



Fly on the wall ...

We were not amused ...

WHEN denunciation of the sins of the past becomes iconoclasm, it tends to get ugly and short-sighted very quickly, and nobody quite knows where the lines should or even can be drawn with any sense of consistency of principle. Fly knows better than to venture into the wasp's nest that has become the debate about the appropriate treatment to be accorded to the statue of Cecil John Rhodes, which still indicates with majestic gesture to the current students of the University of Cape Town precisely in which direction to continue building the Empire, famously begotten in a fit of absent-mindedness, upon which at some point in time, apparently, the sun never set. Fly is one of those 'our complex mosaic of history' types, no doubt due partly to his own complex mosaic of history. As a child at school he was taught how Rhodes and his ilk were part of what was called 'Britse Imperialisme', the foil to which was 'Afrikaner Nasionalisme', the former connoting gold diggers and dying *Boeremeisies* in *kappies*, the latter *veldhoedens* and *kommando* and *Mausers* and all sorts of other romantic stuff. (The textbook was written in a style that hinted at editorial approval of the one phenomenon and disapproval of the other.) 'The Native Question' did not feature. Fly assumes it was left aside for the

nonce, something young minds should not be bothered with too readily. And then, a few decades later, Fly was toasting 'The Queen' at a famous British institution, and wondering how those *Boeremeisies* would have felt about that.

So, rather than stepping right into the substance with which some students lovingly anointed the Great Man's statue, Fly thought this was an apt occasion for a Case Note. The case was decided in 1899, as Her Majesty was about to continue the task that our Cecil had tried to kick-start four years earlier, with his own embarrassing nineteenth century rendition of the Bay of Pigs. This, as they say, was one for the historian and the jurist. Rhodes featured as prime defendant. It was not his finest hour.

IN *Burrows v Rhodes and Jameson* [1899] 1 QB 816, a young soldier had been employed by the British South Africa Company, of which Rhodes and Jameson were principals. He was employed as a soldier in the Company's army (yes, it had an army; this was 1895, and it was a British company, in South Africa). Rhodes and Jameson advised Burrows that Trouble had broken out in Oom Paul's Boer Republic, and that Her Majesty's government had decreed the Company's finest should rush to the aid of some women and children in desperate need of defending in Johannesburg. Young Burrows did as he was told. He ended up losing a leg, and being taken back to England as a prisoner for participating in a criminal endeavour. The 'criminal endeavour' bit came as a surprise to him, so he sued Rhodes and Jameson for 3 000 pounds for damages caused him by their fraudulent misrepresentation. The fraud was that Her Majesty had approved. Had She approved, Burrows would have

been engaging in a Noble Endeavour. (After all, he was just a few years too early). But, alas, She had not. So he was engaging in a crime. Rhodes and Jameson had fraudulently caused him to do so. Rhodes and Jameson took an exception. The case did not sustain a cause of action. You cannot sue me for making you commit a crime. That is against public policy. What would the world come to if this were competent? Of this, Grantham J mused, 'and yet it has been solemnly argued that such is the law at the present time.... A grosser perversion of English justice it is impossible to imagine, and I should indeed be sorry if, under any circumstances, it could be proved to be English law.' After all, these scoundrels with their 'deeper-dyed fraud' had duped young Burrows into committing his crime. He had been told this was a Noble War, what with Her Majesty and all. Instead, it had been nothing other than a gangster's escapade or, as Grantham J would have it, 'something in the nature of a highway robbery', for which Burrows had lost a leg. But, their Lordships wondered, could one extend the principle, that someone ignorantly duped into committing a private wrong could sue for damages suffered as a result, to the case of being duped into committing a crime? Is not everyone presumed to know the criminal law? Could Burrows end up being convicted and still have a cause of action for being duped into this? The principle was, after some deliberation, duly thus extended by Her Majesty's Bench. After all, We had not been amused. How dared they murder and maim without Our approval?

TIMING is everything. And so, some months before Her Majesty did it all properly, the Queen's Bench upheld young Burrows' action. Fly wonders if Rhodes ever paid anything. What are the odds? **A**