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EX PARTE ROELEVELD.

(NATAL PROVINCIAL DIVISION.)

1970. *August* 7, 17. HARCOURT and MULLER, JJ.

Advocate.—Admission.—Foreign degree.—Examinations under sec. 2 *of Act* 19 *of* 1921 *not passed.—Applicant not entitled to admission.*

Although an applicant has obtained the degree of doctor of laws at the Ryks University of Leiden before the coming into operation of Act 74 of 1964, which repealed Act 39 of 1908 (O.R.C.) and Union Act 19 of 1921, he is not entitled to admission as an advocate if he has not passed the two examinations required by section 2 of Act 19 of 1921.

Application for admission as an advocate. The facts appear from the judgment.

Applicant in person on his own behalf.

D. J. Shaw, Q.C. (with him *G. I. Raftesath*), for the Bar Association.

Cur. adv. vult.

Postea (August 17th).

MULLER, J.: The applicant applied for admission to practice as an advocate of the Supreme Court of South Africa. The application is opposed on certain legal grounds by the Bar Association of Natal.

The Admission of Advocates Act, 74 of 1964, came into operation on 18th February, 1966 and lays down the requirements of admission at present. The petition in question was addressed to the Court in the prescribed way. The arguments dealt, however, with the question whether the applicant satisfied all the requirements of admission. Seeing that he personally appeared before the Court to argue his application and also submitted written "pleading notices" in support thereof, I shall try to deal with all aspects of the application, point by point.

Sec. 3 (1) of Act 74 of 1964 provides that the applicant must be admitted and authorised as an advocate, if he satisfies the Court:

(*a*) that he is over the age of twenty-one years and is a fit and proper person to be so admitted and authorised;
(*b*) that he is duly qualified;
(*c*) that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic.

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(Sec. 3 (1) (*d*) and (*e*) deal, respectively with former attorneys and attorney's clerks and is irrelevant here.)

Sec. 3 (2) of the Act provides that in applying sec. 3 (1) (*b*) the following persons are deemed to be duly qualified:

"(*a*) Any person who has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic."

The applicant did not pass such a degree examination and consequently cannot rely on the sub-section in question.

"(*b*) Any person who before the commencement of this Act passed any examination or satisfied all the requirements for any degree which in terms of any law repealed by sec. 13 would immediately before such commencement have entitled him to be admitted to practice as an advocate of any division on compliance with any other requirement of the said law with regard to matters other than such examination or degree."

The applicant tried to rely on the provisions of sec. 3 (2) (*b*) to satisfy the Court that he is deemed to be duly qualified by the Act for the purposes of sec. 3 (1) (*b*).

Mr. *Shaw*, on behalf of the Bar Association, conceded openly that the applicant satisfied all other requirements of admission of sec. 3 (1), but he submitted that the applicant was not duly qualified as required by sec. 3 (1) (*b*). Seeing that the applicant relies on sec. 3 (2) (*b*), it is necessary also to analyse the provisions of sec. 13 of the Act and those of two of the repealed Laws mentioned in the Annexure. Only two of the repealed Laws are relevant, viz. Act 39 of 1908 of the Orange River Colony and the Union Act, 19 of 1921, on account of the nature of the applicant's legal training and the academic qualifications obtained by him by way of examinations, thesis and the awarding of degrees.

To begin with it is necessary to point out a few facts concerning the applicant:

He was born on 21st April, 1919 and was a Dutch citizen. He emigrated to the Republic of South Africa on 13th November, 1965, and he is since then domiciled in the Republic. On 17th April, 1967 he became a South African citizen by naturalisation. His legal academic training was as follows:

On 27.7.1942, he was admitted as a student at a Dutch university after passing an entrance examination. On 6.2.1946, he passed the "Kandidaatsexamen, Nederlands Recht" at the Ryks University of Leiden. On 15.4.1948, he passed the examination for the degree of doctor at the Ryks University of Leiden. (In terms of the applicable Dutch statutes mentioned in the application, this granted the title "meester in de rechten" and entitled the applicant to admission as advocate in all the Dutch courts).

On 29.6.1955 the applicant successfully defended a thesis titled "De onderlinge Waarborgmaatschappy, in het bysonder als levensverzekeraar" in public, as well as certain propositions at the Ryks University of Leiden and thus obtained the degree of doctor of law. An affidavit by applicant was properly submitted to this Court in support of these

contentions—certificates of degrees were also submitted, together with an affidavit by the acting archivist of the senate of the University of Leiden.

A convenient summary of the history of the legislation in question and of some of the legal principles governing the interpretation of sec. 3 (1) (*b*) and 3 (2) (*b*) of Act 74 of 1964 are included in the following cases. *Lister* v. *Incorporated Law Society,* Natal, 1969 (1) S.A. 431 (N), and *Jasat* v. *Incorporated Law Society,* Natal, 1969 (1) S.A. 437 (N) especially p. 440A-C. (The latter case was reported in 1970 (1) S.A. 221 (A.D.) on appeal.)

