

Appeal.]—Appeal by the plaintiff from the judgment of the County Court of Essex dismissing the action. Lorne & Son, contractors, of Windsor, agreed with the town corporation of Sandwich to construct a sewer from Bedford street in the town to the Pittsburg dock in the Detroit River, a distance of 1,600 feet, according to plans and specifications prepared by the town engineer. Part of the work undertaken, the outermost 75 feet, was sublet by Lorne & Son to the plaintiff. The price agreed upon for this outlet was \$600. The plaintiff alleged that, after he began work, a new contract was made with Lorne & Son, involving an expenditure much in excess of \$600, and that the defendant, who, as surety for Lorne & Son, was obliged to take over and complete their contract, was liable as a matter of law to the plaintiff for such excess. Upon the law the trial Judge held that the defendant was not liable; but, on the facts, he found that a second contract was made between the plaintiff and Lorne & Son. Upon the evidence, the Court (BOYD, C., LATCHFORD and MIDDLETON, JJ.) did not agree with the finding of fact of the trial Judge, but were of opinion that there was no new agreement, and that the defendant was, upon that ground entitled to have the action dismissed. Per BOYD, C.:—The Court will not readily interfere with the conclusion of a Judge based upon facts and pronounced after seeing and hearing the witnesses, but the power exists and is to be exercised in proper cases. This is such a case. The evidence of the plaintiff is overborne by the weight of evidence opposed to him. Appeal dismissed with costs. E. S. Wigle, K.C., for the plaintiff. A. H. Clarke, K.C., for the defendant.

RE WILSON—MIDDLETON, J.—NOV. 24.

Will — Construction — Period of Distribution of Moneys in Hands of Executors—Death of Annuitant.]—Motion under Con. Rule 938 for an order determining a question arising under the will of C. S. Wilson, by which the executors were required to retain sufficient to answer the growing payments of the widow's annuity. They were not directed to retain sufficient capital to enable this to be paid out of the income. All the estate not required to meet the annuity became divisible at the expiry of twelve years from the testator's decease. MIDDLETON, J., said that, as the 25 years had elapsed, there was no reason why any money in the executors' hands should not now be divided. The provision as to division