

pality should have proceeded to recover damages for breach of contract, and not have re-let the work. This objection appears to be met by sub-sec. 4 of sec. 28, which enacts that "the engineer may let the work and supply of material or any part thereof, by the award directed, a second time or oftener, if it becomes necessary in order to secure its performance and completion."

We think the appeal should be allowed and plaintiff's action dismissed. As to costs, the engineer's certificate, as to the amount owing to him for his charges, was sufficiently vague to have misled plaintiff into believing that an illegal amount was being levied against her land, and it thus afforded some excuse for her having instituted the present action. We therefore think she should not be charged with costs. This appeal is allowed without costs and plaintiff's action dismissed without costs.

CARTWRIGHT, MASTER.

OCTOBER 19TH, 1906.

CHAMBERS.

WAGAR v. CARSCALLEN.

Pleading—Statement of Claim—Striking out—Embarrassment—Fraud—Setting out Facts and Circumstances—Anticipating Defence—Leave to Amend.

Motion by defendants to strike out paragraphs 4, 7, and 9 and part of paragraph 8 of the statement of claim.

Plaintiff, who was over 66 years of age, sought to recover from her daughter and her son-in-law \$10,000. Plaintiff alleges that she was induced by fraud and intimidation to make a deed of the land in question, which was afterwards sold for \$10,000.

C. A. Moss, for defendants.

J. H. Spence, for plaintiff.

THE MASTER:—Paragraphs 4, 7, and 8 are objected to as being embarrassing and irrelevant and at most being a pleading of evidence.