

brother against another, the defendant being executor of the will of a deceased sister, to recover \$2,967.25 for board, medical expenses, etc., of the sister while living with the plaintiff during the last three years of her life.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

H. S. White, for the appellant.

E. G. Porter, K.C., for the defendant, respondent.

MACLAREN, J.A., reading the judgment of the Court, said that at the trial the plaintiff sought to prove the insanity of the deceased at times, and also relied upon the promises made by her at the time she came to live with him and on subsequent occasions. There was some evidence of insanity.

The estate of a lunatic is liable for necessaries supplied to him: *Manby v. Scott* (1665), 1 Sid. 112; *Wentworth v. Tubb* (1842), 12 L.J.N.S. Ch. 61, 62; *Howard v. Digby* (1834), 2 Cl. & F. 634, 663; *Williams v. Wentworth* (1842), 5 Beav. 325, 329; *In re Gibson* (1871), L.R. 7 Ch. 52, 53.

If the question to be decided was, whether the deceased was insane at the time she went to live with the plaintiff, the learned Judge would have had difficulty in finding that question in the affirmative upon the evidence; but the plaintiff saw fit to bring witnesses to testify as to the deceased's insanity, not however as to her condition at the exact time of the contract upon which he based his claim.

The defendant's counsel sought to bring out from the plaintiff's witnesses testimony as to the deceased's insanity generally, and argued strongly that she was incompetent to enter into any contract at the time she went to live with the plaintiff or subsequently.

Assuming that it was not satisfactorily proved that the deceased was insane during the time that she lived with the plaintiff, there was, in the learned Judge's opinion, ample evidence to establish the fact that she was in the plaintiff's house in circumstances which would render her and her estate liable to the plaintiff for the fair value of her board and lodging during the 145 weeks she lived with him. The plaintiff testified that the deceased, when she first came to him, promised to pay her board, and this was amply corroborated by the plaintiff's wife and son—the testimony was more than sufficient to meet the requirements of sec. 12 of the Evidence Act, R.S.O. 1914 ch. 76..

The trial Judge made no specific findings, but it was clear from his observations that he credited the testimony of the plaintiff and his witnesses. He accepted the argument of the defend-