

Oupa Hortors' Diary

Aaron Mendelow, QC, Johannesburg Bar

Aaron Mendelow is one of the most senior members of the Bar. He entered the legal profession as an articled clerk in 1927 and was admitted as an attorney in November 1930 and practised as such until February 1945 when he had his name removed from the roll of attorneys in order to be admitted as an advocate in September 1945. He was appointed as a QC in 1959. He is still an active member of the Johannesburg Bar and insists that the second half of his life in that profession will be even more interesting and satisfying than the first half. His experience in the profession in all its phases, therefore, exceeds 60 years.

*(Mr Mendelow set an excellent example to our colleagues by writing yet another interesting article for **Consultus** – held over for a future edition. Editor.)*

THE news that the Bar was to produce its own journal, to be named **Consultus**, was refreshing. It is hoped, however, that its arrival will not evoke the same response as did the SALR on their birth, as described by the late Otto Beyers, later the Honourable Mr Justice D O K Beyers of the Appellate Division. He said, in words to that effect that he had welcomed the news that *all* the Law Reports, from *all* the divisions of the Supreme Court, would now be collected in one single volume and had looked forward with keen anticipation to the arrival of the first volume – for, to him, this was to be the Book of Judges. Then came the first volume and he read it most carefully. To his consternation he found that it was not the Book of Judges at all – it was the Book of Revelations!

With this lamentable possibility in mind, the problem immediately obtruded itself: what would be a suitable topic for the first, conceivably the most historic, number of the first book of advocates, or, sticking to the biblical metaphor, the Book of Prophets? Fortunately, there is a guardian angel who watches over perplexed advocates and he (these days, could it be she?) came to the rescue in the form of nothing other than the mundane Hortors' Legal Diary for 1988. On page 27 there is the legend:

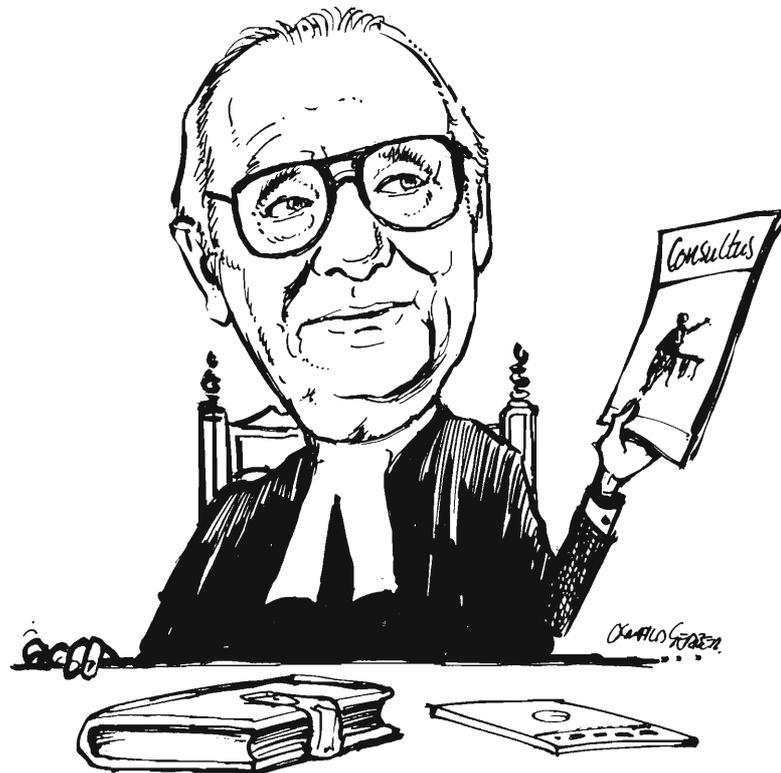
"This edition has been compiled from the Statutes, Rules, Regulations and other information promulgated or available up to the 31st May 1987."

And thereafter there follows the Law List of Practising Advocates and Attorneys – 161 advocates in Pretoria and 354 in Johannesburg, a total of 515 in the Transvaal.

My guardian angel reminded me that in my own library I had what must be the grandfather of Hortors' Legal Diary for 1988, in the shape of the Legal Handbook of British South Africa for 1903. It was published in Grahamstown by the African Book Co Ltd, who described themselves as "Law publishers". On the spine of the book appear the words, "Legal Handbook of British South Africa 1903" whilst the frontispiece carries the words "The Legal Handbook of Practical Laws and Procedure, with Tariffs of Fees of Office and Stamps in British South Africa together with a Law List, 1903". The authors were W H Somerset Bell who was the editor of the South African Law Journal, and Manfred Nathan LL D who was an advocate of the Supreme Court.

In their introduction, the authors, as early as November 1902, (the Anglo-Boer War had only just ended that year) drew attention to three features:

- "The Statute Law of all these territories – which collectively form what is known as British South Africa – is



contained in many ponderous volumes; and the task of extracting from them rules for guidance in every day practical affairs has ever been a trying one to the busy practitioner or official. Year after year these statute books increase in bulk, and it becomes ever more difficult to know what laws are repealed, and what laws are still of effect."

