

be, he had no right to act as he did; his connecting his sewer with that of the city was an unauthorised trespass, and the city should not be ordered to restore the connection.

No objection is made to clause 8, except such as has been already met.

Certain omissions may be supplied which are complained of. The most important matter is the claim in paragraph 4 of the prayer. This was disposed of adversely to the plaintiffs orally at the trial, and, no doubt, had it been brought to the attention of the learned Judge, he would have inserted a clause so disposing of it.

The claims for specific performance of the agreements of 6th March, 1903, and October, 1902, should be dismissed, as also that for the declaration sought in paragraph 5 of the prayer.

As to costs, success both at the trial and before us is divided, and a proper disposition to maké is that there should be no costs here or below, unless the plaintiff Barnes should release any right to recover back the amount paid by him, in which case the defendants will pay the sum of \$100 costs.

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CARTWRIGHT, MASTER.

MAY 3RD, 1909.

CHAMBERS.

WADE v. TELLIER.

*Discovery—Production of Documents—Examination of Parties—Order and Appointment Issued after Trial Begun—Mechanics' Lien Action—Motion to Set aside Order and Appointment—Forum—Official Referee Seised of Trial.*

Motion by defendants the Frankels, in an action to enforce a mechanic's lien, to set aside an order for production by the applicants and an appointment for their examination for discovery, issued by the plaintiff, after the trial before an official referee had begun, pending an adjournment of the trial, and without the leave of the referee.

Casey Wood, for the applicants.

R. G. Smythe, for the plaintiff.

THE MASTER:—As the object of production is to enable the moving party to prepare for trial, it seems self-evident