

*Coram :*  
MORICE, J.  
In chambers.

## THE REGISTRAR OF DEEDS

*v.*

*Coram :*  
KOTZÉ, C.J.  
JORIS-  
SEN, J.  
GREGO-  
ROWSKI, J.

## THE LYDENBURG MINING ESTATES, LIMITED.

TRANSFER DUES, EXEMPTION FROM—LAW No. 20 OF 1895,  
SECT. 5—REGISTRATION OF COMPANIES—LAW 5 OF 1874,  
SECT. 2—FISCUS.

1897  
8 February.  
14 April.

*Where a company was the only shareholder in another company, which latter company was in liquidation, and wished to transfer its assets to the first company, the Court held that in such case no transfer duty was due, inasmuch as the principle laid down in the various sub-sections of sect. 4 of Law 7 of 1883 (sect. 5, Law No. 20 of 1895) applied, viz., that no transfer duty is due where in reality no transfer of ownership takes place.*

*Per Morice, J. : The provision in Law No. 5 of 1874, that at least twenty-five shareholders are required for the incorporation of a company, does not prescribe that this number must remain such.*

*In case of doubt the presumption is against the Fiscus.*

THIS was an application to order the Registrar of Deeds to register the properties of the B. and B. Syndicate, Limited (in liquidation), in the name of the Lydenburg Mining Estates, Limited, free of transfer duty, as this latter company was the sole holder of the 20,000 issued shares of the B. and B. Syndicate, Limited, and consequently it was a mere change of name without in reality any change of ownership. The Registrar of Deeds objected to this, not because he disputed that this was a case which might or might not fall under sect. 4 (d) of Law No. 7 of 1883, but because the B. and B. Syndicate had not complied with the law as to limited liability, which prescribes that there must be twenty-five shareholders for the purpose of incorporation, and, as the applicant had apparently obtained all the shares by purchase, transfer dues were payable on this purchase.

Kock, for the Registrar of Deeds, addressed the Court, and intimated that he did not dispute the point whether the present case fell within sect. 4, sub-sect. (d), of Law 7 of 1883. He submitted that the B. and B. Syndicate, Limited, did not comply with sect. 2, sub-sect. 4, of Law 5 of 1874, the law dealing with the limited

liability of companies, which lays down that there must always be and remain twenty-five shareholders for the purpose.

With regard to this point, Morice, J., held that it was not obligatory for a company always to have twenty-five shareholders, and further, with regard to the case itself, that it ought to be considered as included under sect. 4, sub-sect. (d), of Law No. 7 of 1883, although this might lead to an evasion of the law, and that accordingly the application should be granted.

An appeal on this application was subsequently heard on 8th February, 1897.

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*Lohman*, for the appellant.

*Esselen*, for the respondent.

*Cur. ad. vult.*

*Postea.* 14th April.

GREGOROWSKI, J. (delivering the judgment of the Court) : This is an application which has come on in appeal from the decision of Morice, J., in chambers. The respondent applied in chambers for a rule *nisi* directing the Registrar of Deeds to transfer certain properties, standing in the name of the B. and B. Syndicate, to the Lydenburg M. Estates, Limited, free from the payment of transfer duty. The application was granted, and from this appeal is now brought. The B. and B. Syndicate is a company duly registered in this State, and is the registered owner of a number of farms in the Lydenburg district. The Syndicate was, by a resolution of the shareholders, placed in liquidation on 16th Oct. 1895. The Lydenburg Mining Estates, Limited, is the sole shareholder. The liquidators of the B. and B. Syndicate are desirous of passing transfer of these farms in favour of the Lydenburg Mining Estates, Limited, as being the only interested party, and consider that by virtue of sect. 5 (d) of Law No. 20 of 1895, no transfer duty is payable. The Registrar of Deeds takes a different view and claims payment of transfer duty. The question is whether the contention of the liquidators is sound, or whether the Registrar of Deeds is right.

Sect. 5 (d) contemplates an act of partition, and therefore a case where more than one shareholder or partner remains. The present instance is evidently a *casus omissus* not falling within the express language of the law, but that there ought to be an exemp-

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tion from payment of transfer duty in this instance is in accordance with the tendency of the law and in accordance with the principle upon which the law is founded. The principle is that transfer dues ought not to be paid where the registration into another name does not in reality denote an actual transfer of ownership, as the property was already vested in the receiver of the transfer before transfer. This is the case here. As the Lydenburg Mining Estates, Limited, is the only shareholder in the B. and B. Syndicate, Limited, it is in fact the owner of the farms, and the registration does not denote a transfer of property to another party. The general principle of Roman-Dutch law is that we should always hold against the Fiscus in case of doubt. (*Utrecht, Consult.*, vol. 2, c. 155, p. 627, num. 25, *in dubiis questionibus contra fiscum sit judicandum.*) Under the circumstances I think that transfer duty cannot be claimed, and that this appeal must be dismissed with costs.

Applicant's attorney: *Carl Ueckermann, sen.*

Respondent's attorney: *H. L. Scholtz.*

*Coram:*  
 ESSER, J.

## THE STATE v. MEYER YATES.

1897  
 16 April.

### SUBORNATION OF PERJURY—EXTRADITION LAW.

*The Court presumes that Extradition Laws, so far as the nature of crimes is concerned, are the recognition of existing conditions and not the creation of new conditions.*

*Where, therefore, the Extradition Law of 1887 (Law No. 9) includes in the list of crimes that of subornation of perjury, it must be taken that this crime already existed in the Republic before the passing of this law.*

THIS was an exception taken against an indictment under which one Meyer Yates was charged with the crime of "subornation of