

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION.

APRIL 29TH, 1913.

WALLBERG v. JENCKES MACHINE CO.

4. O. W. N. 1188.

Contract—Place of Delivery of Goods—"Site of Work"—Meaning of—Reformation of Contract.

MIDDLETON, J., held, 23 O. W. R. 891; 4 O. W. N. 555, that the phrase the "site of work" in a contract for the installation of two certain large steel pipes for use in a power installation was the immediate vicinity of the line of location of the pipes and not a dock a quarter of a mile away therefrom.

SUP. CT. ONT. (2nd App. Div.) varied above judgment by directing 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.

An appeal by the plaintiff and cross-appeal by the defendants from a judgment of HON MR. JUSTICE MIDDLETON, 23 O. W. R. 891.

The appeal and cross-appeal to the Supreme Court of Ontario (Second Appellate Division) were heard by HON. SIR WM. MULOCK, C.J.Ex., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH.

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

THEIR LORDSHIPS 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.