

as to fences, sidewalks, connecting pipes with sewers, or gables, or any other liability except as to the sufficiency of a complete hot water heating system, and as to that I do not determine either way. Plaintiff contended that the hot water heating system was sufficient to satisfy said agreement—defendant contended that it was not. Under the agreement the number of radiators is to be not less than 10. The location of these is for plaintiff, except so far as a particular location may be necessary for sufficient heating. This question of the sufficiency of a complete hot water heating system, in my opinion, could well be dealt with by scientific or local investigation, so I was disposed to refer this matter to a special referee, under sec. 29 of the Arbitration Act, and, with that in view, the counsel in this case, at my request, came before me, but they did not agree upon a special referee, and were not prepared to make any suggestion as to an expert whom I could call to assist me. The parties stood upon their strict legal rights. Defendant contends that under the agreement her remedy is, in the event of the insufficiency of the heating, to do the work and deduct the cost from the balance of the purchase money, and that she ought not to be left to recover what an expert or referee may say, especially as the work as necessary and as contended for by defendant has already been done by her in one of the houses, and is to be done in the other. Under the circumstances, I will not, against the will of the parties, force an expert upon them, much as I think this would be in the interest of both with a view to saving further litigation.

Judgment will be for a declaration: (1) that plaintiff is entitled to the mortgage as asked, completed and ready for registration; (2) that as to matters in agreement . . . defendant has no claim against plaintiff in respect of fences, sidewalks, connecting down pipes with sewers, or the gables; (3) that this judgment is to be without prejudice to any claim defendant may make against plaintiff for breach of her agreement as to putting in a complete hot water heating system in each of said houses, sufficient for the purpose of heating said houses, not less than 10 radiators in each house; (4) that in the event of the liability under said agreement being established, and the amount ascertained, defendant is entitled to deduct the amount so found against plaintiff, when found, from the amount of said mortgage.