

530.29, leaving a net balance due the plaintiff company of \$4,776.37, which should bear interest at the rate of six per cent. from the 1st October, 1909. Each party having in part succeeded in its contentions, and an indulgence having been granted to the plaintiff company by a postponement of the trial, there should be no costs to either party. C. A. Moss and Featherston Aylesworth, for the plaintiff company. W. N. Tilley and W. M. Cram, for the defendant company.

OLDS v. OWEN SOUND LUMBER CO.—MIDDLETON, J.—APRIL 4.

Contract—Manufacture and Delivery of Lumber—Shipment—Payment for Lumber Delivered—Inspection of Lumber—Interest.]—Action by the vendor upon a contract for the sale of lumber. Certain lumber had been delivered and paid for; other lumber had been delivered and not paid for; other lumber had been tendered and refused. No claim was made by the plaintiff save for the price of the lumber delivered and not yet paid for. The defence was, that the contract called for the delivery of the entire quantity, and that, the vendor not having delivered all, the purchasers could keep what they had without payment; and the defendants counterclaimed damages for failure to deliver and also for the delivery of inferior lumber. The learned Judge finds that the plaintiff was ready to deliver and not in default; that the whole run was sold at one price, and the best had not yet been delivered; that part of the lumber was, at the time of the contract, manufactured and ready for shipment, but part was in the log and required time for manufacture; that the manufactured lumber was one lot, the lumber to be manufactured was a second lot, which indicated that "shipment" and "delivery" were not used in the agreement as meaning the same thing; that an inspection made by an inspector agreed upon was conclusive on the parties; that the claim for damages for failure to deliver had no foundation; that the defendants should pay for the lumber received at the contract-price, less \$500, an allowance made because the lumber supplied was below the average of the entire run; and that the defendants should pay interest from sixty days from shipment and the costs of the action. Judgment accordingly. J. H. Rodd, for the plaintiff. W. H. Wright, for the defendants.