In the present case the provisions of sec. 3 (2) (*b*) of Act 74 of 1964, must be applied to the said two Acts, viz. Act 39 of 1908 (O) as supplemented by Act 14 of 1909, and the Union Act, 19 of 1921 as amended. These Acts were in force until 17.2.66 and are relevant in consequence of the particular facts of applicant's case quoted above. Act 39 of 1908 (O) extends the academic qualifications of admission of advocates to British citizens resident in any colony or territory in British South Africa and who obtained a certificate or diploma of "*Juris Utriusque Doktor*" or of "*Legum Doktor*" (or another equivalent legal degree) at any university supported or controlled by the government of Germany, France, Holland or Belguim. Act 14 of 1909 (O) adds the certificate or diploma of "Doktor in het Hedendaags Romeins-Hollands Recht" to the two certificates or diplomas mentioned in Act 39 of 1908 (O).

The Union Act, 19 of 1921 in sec. 1 in turn extends the qualifications of admission of advocates *inter alia* to British citizens domiciled in one of the Union provinces and who, *while he is still a British citizen,* obtained by way of an examination the certificate of diploma of "*Juris Utriusque* Doktor" or of "Doktor in het Romeins-Hollands Recht" or of "*Legum* Doktor" at the University of Leiden, or the University of Amsterdam or the University of Groningen.

The other provisions of sec. 1 of Act 19 of 1921 refer to the recognition of certain British and Irish legal degrees which are evidently not applicable to the applicant.

In passing it must be pointed out that in the 1908 (O) Act certain provisions recognise the Legal qualifications of four European countries only, while the Union Act of 1921, merely refers to legal qualifications of certain universities of Holland, Great Britain and Ireland. The applicant was never a British citizen and only emigrated to South Africa in 1965. He already obtained his doctor's degree in law in 1955, while he only became a South African citizen in 1967.

The reference in the two Acts in question to British citizenship was put on a par by sec. 38 of the South African Citizenship Act, 44 of 1949, with South African citizenship or citizenship of a Commonwealth country, or of the Irish Republic. (In each case it is citizenship by birth or by descent.)

Mr. *Shaw,* in my opinion correctly conceded that the applicant's doctor's degree in law is academically equivalent to the four other kinds of doctor's degrees in law mentioned by the two Acts in question. He

made this concession, because he accepted the contents of the affidavit by the acting archivist mentioned above, as being correct.

A further statutory provision which materially concerns the admission requirements of advocates with foreign legal degrees, is sec. 2 of Act 19 of 1921. In terms thereof any person who applies for admission as an advocate on the ground of the provisions of sec. 1 Act 19 of 1921, or of qualifications obtained outside the Union, must first pass an examination in "Romeins-Hollands Recht" and in the Union Statutes. The Chief Justice and the other Judges prescribe the examination rules by way of regulations. These regulations will remain in force until 31.12.74 in terms of sec. 13 (1) of Act 74 of 1964. The latest regulations are contained in *G.N.* 588 of 29.4.1960, as amended by *G.N.* 1310 of 29.12.1961 and *G.N.* 656 of 27.4.1962. It is noticeable that the 1961 *Notice* withdraws the special exemption of persons, who passed certain examinations in Roman-Dutch Law in the Netherlands and England.

The result (as on 17.2.1966) of these amended regulations is that all the persons with foreign law degrees recognised by the various admission of advocates Acts as sufficient academic qualifications, must nevertheless before admission pass the prescribed examinations in Roman-Dutch law as well as in the statutory law of the Republic of South Africa. The 1962 notice prescribes the syllabus. Not less than five examination papers of three hours each must be passed in the two subjects.

The reasons for this are obvious. Although foreign degrees in Roman-Dutch law in the four European countries (Holland, Germany, Belgium and France) certainly include many useful courses of study and the highest academic standard is maintained there, it is a fact that the Roman-Dutch law has not been the ruling system of common law since the Napoleonic period in any of the four countries. Codification has taken the place of the Roman-Dutch common law and halted its natural development.

On the other hand this system is still the ruling system of common law in South Africa. In this country it has developed during the past two centuries giving our present-day common law an independent South African character.

Since 1809 the political history of the former four British colonies in South Africa as well as the later Union of South Africa (1910), and the still later Republic of South Africa (1961) was of such a nature, that our common law was also influenced in its development by English law. See, e.g. the remarks of STEYN, C.J., in *Trust Bank van Afrika Bpk.* v. *Eksteen,* 1964 (3) S.A. 402 (A.D.) at p. 410D-411E.

In short the Roman-Dutch law in force in South Africa in 1964, does not necessarily have a bearing on the legal principles which are being taught under the generic name "Roman-Dutch law" at the European universities. This conclusion is inevitable, in spite of the fact that the legal system known as Roman-Dutch law was the common law of