225/54

G.P.-S.384-1953-3-40,000. U.D.J. 445.

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

(..DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPEL IN KRIMINELE SAAK.

....

Appellant.

versus

....

Respondent.

Appellant's Attorney .... *Respondent's Attorney* ....
Prokureur van Appellant *Prokureur van Respondent*

Appellant's Advocate G.A. Coetzee *Respondent's Advocate* G.G. Lynn.
Advokaat van Appelant *Advokaat van Respondent*

Set down for hearing on:— ....
Op die rol geplaas vir verhoor op:—

(9.45 — 10.40)

— Mr. Lynn not called upon.

— Appeal dismissed. Reasons will be handed in [illegible].

Schreiner, van den Heever, Hoexter, Fagan & Steyn, JJ.A.
22 - 3 - 55.

[illegible]
Registrar.

Feb 22/55/54

APPELLATE DIVISION

(Schreiner J.A, van den Heever J.A, Hoexter J.A, Fagan J.A, Steyn J.A)

Heard: 22 March. Delivered: same day.

Reasons for judgment: handed in: 31 March, 1955.

C H R I S T I E v. R E G I N A M

FAGAN J.A.: The appellant was convicted in a magistrate's court of contravening Section 10(1) of the Rents Act, No. 43 of 1950, by requiring or permitting the lessee (one Christoforou) of certain controlled business premises of which he was the lessor to pay a rental of £13.10.0. per month after a rent board had made an order determining £6.10.0. as a reasonable rent for those premises. He appealed unsuccessfully to the Transvaal Provincial Division, which granted him leave to appeal to ~~us~~ this Court.

It was not disputed that a rent board had, while an earlier lessee was in occupation, fixed the rental at £6.10.0. per month, nor was it disputed that the appellant had for about two years been accepting a rental of £13.10.0. per month from Christoforou. The defence was that there existed a written agreement complying with the requirement of Section 3(1) of the Act, which allows, as an exception to Section 10(1), that "any lessor of business premises may validly enter into a written agreement with the lessee of such premises to the effect" that a higher rent may be payable.

The facts on which the appellant relied for bringing Section 3(1) into play were, shortly:

(1) That on 4th December, 1950 - after the rent board determination - he and the then lessee, a Mrs Opperman,

had executed a written lease for five years under which she had undertaken to pay him £13 per month for the first two years reckoned from 1st December, 1950, and £15 per month for the last three years, plus 10/- per month for water.

(2) That on the 14th March, 1951, a written cession of this lease for the unexpired period to a new tenant, one Rousos, had been executed by the three parties concerned: the appellant as lessor, Mrs Opperman as cedent and Rousos as cessionary.

(3) That in May, 1951, Rousos had taken Christoforou in as a partner, but the partnership had been dissolved by a written deed of dissolution entered into between the two partners on the 26th June, 1951. Under this deed Christoforou took over the business, and the parties placed on record "that they will approach the said George Christie in respect of a cession of the shop within which the said Christoforou will carry on business."

(4) That, in Christoforou's words: "The lease was read over to me, and I accepted the position"; in the words of the appellant:-

> " Complainant did approach me for the cession in the offices of Blake, Miller and Fourie. I said I was prepared to give him the lease on the same terms. He asked what cost of drawing lease was. I said £3 to £4. He said it was too much, and he had no money. I asked Mr Attorney du Toit if the old lease would do. He asked me to read the lease which I did and translated to complainant in presence of Rousos. Complainant said he adopted the lease on the same terms, and agreed to take over the lease for the balance of the period. I thought I had ceded the lease to complainant verbally..... Complainant did not sign any document that he would pay me £13.10.0. per month."

The decision turns on the contention submitted on behalf of the appellant that by orally agreeing to

adopt

adopt as binding on themselves the provisions contained in the written lease between the appellant and the earlier lessee (Mrs Opperman) the appellant and Christoforou "entered into a written agreement" to the effect that Christoforou would pay the higher rent.

The wording in which I have here formulated the contention - and I think it is a fair and correct way of describing it - really disposes of it; for it shows plainly that the actual agreement between the appellant and Christoforou, though it referred to a document, was orally concluded. However, I shall try to examine the argument put to us by Mr Coetzee and the wording and object of the enactment we have to construe in somewhat more detail.

