazette which his firm did not have. I naturally said, “of course”. He said the Gazette that he needed was the

\* See also the contribution on p86 of this issue.

Christmas number and as none of the firms in the same building were in possession of that particular number, would I be good enough to see whether I could borrow that particular issue from some other firm in some other building. Not having as yet been entrusted with significant and exacting duties, other than fetching my mentor’s dry-cleaning and his cinema tickets, I set off and, naturally, returned empty-handed, but I enquired from the man who had sent me why everybody burst into laughter when I asked them if they could possibly lend me “the Christmas number of the Government Gazette”.

## Looker-on

In the late twenties and part of the thirties, a method of debt-recovery, known as civil imprisonment, was sanctioned by the Magistrate’s Court Rules. This meant that where a creditor had obtained a judgment and a *nulla bona* return on the ensuing writ of execution, he was entitled to issue a summons calling upon the debtor to appear before a magistrate, who would then launch an extensive investigation into the debtor’s financial position and, if the facts warranted it, he would grant an order of imprisonment against the debtor, usually for a period of three months, but would suspend it, provided the debtor paid the present day equivalent of 25 cents or 50 cents every month.

The magistrate who normally presided at these enquiries was Mr Charlie Fraser – a man with a great sense of humour and a man with

great humanity – a tribute to the latter of which I shall relate in a future issue, if the editor were to allow me to do so, but in the present issue, as an example of the former, I cite the following. On the occasion in question, as was to be expected, the civil imprisonment court was jam-packed full with debtors, and the front row was fully occupied by attorneys for creditors, all coming to “hammer” the unfortunate debtor. When Charlie Fraser took his seat on the bench with a pile of covers about 18 inches high, he proceeded to call out the name of the first debtor, “Van Tonder”; there was no reply; he called again, “Van Tonder”; again there was no reply; he called a third time “Van Tonder”, and still there was no reply. Charlie Fraser then looked up from his pile of covers and saw a debtor leaning completely uninterested against the back wall of the court. Charlie addressed him, “Are you Van Tonder?” “No Sir”, answered the debtor, “I am Coetzee”. “Why then”, said Charlie Fraser, “why then do you stand there looking like Van Tonder?”



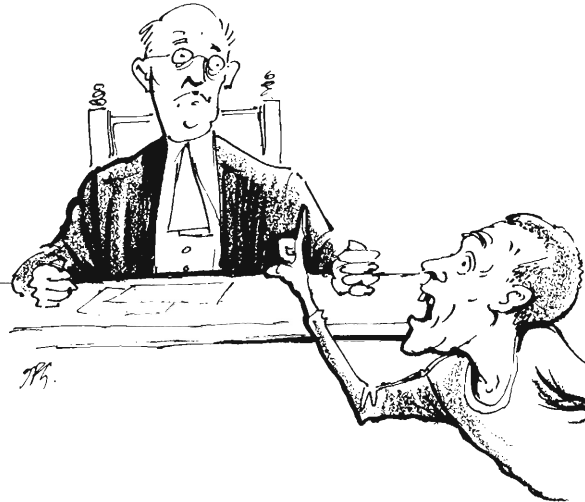
**Judge “demoted”**

When the late Honourable Mr Justice J G Maritz was the Judge President, he was criticised by many members of the profession for what, to those who knew Jerry, as he was affectionately known, and understood him, they realised was merely his kindness and humanity, but which others who did not, described as “undignified”. He certainly often took a robust but common sense, man-in-the-street approach, but if the critics were to take the trouble to study some of the reported judgments, especially when he was president of the income tax court, they would realise that he was a man of considerable learning and ability. He was, undoubtedly, not a library on two legs, as were one or two of his contemporaries, but, on the whole, his judgments were fair, they were sensible and they were understood, especially by the litigants.

On one occasion he was presiding at the Criminal Sessions when a man appeared as an accused before him on a number of charges of fraud and forgery. Jerry looked intently at him and said, “Abdul, did I not send you to prison for three years for fraud and forgery in this very court, some four years ago?” “Dja, my Koning, dja – but it is not my fault that my Worship doesn’t got promotion!”

