

INCORPORATED LAW SOCIETY v. BEYERS.

1909. June 15. MAASDORP, C.J., and WARD, J.

Attorney.—Professional misconduct.—Suspension.

An attorney who made false declarations as agent of purchaser for the purposes of transfer suspended from practice for twelve months.

This was an application to have the respondent's name struck off the roll of attorneys and notaries on the ground of improper and unprofessional conduct. It arose out of certain transactions in connection with the sale of two farms by one Rorich of Fauresburg to an engineer of the name of Edwards, residing in Johannesburg. The respondent purchased the farms for £1850 in April, 1907, from Rorich at the request of one Hawthorne. On the 14th June a meeting took place in the respondent's office in connection with the sale in question. At this meeting Hawthorne produced a power of attorney signed by one Lowe in blank and undated. The respondent filled in the power as signed at Zastron on the 10th April and as giving him authority to sell and pass transfer of the farms as Lowe's agent to Edwards for £2250. Hawthorne stated that Lowe's name had been introduced into the transaction as a dummy for the purpose of effecting the sale through him as seller to Edwards, the purchaser. He subsequently admitted that he had signed Lowe's name on the power of attorney, and it appeared from an extract from the evidence taken in the case of *Edwards v. Rorich*, which was heard in the High Court, that Lowe had given him no authority to do so. At the meeting referred to Hawthorne further stated that the sale had been effected on the 15th April, that Edwards had agreed to pay £2250 as purchase-price, and that he, Hawthorne, was to receive by way of commission a sum of £400, being the difference between the amount to be paid by Edwards and that actually received by

Rorich, the real seller. Rorich was asked to state in his declaration of seller that the purchase-price was £2250, it being urged that no one would be injured thereby, and that the Government would actually benefit. The petitioner alleged that the respondent had advised Rorich that there was no objection to this, but the respondent in his affidavit said that Rorich had left his office to consult his own attorney, and had signed the declaration on his return without further question. The respondent a little later on the same day signed a sworn declaration of agent for Lowe as purchaser from Rorich, and, purporting to act in that capacity, declared that the purchase-price was £2250, and that he was aware that the transaction had been entered into and closed on the 11th April, and he also signed a sworn declaration to the effect that he had acted as Edwards's agent in the purchase of the property from Lowe, and that he had purchased the farms in that capacity on the 15th April for £2250. The declarations referred to were all made for the purpose of obtaining transfer of the property sold.

It further appeared from the evidence taken in the case of *Edwards v. Rorich*, referred to above, that Edwards had paid £750 of the purchase-price, and that Hawthorne admitted having actually taken £400 of that amount as commission.

Blaine, K.C., for the applicant.

De Jager, for the respondent.

MAASDORP, C.J.: The Law Society is asking this Court to strike the respondent off the roll for unprofessional conduct in connection with the declarations of purchaser made by the respondent as agent for Edwards and as agent for Lowe. The main issue depends upon the conduct of the respondent in connection with these declarations, which are admittedly false. We have to deal with a professional man—an officer of this Court—and with his conduct. The question is therefore as to the morality of his conduct, because it is the duty of this Court to see that its officers are men of high character, and to see that their work is always carried out in a professional and moral manner. His moral guilt may be looked at from

two points of view, according to the light in which we look at the original transaction entered into by Hawthorne. If we take one view of that conduct, the culpability of the respondent will not be so great as if we take the other. These two views are as follows: Hawthorne was either trying to defraud Rorich, or was defrauding Edwards, the purchaser, in the original transaction. The position as between Hawthorne and Rorich was this—Rorich was the principal, and he instructed Hawthorne according to his own statement to sell the property for £1850, the only price Rorich knew anything about. He knew nothing about the £2250 as between Hawthorne and Edwards. Hawthorne was trying to make a profit on the contract which Rorich was entering into—a profit of £400, without letting Rorich know about it. Under these circumstances, and assuming that Hawthorne actually got the money, Rorich could have sued for a return of the amount as profit made by his agent which ought to have gone to him. There was therefore culpability on Hawthorne's part as regards Rorich. He was trying to defraud his principal of profit. If we look at the case from that point of view, the respondent only came into the matter at the last moment. He had nothing to do with the original transaction; he was only brought in to pass the property to Edwards. Now it appears that Rorich consulted Beyers at that time, and that Rorich was a consenting party to the sale going through for £2250 without demanding the £400 from Hawthorne. Rorich would therefore have no right to complain of the conduct of Hawthorne or the respondent as regards himself, and the moral culpability of the respondent as against him would cease.

Let us take the other side of the question. Hawthorne was instructed by Rorich to sell for £1850, and this was the only price he had any instruction to get. I may premise that in deciding as to the culpability of Hawthorne or the respondent I regard Lowe as entirely non-existent in the matter. Rorich instructs Hawthorne to sell for £1850 to an undisclosed principal, because that is really what Lowe was—he was acting as dummy for the real purchaser, Edwards. Instead of selling to Edwards for £1850, Hawthorne enters into

a deed of sale in which he represents himself as agent for Lowe and sells to Edwards for £2250, representing that as being the price he was instructed to sell at—by that means managing to get £400 from Edwards which he was not called upon to pay, because Hawthorne was not authorised to ask for more than £1850. If he had said to Edwards, “I am selling you this property for £2250,” that would have been *bond fide*, for it was Edwards’s business to know the property he was dealing with. If Lowe were the original owner, as he was represented to be, he ought to have stated the correct price. I think this is where Edwards was defrauded. If this is the correct view, the culpability of Beyers is much greater. He was being consulted as an attorney by Rorich as to whether this was a right thing to do. These transactions were to be allowed to go through without the knowledge of Edwards, and he was to be defrauded of £400, which was to go into Hawthorne’s pocket. He, the respondent, then gives the advice to Rorich that it was quite a correct thing for him to allow the transaction to go through as a sale for £2250, when he knew the price was only £1850. The culpability of Beyers is very much greater in this view, and, if it is the correct one, striking off the roll would not be too great a punishment; and this is the penalty I personally would have been prepared to impose upon him, leaving him to apply for restoration later on whenever he considered himself entitled to it. It is the other view, however, that appeals more to my brother WARD, and I am prepared to submit my view to his, at any rate as to the penalty to be inflicted. The Government would not be defrauded, because the respondent actually swore that the purchase-price was £400 higher than it really was. The Government benefit to the extent of the higher transfer duty, and the only person who was to suffer was Edwards. In this view the penalty would be very much less, and we have agreed that the respondent shall be suspended for one year.

WARD, J.: I may just say that if the papers put in in this case convinced me that there was a fraud being per-

petrated, and that the respondent knew that, I would also be of opinion that he was a party to a fraud, and that the proper penalty would be to strike him off the roll. My difficulty is to locate the fraud. The Government is not defrauded, for the result of raising the price of the property from £1850 to £2250 is that the Government got £16 more than they were entitled to. When you find a purchaser prepared to pay this amount gratuitously to Government, you may suspect that there is fraud somewhere. If we had evidence that he told Edwards that he purchased for £2250 or that Hawthorne was agent for Rorich to sell for the same price, fraud would have been proved. But the papers give no evidence of that sort. The only thing proved against the respondent is a false declaration under the Transfer Duty Ordinance (12 of 1906), sec. 17, under which he renders himself liable to a penalty of £100. Although, so far as I can see, no one was defrauded, it is a very serious matter for an attorney of this Court to make such a false declaration, and I agree with the CHIEF JUSTICE that the respondent should be suspended for twelve months.

Applicant's Attorney: *C. J. Reitz.*

