

Where the material filed was contradictory, Sutherland, J., in *Re Taylor* (1915), 9 O.W.N. 110, refused to make an order. But here the evidence strongly preponderated in favour of the sanity of the alleged lunatic.

The case presented points of resemblance to *Re Clark* (1892), 14 P.R. 370, decided by the last of the Chancellors.

Application dismissed with costs.

MASTEN, J.

DECEMBER 3RD, 1918.

*MASON & RISCH LIMITED v. CHRISTNER.

Sale of Goods—Contract—Price of Goods Payable Partly in Money and Partly by Delivery of Goods in Exchange—Refusal of Buyer to Accept—Repudiation of Contract—Goods not Appropriated to Contract until after Notice of Repudiation—Breach of Executory Contract—Damages for—Claim for Whole Price of Goods and Damages for Non-delivery of Goods in Exchange—Property in Goods not to Pass until Payment—Special Contract for Payment of Money Based on Delivery of Goods—Reasonable Time for Delivery—Actual Damage Resulting from Breach of Contract.

By a written instrument, dated the 29th April, 1918, the defendant agreed to purchase from the plaintiff company "one Mason & Risch player piano, style 70, No.—, and combination bench," for which he agreed to pay \$500 "and in addition to this one upright piano by Heintzman & Co., No. 15123," which meant that a piano was to be delivered by the defendant to the plaintiff as part of the price of the player piano. The \$500 was to be paid in instalments, \$100 on the 1st September, 1918, and \$75 each 6 months thereafter until paid, with interest. Until the whole of the purchase-price and interest was paid the player piano was to remain the property of the company. On default in payment of any instalment the whole of the balance was forthwith to become due. The company was to be at liberty to insert the number of the player piano, left blank as above. It was provided also that the written document contained the whole agreement between the parties.

The plaintiff company treated the writing signed by the defendant as an offer, and on the 14th May, 1918, accepted the offer by a letter addressed to the defendant, in which it was said that a player piano had been selected for the defendant from the company's stock. It appeared, however, that on the 14th May the