Mr Coetzee referred us to legislation which, when requiring certain types of agreement to be in writing, add in express words the requirement that the writing should be signed by the parties, and he stressed the absence of the second requirement in Section 3(1) of the Rents Act. He mentioned, in this regard, the Transvaal Transfer Duty Proclamation No.m8 of 1902, Section 30, and the Hire-Purchase Act, No. 36 of 1942, Section 4(1). In the former case the requirement is that the writing should be "signed by the parties thereto or by their agents duly authorized in writing"; in the latter that it should be "signed personally by the buyer and by or on behalf of all other parties to the agreement". These are special requirements which do not seem to me to be of assistance in the case now before us.

Mr Coetzee relied strongly on the case of Union Government (Minister of Finance) v. Chatwin, 1931 T.P.D. 317, and Baker V. Afrikaanse Nasionale Maatskappy, 1951 (3) S.A. 371 (A.D.). In both these cases the document tendered as a record of the agreement had been signed by the party sought to be held bound by it, though not by the other party; it had been drawn up ad hoc to record the agreement of these two parties; and in

both

both ~~these~~-cases the issue did not relate to a statutory requirement that the agreement should be in writing, but to the question whether terms embodied in the document could be varied by parol evidence. In these three aspects - which may all be of considerable importance in influencing the Court's valuation of the writing for the purposes of the decision it has to make - those cases are distinguishable from the one now before us. Mr Coetzee's argument, however, was based not so much on the actual decisions as on certain phrases appearing in the judgments. In Chatwin's case Tindall J. said (at pp. 320, 321):

> " A document may constitute a contract in writing even though it is signed by only one party..... the test is whether the parties have deliberately agreed to record their agreement in writing."

And in the judgment in Beker's case we read (at p. 375):

> " Die dokument is nie deur iemand namens die Maatskappy geteken nie. Maar een of beide partye mag op ander maniere as deur hul handtekening te kenne gee dat hul ooreenkom op terme wat in 'n geskrif vervat is; en as hul weersydse instemming met die skriftelike terme dan bewys word, is hul net soseer daaraan gebonde asof hul dit onderteken het."

I can find nothing more favourable to the appellant's case in these quotations than the trite proposition that parties are bound by terms contained in a written document if they are shown to have agreed, albeit orally, to be so bound. But these quotations are no authority for the proposition that an oral agreement to be bound by the terms contained in *some* document is a written agreement in terms of a statutory requirement that the agreement should be entered into in writing.

Mr Coetzee submits that *a document* may constitute an agreement entered into in writing by the parties concerned even if it does not contain their signatures. Certainly signatures - or such markings as are in law regarded as equivalent to signatures - are the usual way in which parties signify their assent to written

documents, and I find it difficult to conceive of any other satisfactory method. For my present purpose, however, I may leave open the question whether some other method may be possible; for what at least is clear in the case before us is that no nexus at all between the parties concerned was formed in writing.

The lease in this case records that Christie and Mrs Opperman have agreed; and there is an additional written agreement substituting Rousos for Mrs Opperman. What is alleged to have made the provisions of the lease binding on Christie and Christoforou is an agreement between them to substitute Christoforou for Rousos in respect of the remainder of the period of the lease. But that agreement - the real link that had to bind them to one another - was entered into orally.

I do not seeh, then, how it can be said that the appellant and Christoforou entered into an agreement in writing to the effect that Christoforou should pay the higher rent, even though, apart from the statute, we may have to look at the document to find what the provisions are by which they agreed orally to be bound, and parol evidence may not be admissible to vary those provisions once it is established that they agreed to be bound by them in the wording in which they are recorded in the document.

A consideration of the purpose of the enactment can only serve to strengthen the view I have expressed in its application to this requirement in the Rents Act. The only possible objects I can see in

Section

Section 3(1) are: (1) to impress on the lessee the fact that he is seriously undertaking the obligation of paying the higher rental, and (2) to obviate disputes, ~~as to whether or not he bound himself to do so~~. Obviously both these objects would be frustrated if an oral assent to the adoption of another lessee's obligation, even though that lessee had given his undertaking in writing, were held to be a compliance with the section.

We considered, therefore, that the magistrate and the Provincial Division were correct in holding that the requirements of Section 3(1) had not been complied with and that consequently the appellant's acceptance of a rent in excess of the determined amount was a contravention of Section 10(1).

For these reasons the appeal was dismissed.