tage. He then adds "but prescription in accordance with the law of the subsequent domicile cannot be made to run from ny date further back than the moment at which that new domicile was acquired," and for this he quotes a decision of the Supreme Court of Posen.

These views of Bar as regards a proportional calculation or as regards an election by the debtor seem fantastic. A Court administering the *lex fori* could hardly adopt either of these views, but the further expression of opinion that prescription in the new domicile can only begin to run from the date of the change of domicile would seem to be the correct view. A defendant is not bound to avail himself of a plea of prescription. He can raise such a plea or waive it at his discretion. But he has no other choice. He can hardly be allowed to choose the prescription which is most favourable to himself when he has voluntarily changed his domicile and inconvenienced the creditor. In my opinion the course of action in this case only accrued when the defendant came to reside within the jurisdiction of the Courts of this Province. Previously to this the plaintiff had no right of suing the defendant in these Courts. It is admitted that when the defendant was sued, the prescription period of three years had not elapsed, and thus I think that the plea of prescription was wrongly allowed, and the appeal must be upheld, with costs.

On the second plea I think on the evidence the defendant is entitled to the moratorium claimed. Having regard to the circumstances of the case and the peculiar way in which the defendant pleaded and conducted his case, justice will be met by giving judgment in favour of the plaintiff, but suspending execution until after the expiry of the moratorium clause.

[J. M. M.]

REX v. FRICK PAULSE.

1915. *November* 1. DE VILLIERS, J.P., WESSELS and GREGOROWSKI, JJ.

Criminal law.—Juvenile offender.—Detention in reformatory.—Lashes.—Act 16 *of* 1908, *sec.* 6.—*Act* 13 *of* 1911, *sec.* 73 (1).

Where a male juvenile adult is sentenced to detention in a reformatory in terms of sec. 73 (1) of Act 13 of 1911 a sentence of lashes may be superadded in cases where the offence of which he was convicted justified the imposition of lashes.

Argument on a question of law reserved under sec. 270 of Ordinance 1 of 1903 by WARD, J.

The facts appear from the judgment.

I. Grindley-Ferris, for the accused.

C. W. de Villiers, A.-G., for the Crown.

DE VILLIERS, J.P.: Under sec. 6 of Act 16 of 1908, of contravening which the accused was found guilty, he could have been sentenced to a period of imprisonment and, in addition, to whipping not exceeding twenty-four strokes. The section thus provides two forms of punishment. As the learned Judge considered that the accused was about sixteen yeare of age—that is, that he was a juvenile adult—he sentenced him to be detained in a reformatory for five years and, in addition, to ten cuts with a cane. The question now to be decided is whether he could impose the punishment of whipping in addition to detention in a reformatory. That depends on whether sec. 73 of Act 13 of 1911, which says that the Court before which any juvenile adult is convicted may, instead of imposing a sentence of imprisonment, order that he be detained in a reformatory for not less than two or more than five years, impliedly abrogates the power of the Court to impose a sentence of whipping. Now, it seems to me clear that it does not. Sec. 6 of Act 16 of 1908 provides for two forms of punishment—imprisonment and whipping. Sec. 73 of the later Act substitutes for one form of punishment, viz., imprisonment in a gaol, detention in a reformatory; the power of the Court, therefore, to inflict whipping still remains. This conclusion is fortified by the case to which the learned Judge has referred the Court, of *Rex* v. *Lydford* (1914, 2 K.B.D. 378), in which a very similar question arose. There, under an Act of 1861, a juvenile could be sentenced both to imprisonment and to whipping, and the question was whether under the Children's Act, 1908, which provided for detention in a reformatory in place of imprisonment, the whipping was impliedly abrogated; and the Court held that it was not. There would have been no difficulty in the case, had it not been for a decision which is said to have been given by MCGREGOR, J., in the case of *Rex* v. *Colbert*, under sec. 53 of Act 13 of 1911, which is very similar in its wording. Unfortunately, the Court has not before it the reasons which actuated the learned Judge in coming to that conclusion, nor the facts upon which he went. But as the matter seems to us so clear, we do not think it advisable that we should

postpone giving judgment. The learned Judge in this case was right in coming to the conclusion that he had power to impose the sentence of cuts with the cane.

WESSELS and GREGOROWSKI, JJ., concurred.

LOWTHER v. SWAN & CO.

1915. *October* 25, *November* 2. DE VILLIERS, J.P., WESSELS and CURLEWIS, JJ.

Work and labour.—Building contract.—Architect's certificate.—Satisfaction of architect.—Final certificate.

In terms of a building contract the work had to be performed to the satisfaction of the architect, and a certain percentage of the contract price was only to be paid to the contractor "two months after the date of the certificate of final completion, when the architect shall have certified that the works are completed in terms of the contract and to his satisfaction and that the roofs have been proved watertight." The architect gave a certificate as follows :—"Final instalment. Certificate. I hereby certify that the sum of £16 13s. 9d. is due to G. Swan & Co. on account of work executed and materials supplied." *Held*, on appeal, that the certificate was a final certificate in terms of the contract and implied that the work had been done to his satisfaction.

Appeal from a decision by the A.R.M. of Benoni.

The facts appear from the judgment.

T. J. Roos, for the appellant: Under the contract the retention money is only payable on the architect giving a certificate that the work is finally complete, that it has been done to his satisfaction, and that the roofs have been proved watertight. The certificate given is not a final certificate; it merely certifies what amount is due. An architect has no power to give such a certificate. See Halsbury's *Laws of England*, Vol. 3, p. 214. A certificate of satisfaction is essential. Furthermore, there is no certificate that the roofs are watertight.

A. Davis, for the respondent: It is clear from the evidence that the architect was satisfied, and that he informed the appellant of that fact. The contract does not require the certificate to be in writing. See Halsbury's *Laws of England* (*loc. cit.*).

Roos replied.

Cur. adv. vult.

Postea (November 2).