

T. W. BECKETT &amp; CO. v. B. GUNDELFINGER.

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

HIRE GOES BEFORE SALE—EXCEPTION TO THIS—ESTOPPEL.

*Where a leased property was sold by public auction in the presence of the lessee, with the representation that no lease existed on it, and no objection against this was made by the lessee, he cannot subsequently be heard to allege that the purchaser obtained the property subject to the lease.*

1897  
12 February.

THIS was an action for ejectment and damages. The plaintiff company alleged that it was the owner of certain western portion of Erf No. 331, Pretoria, and of the building thereon, which had been purchased by it in the insolvent estate of a certain E. H. Fry, on the 2nd May, 1896. The defendant had leased this portion of the erf from E. H. Fry, and on the expiration of the lease, on 31st December, 1895, the defendant was allowed by the trustee of the then insolvent estate of Fry to continue the occupation of the said piece of land from that date at a rental of 30*l.* per month. Immediately after the sale of the property the plaintiff notified the defendant thereof by letter dated 24th June, 1896, and requested him to vacate possession. The defendant refused to quit, and alleged that he had verbally, but with the understanding that the agreement should subsequently be reduced to writing, leased the property on or about the 2nd September, 1895, from the agents of Fry for a period of three years, at 30*l.* per month, with the right of renewal for a further period of three years at 35*l.* per month, and after that with a right of renewal for another four years at 40*l.* per month. Further, that this verbal agreement was confirmed by the trustee of the insolvent estate of the said Fry in March, 1896, and that the plaintiff company, when it purchased the property in question, was well aware of this agreement.

From the evidence, it appeared that the property was sold by public auction. The defendant admitted that he was present at the sale and that he heard the auctioneer, on a question put by one Strange, answer that there was no lease on the property. He further stated that neither he nor his brother had said anything

1897  
 BECKETT  
 v.  
 GUNDEL-  
 FINGER.

in regard thereto, and that he knew Strange was the representative of the plaintiff company.

[KOTZÉ, C. J. : Under these circumstances, granted that there was indeed an agreement of lease, how can the defendant, who admits that he was present at the sale and raised no objection, be now heard to say that the plaintiff company acquired its title subject to the agreement of lease? Bigelow on Estoppel (p. 586) says: "If a man knowingly, though passively, by looking on, suffer another to purchase land for valuable consideration under an erroneous impression of title, without making known his claim, he will not be permitted thereafter to exercise his legal right against such person."]

*Cloete* (with him *Lohman*), for the defendant : The silence of the defendant at the sale cannot deprive him of his right.

*Esselen* (with him *Esser*), for the plaintiff company, were not called on.

The Court gave judgment in favour of the plaintiff company, with costs. The defendant was ordered to vacate the portion (of the erf in question) within three months, and to pay the rent, as prayed, at 30% per month.

Attorneys for the plaintiff : *Stegmann* and *Esseler*.

Attorney for defendant : *P. A. M. Cloete*.

---