

WALLBERG v. JENCKES MACHINE CO.—MIDDLETON, J.—DEC. 27.

Contract—Construction—"Site of the Work"—Reformation.]—Action by plaintiff to recover \$3895 and interest from July 20, 1911, paid by the plaintiff under protest, for the purpose of securing the discharge of a mechanics' lien registered against the power plant and premises in question. MIDDLETON, J., said that in the view he took of the contract between the parties, the "site of the work" means some place immediately adjacent to the line of location, and that its true interpretation is indicated in the fact that the purchaser is to provide "a standard gauge track adjacent to pipe line for the distribution of material along the line of location." He thought the intention of the parties was that the purchaser was to bring the pipes to such a place that they could be conveniently distributed along the line of location by the tramway which he was called upon to provide, and that his obligation was not at an end when he deposited the material upon a dock some quarter of a mile away. Applying this view to the facts of the case, he thought the purchaser's duty ended when the pipes were placed upon the skidway near the top of the hill. At the trial he allowed an amendment to be made by the defendants, by which they set up that if this is not the true construction of the contract it ought to be reformed. In the learned Judge's view, however, no reformation is necessary; and as practically the whole evidence upon this alternative branch of the case is documentary, he refrains from expressing any opinion upon it. He considered, however, that the claim put forward by the contractor was very much exaggerated, and makes a deduction of \$575. Judgment for the plaintiff for \$3320, with interest at 5 per cent. from July 20, 1911. No costs to either party. I. F. Hellmuth, K.C., and M. L. Gordon, for the plaintiff. G. H. Kilmer, K.C., and J. A. Rowland, for the defendants.

DEEVY v. DEEVY—KELLY, J.—DEC. 28.

Deed—Alleged Forgery by Deceased Grantee—Evidence.]—Action by the father and mother of W. J. Deevy, deceased, against the widow and sole devisee and sole executrix of the said W. J. Deevy to set aside as fraudulent a deed of Sept. 21, 1909, from plaintiffs to their son. The learned Judge, after reviewing the evidence, said that he was not prepared to accept the testimony of the plaintiffs, that the deed in question was not