

Possibly, however, the parties would prefer to see it held as in *In re Tyler*, [1891] 3 Ch. 252, and other cases, as if the legacy for charity had been burdened with the charge to maintain the tombstone, and, if all parties consent, it may as to this small charge be, by their consent, so declared. Or possibly the parties can settle the matter amongst themselves without any formal declaration. . . .

Let the costs of all parties be paid out of the estate, and in the case of the executors and trustees as between solicitor and client.

MACMAHON, J.

NOVEMBER 4TH, 1904.

TRIAL.

FISHER v. CARTER.

Sale of Goods—Contract—Breach—Rescission—Damages.

Action for damages for the alleged breach of a contract, dated 8th July, 1903, by which defendant agreed to deliver to plaintiff three mixed car loads of staves, hoops, and headings. The contract was entered into at Grimsby, in the county of Lincoln, and a copy of the order given by plaintiff to defendant's agent was delivered by the latter to plaintiff.

G. Lynch-Staunton, K.C., and C. H. Pettit, Grimsby, for plaintiff.

W. M. Douglas, K.C., and J. Mulcahy, for defendant.

MACMAHON, J.—The correspondence shews a completed contract between the parties.

A question was raised as to whether plaintiff was only to give notice as to when the car-loads after the first one were to be shipped, or whether he was also to give notice when he required the first car.

The order read: "Mr. W. W. Carter. Ship to A. R. Fisher at Grimsby one car 1st August; terms, 1st car three months; three mixed cars . . . staves, \$7, hoops \$9.50, heading, 5½ cents; will write when to ship."

In my opinion, the first car was to be shipped by defendant at all events by 1st August, and the other two cars when plaintiff wrote to ship.