

set it up against the stationary portion, leaving the area occupied by his workmen open to the street. The movable portion of the fence fell upon the plaintiff, M. K., while passing along the street, and caused injuries for which damages were claimed. The trial judge assessed the damages at \$25, and ordered judgment in favor of plaintiff for that amount. Plaintiff's solicitor took an order for judgment for the amount awarded, taxed his costs, and immediately demanded payment from the defendant under threat that if not paid judgment would be entered and execution issued. Subsequently an appeal was asserted from the judgment in so far as the same restricted the damages awarded to external injuries suffered by M. K., and refused to allow damages for shock consequent upon such external injuries.

Held, dismissing the appeal with costs, that in order to succeed plaintiff must have the whole judgment set aside for errors alleged in the assessment of damages; that the case was not one in which the damages were severable; and that if the trial judge erred in not awarding greater damages the only course open to plaintiffs was to appeal.

W. F. O'Connor, in support of appeal. *R. E. Finn*, contra.

Full Court.]

McECHEN v. McDONALD.

[March 8.

Specific performance of agreement to convey land—Measurements controlled by description.

In an action, brought by plaintiff, claiming the specific performance of an agreement for the conveyance of land and a declaration that plaintiff was entitled to a reduction in the price of the land in proportion to the amount of land which defendants might be unable to convey. It appeared that defendants' testator entered into an agreement with plaintiff for the sale to him of "the house and premises on P. street, now occupied by Mrs. L., 32 feet more or less frontage on P. street, and 67 more or less in depth." It further appeared that the land in question measured 67 feet in depth on one side, but that on the other side, at the rear, a piece of land measuring 13 feet by 14, had been taken out of the land previous to the time at which it was acquired by defendants' testator, and was fenced off from the portion conveyed to deceased and occupied by L.

Held, 1. The implication as to the uniform depth of the lot which would arise from the measurements given ought not to prevail, there being a certain description expressed in the agreement, viz.: the occupation by L.

2. Assuming that the distance to the rear line, from the measurements given, must be equal, the case was one in which the maxim *falsa demonstratio non nocet* applied, it being absolutely necessary to take the occupancy of L. in order to obtain the base line.

3. The description answering to the holding of deceased ought to prevail over the implied description or subsequent addition which would be false.

G. A. R. Rowlings, for appeal. *P. A. Lovett*, contra.