

APRIL 29TH, 1913.

WALLBERG v. JENCKES MACHINE CO.

*Contract—Construction—Reformation—“Site of the Work”—
Cost of Transporting Material—Variation of Judgment.*

Appeal by the plaintiff and cross-appeal by the defendants from the judgment of MIDDLETON, J., ante 555.

The appeal and cross-appeal were heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and LEITCH, JJ.

G. H. Kilmer, K.C., and J. A. Rowland, for the plaintiff.
J. Bicknell, K.C., and M. L. Gordon, for the defendants.

THE COURT allowed the appeal and directed that the agreement should be rectified by adding a clause to the effect that the defendants were entitled to have material carried from one tramway to another and to have it distributed where the pipe was to be laid. The plaintiff, by his appeal, claiming only the cost of transporting material from one line to another, the amount of that is to be added to the amount of the plaintiff's judgment as pronounced after the trial; and, if the parties agree, this amount is to be fixed at \$400. If the parties do not agree, there is to be a reference to the Master in Ordinary to ascertain the amount, and the amount ascertained is to be added to the judgment without further application to the Court. The judgment below not to be otherwise disturbed. The plaintiff to have the costs of the appeal. Cross-appeal dismissed with costs.