- "SCOPE OF THIS WORK – it seems, therefore, that the time has arrived when an attempt should be made to present to the legal and commercial world of British South Africa an epitome of all such portions of the statute law, and of regulations framed under the statute law, as are applicable in daily practice. What the busy practitioner needs is a work easier of reference to which he may readily turn for guidance on matters with which he mainly has to deal."
- "THE LAW LIST – by far the greatest difficulties have been met with the preparation of the Law List. An attempt has been made to compile a complete and accurate list of all legal practitioners in British South

Africa. The attempt has not been completely successful. This is due entirely to the apathy of many legal men, who have taken no notice of circulars and letters requesting information concerning their admission, qualification, and residence, or who have given a portion only of the particulars asked for, or who have given wrong dates... It is to be hoped that this lack of interest in the Law List, the first of its kind published in South Africa, does not indicate a similar lack of interest in the science of the legal profession."

To us, in the Transvaal, the most interesting section is obviously the list of advocates then practising, or else admitted, in the Transvaal province – altogether 73 names are listed of whom

- seventeen appear to have been in or associated with the public service – 23.28%;
- eighteen were listed as practising in Pretoria – 24.66%;
- thirty-seven were listed as practising in Johannesburg – 50.68%;
- one was listed but his place of practice was not given.

Those in or associated with the public service held interesting posts – thus B J Bader was the district registrar of mining rights; L W Bangley was a magistrate in Pretoria, H O Buckle a magistrate in Johannesburg and F P Crots a magistrate at Potchefstroom, while W S Duxbury was a resident magistrate at Potchefstroom; C A Wentzel was the chief magistrate of the Witwatersrand. It is interesting to note that of the seventeen advocates, no less than five were magistrates and of those five, three were in Potchefstroom. Amongst the law advisers were S H Barber, E L Mathews, H Tennant, who was also secretary to the Law Department, and Daniel Ward. Associated with the Supreme Court was F J Collinson. The crown prosecutor at Johannesburg was E W Douglas. The sheriff of the Transvaal was also an advocate, B W T Juta. The Attorney-General of Natal, who was also an advocate of the Transvaal republic, was G A de R Labistour and of course Sir Richard Solomon was also an Attorney-General. The registrar of the Witwatersrand High Court, C F Rorke, was an advocate as well.

Of the eighteen advocates listed in Pretoria, ten were housed in the same building namely Law Chambers; six did not provide the address of their chambers but were presumably also housed at Law Chambers. Interestingly enough, two were housed at Lewis and Marks Buildings.

Of the many interesting features relating to the advocates at the time, there are two outstanding features about those in Pretoria:

- The omission of the name of Ewald Esselen: the very formidable leader of the Bar was not listed at all. This may be due to what the authors describe as "the apathy of many legal men".
- The two advocates whose chambers were not in the same building as the others but were in Lewis and Marks Buildings, were none other than J C Smuts and N J de

Wet – the former destined to become the prime minister and a world recognised figure, and the other the chief justice of South Africa. A glance at the law reports for 1902 onwards will show how frequently Advocate J C Smuts appeared in court and on how many occasions, he, in addition, appeared in court and led N J de Wet.

The advocates who practised in Johannesburg were housed in no fewer than fourteen different buildings. A glance will reveal how many famous names appear.

- In Permanent Buildings there were eight advocates, including such names as J W Leonard, G T Morice, Saul Solomon and J Stratford;
- Barnato Building housed Advocate P M Beyers;
- in Rosenberg Buildings there were Advocates C J Brand and A T Rooth;
- in Aegis Buildings were Advocate Seward Brice and Advocate A L Cohn, who later became an attorney;
- in Equitable Chambers there was Advocate J L Brown;
- in Trust Buildings were Advocates S S Taylor and C G Ward, as well as Advocates R C Lane and C G Davison;
- Hoskens Buildings housed Advocate J D Forster;
- Mutual Buildings housed five advocates including Advocate Emile Nathan and Advocate van Hoytema;
- in Saville House there were Advocates A F Kock and J W Peirson;
- in Portland House there was Advocate B H Le Clerq;
- in Jeppe Arcade was Advocate P J MacDonell;
- in Natal Buildings there were four advocates, Advocate Manfred Nathan, Advocate C F Stallard who eventually lived to celebrate his 100th birthday, Advocate W B I Webber and Advocate W T W Morrison;
- in Brown's Buildings was Advocate G St J Mildmay;
- the two advocates whose address was not given were Advocates T A Guerin and A McHugh.

Another interesting feature is that, associated with the Town Council and presumably housed in the Town Council buildings, were two advocates, F Cliffe and C Porter. Porter who was also a medical man, had become the medical officer of health for the Town Council of Johannesburg.

Eighty-five years have passed since that epic day when the Legal Handbook of British South Africa first appeared. For some years the Legal Handbook continued to appear in that form and in the same format but it eventually became Hortors' Diary as we know it today. The publishers' objects of 1903, as reproduced above, have remained unchanged. The Transvaal Bar has grown from 73 (including civil servants) to 515 (*not* including civil servants) and many other changes in the jurisprudential sphere have occurred – changes which have often been commended when commendation was due and criticised when criticism was merited – but, lying on my desk, right next to Hortors' Legal Diary for 1988, still lies the Legal Handbook for British South Africa for 1903. I may be an incurable romantic but I thought I detected a whimsical flutter of its tattered pages – a grandfatherly greeting to its newest offspring. □

To be a good judge, you must have inestimable good judgment, a sense for fair play and a darn good bladder.

Mrs Lloyd C. Payne