

EX PARTE C. I. VAN GRIETHUYSEN.

Coram :
JORIS-
SEN, J.
(In camera.)

**TRANSFER DUTY—EXEMPTION FROM—TRANSFER BY A
 PARTNER TO THE PARTNERSHIP.**

1897

22 November.

Where the applicant, not holding a power of attorney from his co-partner for the raising of money on mortgage, bought an erf in his own name on behalf of the partnership in consequence of pressing requirements of the partnership business, mortgaged this erf and built upon it; the Court allowed the deed of transfer and the mortgage bond relating to the erf, and registered in the name of the applicant, to be re-registered in the name of the partnership without the payment of transfer duty, as no transfer of property had taken place.

In this application an order was prayed directing the Registrar of Deeds to re-register the transfer of a certain erf at Pretoria, standing registered in the name of the applicant, in the name of the firm, Tilanus and Van Griethuysen, free from transfer duty. The petition set forth that the applicant was one of the two partners of whom the firm Tilanus and Van Griethuysen consisted. That when his partner was in Holland the applicant was obliged to decide in regard to the purchase of an erf for the place of business of the firm, as the lease of the former place had been terminated, and the place let to a third party. The applicant was able to obtain a loan from a bank, provided the erf was transferred in his own name, as he did not hold a power of attorney from his partner entitling him to pass a mortgage bond on behalf of the firm. It was, therefore, decided to have the transfer registered in the name of the applicant, whereupon the bank advanced the money. The erf was bought on behalf of the firm, as appeared from the wording of the mortgage bond, the consideration being stated to be "for moneys lent and advanced, or still to be advanced, on current account, to the firm of Tilanus and Van Griethuysen."

After the mortgage bond had been passed, a contract was given out on behalf of the firm for the building of a store with offices upon the purchased erf. The erf was in fact the property of the firm and not of the applicant alone. The Registrar of Deeds, on being requested to register the transfer and the mortgage bond, without the payment of transfer duty, in the name of the firm, refused to do so without an order of Court. On being asked for

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his reasons, the Registrar of Deeds replied that he had refused on the ground that according to sect. 12 of Law No. 5 of 1882 it was only in cases where an error occurred in any original grant of land or in a transfer deed, either in the name or names of the person or persons mentioned therein or in the description of the property, that he was empowered to rectify the error, but here an alteration in the proof of ownership was asked of him, and this he was not competent to do without an order of Court.

Kakebeke, for the applicant, pointed out that in the present instance there was no transfer of any property, and, therefore, the practice of the Court should be followed in regard to exemption from transfer duty and the amendment of the deed of transfer and mortgage bond.

The Court granted the application.

Applicant's attorneys: *Roux* and *Ballot*.

Coram :
 KOTZÉ, C.J.
 JORIS-
 SEN, J.
 ESSER, J.

FRENCH NORTH RAND COMPANY

v.

PRETORIUS.

1897
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 15 Novem^r.
 2 Decem^r.

EXCEPTION—WRITTEN OR VERBAL CONTRACT—RULE OF COURT NO. XI.

Where a plaintiff in his summons relies on a contract, he should state whether the contract is written or verbal, in order to give effect to Rule XI. of the Rules of Court. Taylor and Peel v. Zeederberg (S. C. Transv. Rep. (1888) p. 255) followed.

THIS was an argument on exception concerning the question whether a plaintiff, who in his summons relies on a contract, is obliged also to state whether the contract has been entered into verbally or in writing, in which latter case the plaintiff should annex a copy of the contract to his summons in accordance with the Rules of Court.