

assignor and the payment of two instalments of the purchase money. The relief claimed was specific performance of the contract and "such further and other relief as the nature of the case might require." No amendment of the pleadings was asked for or made.

Held, that, on the failure of the case for specific performance, the trial judge could not, under the prayer for general relief, properly make an order for repayment by the defendant of the money he had received on account of his sale, and that the action should be dismissed with costs, without prejudice, however, to the right of the plaintiff to claim such repayment in another action.

Cargill v. Bower, 10 Ch.D. 502, followed; *Labelle v. O'Connor*, 15 O.L.R. 519, distinguished.

Haffner, for plaintiff. *Macneil*, for defendant.

KING'S BENCH.

Macdonald, J.]

[Feb. 7.

GREAT WEST PERMANENT *v.* ARBUTHNOT.

Mistake—Erection of house on wrong lot.

The plaintiffs advanced money to A. to build a house on lot X. A., by mistake, built the house on lot Y with material bought on credit from B. B. then acquired the title to lot Y.

On discovering this, the plaintiffs stealthily removed the building to lot X, but B. moved it back again.

The former owner of lot Y knew nothing about the placing of the building upon it.

Held, that the building had become part of the realty in the hands of such former owner and that the plaintiffs were not entitled to an order requiring B. to return or remove the building to lot X, or permitting them to remove it themselves, or to any damages or other relief against B.

Taylor, K.C., for plaintiffs. *H. A. Burbidge and Hughes*, for defendants.

Macdonald, J.]

MCPHERSON *v.* EDWARDS.

[Feb. 16.

Practice—Amendment—Delay in applying for.

An application by the defendant made in good faith in Chambers before the trial for leave to amend the statement of