**“A naughty young lady”**

Some of the judgments handed down by magistrates in those days were often entertaining, since the qualifications for the magisterial bench were nowhere near what they are today, especially in the case of magistrates in the *platteland*. The story that made the rounds in the the early thirties concerned a magistrate of a *plattelandse dorp*, which, for the purposes of this story, I shall call, “Buffelsdorp”. It seems that a naughty young lady of about 19 years of age had given birth to an illegitimate baby boy, and she selected the son of one of the leading families of the dorp, as a suitable candidate from whom to extract maintenance. The young man, being a



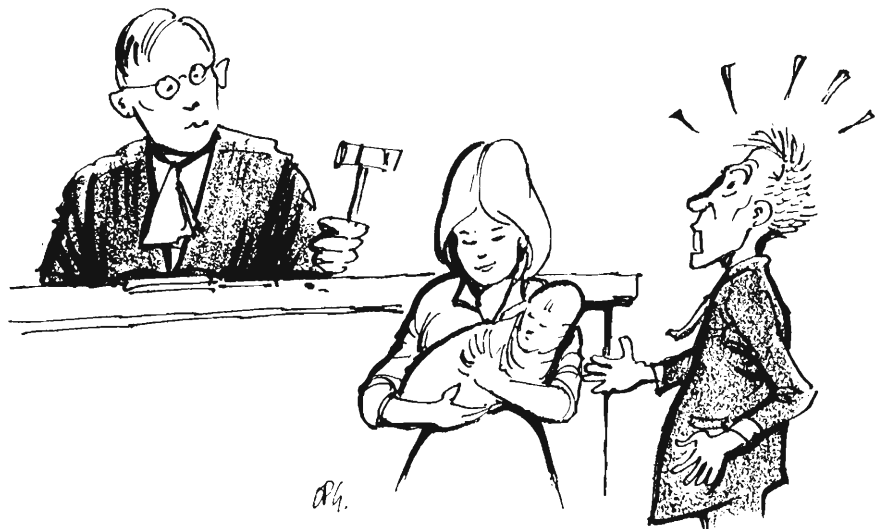
*“Dja, my Koning, dja – but it is not my fault that my Worship doesn’t got promotion!”*

little ashamed, did not tell his parents about this and decided to defend himself. He duly arrived in court and after the lady claimant had given her evidence, he was asked if he had any questions, which he then proceeded to put to the lady. He extracted from her the admission that when he first met her and when he first had sexual intercourse with her, she was already, then, three months pregnant, and also the fact that she had instituted a very intensive search for the man who had made her pregnant, but unfortunately he had disappeared without trace and she was not able to find him. The magistrate reserved judgment, which in due course he delivered, ordering the young

man to pay maintenance for the illegitimate child. The young man now was very considerably disturbed and he took his father into his confidence and the father, in turn, consulted the local *prokureur*. The local *prokureur* then, in accordance with what was then order XXX of the Magistrate’s Court Rules, called upon the magistrate to file a notice setting out, (a) the facts found proved, and (b) the reasons for judgment. In due course the magistrate complied with the notice and this read as follows:

“(a) Facts found proved:

- (i) On this and that date the claimant, an unmarried female, aged 19 years, gave birth to an illegitimate child.
- (ii) This child is in need of maintenance.
- (iii) The defendant has admitted that he had had sexual intercourse with the claimant.
- (iv) It was common cause that at the time when the defendant first had sexual intercourse with the claimant, she was already three months pregnant
- (v) It was also common cause that the claimant had instituted an intensive search for the man who had made her pregnant, but despite diligent search, had >



*“I consider the defendant to be in a position analogous to that of the last endorser and I accordingly hold him liable for maintenance.”*

been unable to find him since he had disappeared without trace.

(vi) In the circumstances, the defendant is liable for the maintenance of the child.

(b) Reasons for judgment:

(i) Unfortunately at Buffelsdorp we do not possess an extensive law library.

