

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.]

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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Notice of the application was given on the 24th June, and the summons was withdrawn on the 25th.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.

*L. Blackwell*, for the applicant: The application made is the proper procedure; see *Frost and Others v. Rising, N.O.* (1905, T.S. 445) *per* INNES, C.J., at p. 447: "The proper course under the circumstances was for the defendant's attorney to file his power and then move the magistrate to have the proceedings set aside." To wait for declaration and then except would be a needless expense.

No appearance for respondent.

WARD, J.: The summons is quite unintelligible, and the copy served is not a true copy. *Frost's* case (*supra*) shows that the proper course has been taken, namely, to set aside the proceedings. True the summons was withdrawn, but not before the costs of the application had been incurred. The applicant is therefore entitled to costs.

Applicant's Attorney: *C. Mathey*.

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

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