

The applicant had disclosed no merits either in his material or upon the argument; and, as in *Re Clark* (1892), 14 P.R. 370, laid more stress on the property than on the person of the alleged incompetent.

The applicant did not seek nor had he disclosed a case for a change in the care of his father; but thought that his father, by reason of his alleged incompetency, due to old age, might do some act which would deprive the applicant of a portion of his estate.

This was not a valid reason for making the order sought.

No action had been commenced by the applicant, but he has made threats of future action.

An application of this kind should not be used as a make-weight in any contemplated litigation. Much of the material filed would be relevant in such litigation; and, as in the case above referred to, this petition was not needed in order to ascertain the rights of all parties interested in the father's estate.

Application dismissed with costs. Andrew Howell the elder to pay the fee of Dr. C.K. Clarke, fixed at \$25, and to be permitted to tax the same against the applicant.

OLIVER-SCRIM LUMBER CO. LIMITED V. GREAT LAKES DREDGING CO. LIMITED—FALCONBRIDGE, C.J.K.B.—SEPT. 26.

Sale of Goods—Action for Price—Account Stated—Inspection Charges—Contract of Sale—Breach—Damages—Counterclaim—Costs.—Action for the price of certain piles and pieces of timber sold and delivered by the plaintiffs to the defendants. The defendants counterclaimed damages for breach of the agreement of sale. The action and counterclaim were tried without a jury at Sandwich. FALCONBRIDGE, C.J.K.B., in a written judgment, said that he did not think that the memorandum dated the 10th October, 1918, amounted to an account stated in the ordinary acceptance of the term. On its face it only professed to be "O.K. as to quantities of piling received." The plaintiffs were, on the evidence, properly chargeable with half the inspection charges—\$916.94. A great deal of the evidence was taken on commission. The learned Chief Justice had no unfavourable criticism to make as to the demeanour of the witnesses examined before him. The defendants had proved their counterclaim, under paragraphs 7, 8, 9, 10, and 11, for damages to an amount sufficient to wipe out the plaintiffs' claim. There was nothing in the contract and no custom proved to make strikes or the alleged shortage of cars an excuse for the non-delivery according to the terms of the contract. The action should be dismissed with costs and the defendants should have the costs of the counterclaim. J. H. Rodd, for the plaintiffs. O. E. Fleming, K.C., and Foster, for the defendants.