

company in substitution for them if new shares have been issued. He is also entitled to the dividends, if any, paid in respect of the ten original or substituted shares since Mr. Curry's death.

I have limited the payment of dividends in this way, after a good deal of doubt and hesitation. I am clearly of opinion that the plaintiff was entitled to the dividends which accrued in respect of these shares from the 5th November, 1908; but the deceased in his lifetime having, with the knowledge of the plaintiff, appropriated these dividends as his own, without any violent, or even definite or emphatic, action on the part of the plaintiff, I have come to the conclusion that the plaintiff, in an action against the estate of the deceased recipient, should be taken to have waived his rights.

I am of opinion, also, that the plaintiff's lack of firmness and his failure to state the facts as early as he should have done, invited this litigation, and that he is, therefore, not entitled to costs. The executors will be entitled to their costs as between solicitor and client, out of the estate.

MIDDLETON, J., IN CHAMBERS.

OCTOBER 7TH, 1913.

OWEN SOUND LUMBER CO. v. SEAMAN KENT CO.

Particulars—Statement of Claim—Contract—Damages—Practice—Information Obtainable by Discovery—True Function of Particulars—Supplementary to Pleadings.

Appeal by the plaintiffs from the order of HOLMESTED, Senior Registrar, sitting for the Master in Chambers, ante 55, requiring the plaintiffs to furnish the defendants with particulars of certain matters alleged in the statement of claim, before delivery of the defendants' statement of defence.

H. S. White, for the plaintiffs.

Coyne, for the defendants.

MIDDLETON, J.:—The plaintiffs by the statement of claim allege an agreement by the defendants to purchase lumber, to be manufactured by the plaintiffs at certain prices. The plaintiffs, it is said, manufactured the lumber and had the same ready