

INCORPORATED LAW SOCIETY v. FRASER & SCOTT.

1909. *March* 1. MAASDORP, C.J., and FAWKES and WARD, JJ.

Conveyancers.—Deeds prepared by unqualified persons.—Fees shared.

It is illegal for a conveyancer to execute and register deeds prepared by an unqualified person.

The petition alleged that under the regulations of the Deeds Office, framed in terms of sec. 6 of Ordinance 33 of 1902, "all deeds of transfer, mortgage bonds and other deeds proper for registration in the Deeds Office shall be executed by a duly admitted conveyancer;" that a tariff of conveyancers' charges was fixed by sec. 2 of Ordinance 3 of 1907 and the schedule thereto; that deeds proper for registration were prepared by the Bloemfontein Board of Executors and Trust Co Ltd., and were signed and executed by the respondent firm practising as attorneys, notaries and conveyancers, for which the latter received a fee of £1, 1s. for signing each deed; that the petitioners were of opinion that this practice was also followed by other conveyancers, and considered that the practice was one that should be discontinued as being unwholesome and detrimental to the interests of conveyancers, who pay a license for practising as such, and as tending to induce a violation of the provisions of Ordinance 3 of 1907, and that the practice constituted a sharing of fees between officers of the Court and unqualified persons and amounted to unprofessional conduct.

Blaine K.C. (with him *Brebner*), for the petitioners: There is no suggestion that the action complained of is in the least degree discreditable to the respondents. On the contrary, their conduct in this matter has been quite open, and the council believes that this action is entirely *bonâ fide*. But it is contended that they have mistaken their rights and duties in

respect of their profession as conveyancers in relation to the public and their brother practitioners. With the exception of one guinea charged under the tariff as filing fee, the fees for the work of conveyancing are drawn by the Board of Executors. In short, the complaint is that the respondents have by their conduct enabled unqualified persons to practise as conveyancers and draw the fees. This practice is contrary to the provisions of the law and also to its policy. The respondents have failed to realise the change of policy on the part of the legislature since the war in this connection. Prior to the war there was no distinct class of persons called conveyancers in the Orange Free State. Any person of full age could practise as a conveyancer. But see Ordinance 4 of 1902, sec. 17, and Rule of Court 102 (a) (Appendix B). It is contrary to the policy of the law, because it lays the public open to this—that they may have to pay more than the tariff provides. They may be exposed to mistakes, which would entail delay and expense. Then, again, it is unfair to qualified conveyancers, because the law gives them a monopoly and requires them to pay a license under Ordinance 10 of 1903, schedule C. Though the sharing of fees by a conveyancer with an unqualified person was admitted as permissible by the Supreme Court in the Transvaal in the case of *Pienaar and Versfeld v. Incorporated Law Society* ([1902] T.S. 11), the Court showed considerable hesitation in doing so. This was specially prohibited by legislation under Ordinance 1 (Private) of 1905, sec. 34, in the Transvaal. Conveyancers alone can charge for the deeds as laid down in Ordinance 3 of 1907.

P. U. Fischer (with him *De Jager*), for the respondents: As the professional conduct of the respondents is not in question, the only point to be decided is whether as conveyancers the respondents could share fees with unqualified persons. The present profession of conveyancers as now appointed by the Court was only created in 1902. The professional status is not on a par with that of an attorney or notary, the secrecy of the work and confidential relationship existing between

attorney and client being absent in conveyancing. The status of conveyancers in this colony to-day is similar to that of conveyancers in the Transvaal in 1902, and in *Pienaar and Versfeld's* case it was held that they were not debarred from sharing fees with unqualified persons. Special legislation was required to alter this in the Transvaal. Rule of Court 106, in providing for the non-sharing of fees, only mentions attorneys and notaries. Ordinance 3 of 1907 does not profess to give the conveyancer a different standing, but merely regulates the taxation of his bill of costs and determines the fees. As conveyancer a person is not subject to the authority of the Law Society, and, in dealing with him as an officer of the Court, the Court will only interfere in cases of gross misconduct, and will leave it to the legislature to determine the rules to be followed in dealing with the profession.

Blaine, K.C., in reply.

MAASDORP, C.J.: This Court has no doubt as to what ought to be the decision in this case. With regard to the cases from the Transvaal Supreme Court, there may have been some special reasons which made the court hesitate. We should not be bound by these considerations or by the decisions themselves, even if they were on all fours with this case, which they are not. Here the respondents are qualified conveyancers and actually practising as such. The law prohibits an unqualified person from carrying on the profession of conveyancer and getting profits without qualification. The respondents may not have acted unprofessionally in the circumstances of the case, and we have been told that other practitioners have acted in the same way; but at any rate it is illegal. They are, in fact, enabling the Board of Executors to make money they would not otherwise be able to make. Such a position may lead to impropriety without the Court knowing anything about it. One can even conceive that there may be other practitioners and other corporations acting improperly under an agreement between them. It is not every practitioner that would give up his fee as conveyancer, as the respondents have done, without getting something in return. What is that something? In

other cases it may be an improper consideration, and the Court would be unable to inquire into it. It would be a case of that secrecy against which, as Mr. *Fischer* says, the law wishes to guard. Why do they give up their fees? We do not inquire. But at any rate the law says a qualified conveyancer shall not enable an unqualified person to act himself in a professional capacity. It is not fair to the rest of the profession.

The order of court is that the practice hitherto followed by the respondents is illegal, and must be discontinued.

FAWKES and WARD, JJ., concurred.

Petitioners' Attorneys: *McIntyre & Watkeys*.
