

1913. October 17. MAASDORP, C.J. and WARD, J.

Contract.—Building.—Quantum meruit.

N had undertaken certain repairs and additions to H's house. H was living in the older portion of the house while the repairs were being effected, and had been in possession of one of the rooms in the new portion. N sued H in a magistrate's court for payment in respect of work done in terms of the contract. H pleaded that the work was not in accordance with the contract. The magistrate found that the work to be done under the contract had not been completed, but awarded N a *quantum meruit*:—*Held*, on appeal, that the magistrate's decision should not be interfered with.

Appeal from a decision of the resident magistrate of Philippolis.

The respondent had sued the appellant in the court below for £24 9s. being the balance due for building work done on the appellant's house at Donkerpoort. The work to be performed under the contract consisted of the erection of three new rooms and of repairs to the rest of the house. The magistrate found that the work had not been performed satisfactorily, and accordingly deducted £10 from the amount claimed. He awarded £14 9s. to the respondent as a *quantum meruit*. There was evidence to show that the appellant lived in the house while the repairs were being effected, and that one of the new rooms had been occupied.

C. L. Botha, for the appellant: A building contract is indivisible. The respondent had no right to sue on completion of only a portion of the contract. See *Muller v. Crawley* (1907, O.R.C. 12), and *Kyte v. McCleod* (6 E.D.C. 43).

P. U. Fischer, for the respondent: The respondent is entitled to a *quantum meruit* in accordance with the maxim: "No man ought to be enriched at the expense of another." See Voet, 19, 2, 40 and *Maasdorp's Institutes of Cape Law*, Vol. III, p. 257.

C. L. Botha replied.

MAASDORP, C.J.: The respondent sued in the magistrate's court for payment in respect of work done in terms of a certain contract and the appellant defended that action on the ground that the work done was not in accordance with the contract. Part of the work consisted of repairs to the old building which were effected while the appellant was in occupation. So far as that part of the work is concerned the respondent is entitled to a *quantum meruit* if the

appellant obtained any benefit from it. As to the erection of the three new rooms, the appellant has been in actual possession of one of them. The magistrate held that the respondent was not entitled to the whole amount claimed, but awarded him £14 9s. as a *quantum meruit*. Under the circumstances I do not think that we should interfere with the magistrate's judgment and the appeal must therefore be dismissed.

WARD, J., concurred.

Appellant's Attorneys: *Marais & de Villiers*; Respondent's Attorneys: *Gordon, Fraser & McHardy*.

[Reported by *R. C. Streeten, Esq., Advocate.*]

35. OP. 47. 49.

WEBBER & ANOTHER v. DANIEL.

1913. October 17. MAASDORP, C.J. and WARD, J.

Landlord and Tenant.—Grazing rights.—Arts. 6 and 9 of Chapter xxxiv. of the Law Book.

An agreement under which grazing rights are granted at a fixed price for each head of stock over property of which the party to whom they are granted has not the exclusive possession is not a lease of immovable property prohibited by arts. 6 and 9 of Chapter XXXIV of the Law Book.

Appeal from a decision of the resident magistrate of Heilbron.

The appellants, plaintiffs in the court below, on taking possession of a farm under lease, found the respondent "squatting" there. He was allowed to continue to live on the farm on condition that he should pay the appellants 1s. a head a month for the stock he had grazing on the farm. The appellants sued the respondent in the magistrate's court for £7 15s. in respect of grazing rights, the amount having been calculated at the rate of 1s. a head a month. An exception was raised in the court below that the agreement entered into was illegal under Arts. 6 and 9 of Chapter XXXIV* on the ground that it constituted a lease of immovable property to a coloured person. The magistrate upheld the exception.

*Arts. 6 and 9 of Chapter xxiv. of the Law Book (O.F.S.) read as follows:—

"6. Coloured persons who do not fall under the terms of articles 1, 2 and 3 have no right to buy immovable property or to get it transferred to their name or to lease it."

"9. Any person selling or leasing immovable property to a coloured person who according to the provisions of this law is not entitled to obtain transfer thereof shall be liable to a fine of £100 sterling, and such contract of sale or lease shall be cancelled"