(ii) I have, however, been able to lay my hands on a copy of *Morgan Evans on Bills of Exchange*.

(iii) According to what is stated at page so and so of *Morgan Evans on Bills of Exchange*, where the maker cannot be found, the last endorser is liable.

(iv) I consider the defendant to be in a position analogous to that of the last endorser and I accordingly hold him liable for maintenance."

of occasions. I pleaded as best I could and Judge Greenberg eventually said that he finds it extremely painful to have to pass sentence on a man of 76 years, but he has a duty to the community and he would be failing in his duty if he did not take a very serious view of this offence, more particularly in the



*"My Lord, I am aged 76 years, I will not live long enough to serve five years".*

I am afraid", and Meyer then shouted "My Lord, I am aged 76 years, I will not live long enough to serve five years".

### The interesting cow

Another story concerning Judge Greenberg, is one in which a plaintiff claimed £2 000 damages for the loss of a cow that had been killed in a collision with a truck owned and driven by the defendant, the plaintiff was represented by a very young and inexperienced advocate. As he rose to his feet, Greenberg, J looked at him and in his sardonic way said "Why was this case not brought in the magistrate's court?" (at that time the limit of the magistrate's court's jurisdiction was £50). "Well", said this inexperienced young man, "M'Lord, the cow in question was part of a very rare herd and the herd itself was of a rare breed, and

### Try harder

I recall appearing before Judge Leopold Greenberg, who had a sardonic wit. I was appearing to plead on behalf of a man called "Meyer", who was aged 76 years, who was a scrap metal dealer and who had been in and out of prison for receiving stolen property on a number

light of the imposing list of previous convictions and that although he bore in mind the fact that the accused was 76 years of age, he found that he could not pass a lesser sentence than imprisonment for a period of five years. From the dock, Mr Meyer shouted "How much?" and Greenberg said "Five years

M'Lord, at the time of this collision, the cow was in a ... in a ... in an interesting condition". Judge Greenberg leaned forward and said to this young man, "Interesting to whom?"

*\*Permission granted, Mr Mendelow!  
- Editor*

## Nuwe lede

### Pretoria

Vanaf 01.07.96

V (Wellynder) Apostoleris BA LLB LLM  
R (Roelof) de Beer BLC LLB  
De W (De Wet) Marais BA LLB  
GM (Lucky) Bokaba BJuris LLB  
J (Jeanetha) Brink BJuris LLB  
CH (Charl) Clark BLC LLB  
SW (Steven) Davies BA LLB  
NF (Nick) de Jager BLC LLB LLM  
JPF (Petrus) de Klerk BLC LLB  
VWV (Walter) Duba BJuris LLB  
J (Julian) du Plessis BJuris LLB

AS (Steph) du Toit BJuris LLB Diploma in Menseregte  
JE (Eduard) Ferreira BCom Regte LLB  
GP (Geoffrey) Ford BA LLB  
MAL (Merik) Frantzen LLB  
PJ (Jannie) Greyling BA Regte LLB  
R (Riaan) Grundlingh BJuris, Legum Baccalaureus  
AM (Marius) Heystek BJuris LLB  
PL (Pierre) Hugo LLB BLC  
GJ (Johan) le Roux BA LLB  
JF (Jaco) Lourens BLC LLB BA (Hons) (Crim)  
KW (Werner) Lüderitz BLC LLB

A (Alta) Mynhardt BLC LLM  
JAL (Koos) Pretorius BLC LLB  
MJ (Joretha) Schwartz BJuris LLB  
T (Temba) Skosana BA LLB  
JS (Japie) Strydom BJuris LLB Bth  
PA (André) Swanepoel BProc LLB  
MH (Martin) van Twisk BLC LLB  
P (Pieter) van der Schyff BLC LLB  
I (Inge) van der Walt BLC LLB  
N (Nico) van der Walt BLC LLB  
J (Jasper) Vlok LLB Hons BCom (Belasting)  
PM (Percy) Leopeng BProc LLB