from succeeding if the word "store" in the agreement clearly covered the business of Cachalia.

Judgment must therefore be for the defendant, with costs.

Plaintiffs' Attorneys: *Van Hulsteyn, Feltham & Ford*; Defendant's Attorney: *G. S. Ritson.*

[Reported by *G. Hartog*, Esq., Advocate.]

LUBKE v. KEGEL.

1913. *June* 18, 23. WARD, J.

Work and labour.—Architest's fees.—Basis of remuneration.

An architect is entitled to a fair and reasonable reward for the amount and quality of his work, but, apart from agreement, the percentage scale upon which that remuneration is customarily calculated by the profession, affords no measure of what is reasonable remuneration. Where there is no such agreement it is the duty of the Court to enquire into the amount and quality of the work actually done.

Action by an architect for remuneration based upon a percentage scale of work done in the preparation of certain plans.

The facts appear from the judgment.

R. Feetham, for the plaintiff: A percentage on the total cost of the works is the usual professional charge in building contracts. Hudson, *Building Contracts* (2nd ed.), p. 114, states that a charge of five per cent. for cost has frequently been found by juries to be reasonable. See also *De Zwaan* v. *Nourse* (1903, T.S. 814); *Rowe* v. *Gotthelf* (18 S.C. 401).

J. Stratford, K.C. (with him *A. Alexander*), for the defendant: The test is what is reasonable; see Hudson, *ibid.*, p. 115; *De Zwaan's* case (*supra*); *Moffat* v. *S.A. Breweries* (1912, W.L.D., (not reported).

Feetham, in reply: I admit there is no authority to the effect that the client is bound by the tariff. I rely on the tariff as a measure of reasonableness only. That tariff should only be departed from where there are special circumstances.

Cur. adv. vult.

Postea (June 23).

WARD, J.: This is a claim by an architect for £731 16s. 4d., as remuneration for work done in the preparation of plans for an hotel which the defendant proposed to have built on the Ocean Beach at Durban. Plaintiffs prepared the plans and called for tenders. The lowest tender was for a sum rather over £22,000. His claim was made up of 3 per cent. on this amount, plus a sum of £66 for alterations made in October last. The defence on the plea was that plaintiff agreed not to charge for the plans, but that if the money were raised for the hotel he was to get architect's fees on the ordinary scale. That plea was withdrawn at the trial, and a tender made of £250 a day or two before the trial. It was argued that as there was no agreement as to the price to be paid, plaintiff was entitled to a fair and reasonable sum for the amount and quality of the work, and that the architect's scale afforded a measure of what was resaonable remuneration. The Court was told there were English cases in which juries had found to that effect, but I am not prepared to accept such findings. First, one never knew what arguments influenced a jury, and, secondly, the scale was arbitrary, inasmuch as it was based on the tenders made. Thus when labour and materials were dearer the architect would get more, though the work done was the same. The scale was a measure of nothing, and the mere fact that there was a scale was not binding in the absence of special agreement. It was proved that architects in Durban and the Transvaal made the same charge, namely, $1\frac{1}{4}$ per cent. for prelimenary sketches, $1\frac{1}{4}$ per cent. for plans and specifications and $\frac{1}{2}$ per cent. for calling for tenders. Here no preliminary sketches were made, for the defendant had had some plans prepared which he submitted to plaintiff, who used them for making his own plans. So the claim would be reduced by $1\frac{1}{4}$ per cent., *i.e.*, to about £500, assuming the scale were accepted; but as the Court could not accept the scale, the work and labour actually done must be examined. It was contended for defendant that the amount of the tender was sufficient, but the result was only arrived at by cutting plaintiff down to the narrowest limits as to time and payment. There is no doubt some work was done in considering the plans and not a little in calling for tenders. It was also clear that defendant's allowance of three guineas per day was a minimum

charge, which clearly did not take into account the employment of imagination, plaintiff's skill as an architect, or his experience as a builder of hotels in Durban. Then allowance must be made for assistance required, and no doubt a certain amount for the responsibility involved. Taking all these factors into account, and allowing for expenses incurred and certain alterations made in the plans, a sum of £400 would be a fair sum to award. Judgment accordingly for £400 and costs.

Plaintiff's Attorneys: *Bell & Nixon*; Defendant's Attorneys: *Alexander & Brothers.*

[Reported by *G. Hartog*, Esq., Advocate.]

SEME v. CAMPBELL.

1913. *June* 26. WARD, J.

Practice.—Defective summons.—Setting aside.—Proper procedure.

The copy of a summons served on a defendant was not a true copy of the original, which was in itself bad in law :—*Held,* that the summons could be set aside on application for an order to that effect.

Application for an order dismissing a summons issued by respondent against applicant, on the ground that it "was invalid and did not comply with the rules of Court in that a true copy thereof was not served on the defendant, and generally is bad in law."

The summons commanded the appearance of applicant "of Johannesburg, attorney-at-law, in his capacity as the duly constituted agent and principal of Paulus Ngabane" and thirteen others (named) to answer respondent in an action wherein he claimed certain sums as the purchase price of portion of the farm Klipgat 680, Potchefstroom, in terms of an agreement entered into between the parties on the 3rd April, 1913, or alternatively damages for non-performance.

The copy served on the applicant was not a true copy of the original in that it did not contain the name of the registrar.

Notice of the application was given on the 24th June, and the summons was withdrawn on the 25th. The only question remaining therefore was that of costs.