

of paying more than \$4,000 in November, 1912, does not assist him. The application made by the plaintiff of the money has precisely the same effect as though he had been in February, 1913, allowed to exercise the option he had in November, 1912.

None of the circumstances succeeding February, 1913, has displaced the right of the plaintiff to appropriate the payment as he has done; and I do not see anything inequitable or unfair in his insisting on his rights when he made a conveyance of the land at the request of the defendant.

Whether the defendant has any rights against the plaintiff not raised by his pleadings, we need not consider.

I think the appeal should be dismissed with costs.

JUNE 18TH, 1914.

OLDS v. OWEN SOUND LUMBER CO.

*Contract—Manufacture and Delivery of Lumber—Shipment—Payment for Lumber Delivered—Inspection of Lumber—Interest.*

Appeal by the defendants and cross-appeal by the plaintiff from the judgment of MIDDLETON, J., ante 241.

The appeal and cross-appeal were heard by MEREDITH, C.J.O., MACLAREN and MAGEE, J.J.A., and RIDDELL, J.

W. H. Wright, for the defendants.

J. H. Rodd, for the plaintiff.

THE COURT dismissed both appeals with costs.

SUTHERLAND, J., IN CHAMBERS. JUNE 18TH, 1914.

FISHER v. THALER.

*Execution — Stay pending Appeal — Removal of Stay — Rule 496—Summary Judgment—Rule 57—No Real or Valid Defence.*

Motion by the plaintiff, under Rule 496, for an order removing the stay of execution upon the plaintiff's judgment conse-