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).

DE VILLIERS, J.P.: In this case the respondents, the contractors, sued the appellant in the Court of the Resident Magistrate at Boksburg for £16 13s. 9d., retention money due upon a building contract according to the architect's certificate. The defence was, in effect, that the work had not been performed in a good and workmanlike manner. A great deal of evidence was led; but in the result the magistrate took the view that the architect's certificate was final, and therefore gave judgment in terms of the certificate. That is the question the Court has now to decide.

Two points were raised by the appellant. The first was that the architect's certificate was not final, and that the Court had power to investigate whether the work had as a fact been performed in a workmanlike manner; secondly, even if upon the true construction of the contract the architect's certificate was final, no such certificate as was required by the contract was given. With regard to the first point, we have come to the conclusion that the architect's certificate was final, though it was not stated in the contract to be so in so many words. In the contract it is recited that the contractor has proposed to do the whole of the work "according to the said plans, specifications and conditions . . . . under the supervision and to the satisfaction of the architect," for a certain specified sum, "which proposal has been accepted by the proprietor." And from the other clauses in the contract it is clear that the architect was set up as the individual according to whose satisfaction the work had to be performed. In the absence, therefore, of any other clause in the contract which shows that his satisfaction was not to be final, but was subject to revision or to arbitration, or to question in a Court of law, we must take it that his certificate was to be final. The only question, therefore, is whether the architect has given such a certificate.

The certificate which is required under the contract is one which is contemplated with regard to the 5 per cent. retention money. The clause reads: "The said sum of 5 per cent" (retention money) "shall be paid to the contractor two months after the date of the said 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." There must, therefore, be two things before the contractor could get payment of this money—(1) two months must have elapsed since the certificate of final completion, and (2) the architect must have certified as is contemplated in this clause. When

the case was argued I had some doubt whether the architect had, as a fact, given a certificate of final completion. This is the certificate which he gave: "Final instalment. Certificate. I hereby certify that the sum of £16 13s. 9d. is due to G. Swan & Co., of Springs, on account of work executed and materials supplied in the erection of semi-detached cottages on stand No. 10, Geduld Township (sgd.) James C. Cook, architect." But upon a consideration of the authorities which have been quoted and which the Court has been able to find, I have come to the conclusion that we must look upon this as a final certificate in terms of the contract. It is true that it says nothing about "satisfaction." But in the absence of dishonesty on the part of the architect, which has not been proved and which has not been relied upon before us, we can only come to the conclusion that when he gave the certificate he had made up his mind that the work had been done to his satisfaction. The magistrate states that the architect said that he had verbally told the employer that the work had been done to his satisfaction. I have not been able to find this in the evidence; but I have come to the conclusion that although the certificate is in terms a certificate of payment, it implies a certificate of satisfaction. Hudson on *Building Contracts* (Vol. II, p. 528) draws attention to the case of *Dunaberg & Witepsk Ry. Co.* v. *Hopkins, Gilkes & Co.* (36 L.T., N.S., p. 733). There there was a similar contract; the work had to be performed to the satisfaction of the engineer, and it was held that when the engineer certified for the last payment that implied a certificate of satisfaction. In the absence of any fraud—which has not been pleaded or proved in this case—or misconduct on the part of the architect, the Court must come to the conclusion that when he gave a certificate of final payment it implied a certificate of final satisfaction—that he has examined the work, and has finally satisfied himself that it has been done according to the contract; and that is what the architect himself says. For these reasons the appeal must be dismissed with costs.

WESSELS and CURLEWIS, JJ., concurred.

Appellant's Attorneys: *Stegmann & Roos;* Respondents' Attorneys: *Tindall & Mortimer.*

[G. v. P.]