But it was contended that, even though the mother did not see fit in her lifetime to call upon the defendant to furnish maintenance for her, and even though it might be presumed from the circumstances that she was not disposed to do so, it was open now to the administrator of her estate to claim from the defendant damages for breach of his covenant to maintain his mother from the date of the deed to the time of her death, or at all events for 10 years prior thereto. It was suggested that the maxim "actio personalis moritur cum personâ" had application to such a claim, it being founded on contract and not on tort.

Reference to Chamberlain v. Williamson (1814), 2 M. & S. 408, 416; Finlay v. Chirney (1888), 20 Q.B.D. 494, 498, 499.

Here, while the obligation to maintain arose out of the contract in the deed of the property and the covenant therein contained, it was not one which in reality affected property—the claim based upon it was a personal one, and died with the mother. The plaintiff was, therefore, not entitled to recover damages.

The action should be dismissed with costs.

The counterclaim of the defendant was not pressed at the trial, and should be dismissed without costs.

PASTORIUS v. DANTO & CO.—KELLY, J.—MARCH 6.

Sale of Goods—Action for Price—Quality of Fish Delivered—Deduction for Shortage—Findings of Trial Judge.]—Action for the price of fish sold and delivered to the defendants. The action was tried without a jury at Sandwich. KELLY, J., in a written judgment, said that an analysis of the evidence made by him since the trial, had confirmed the view he entertained at the close of the trial, that the plaintiff was entitled to succeed on the main part of his claim. The fish delivered substantially answered, at the time and place of delivery, the quality which the plaintiff agreed to sell; and the conditions of which the defendants complained at or after the fish arrived in Detroit were not due to any act or neglect of the plaintiff. The defendants claimed the right to deduct $7 for shortage in weight of a shipment of the 21st November, 1918. Danto's evidence was positive that, on the arrival of the goods in Detroit, there was a shortage to that extent. The plaintiff's evidence was not definite on that point, and the deduction should be allowed. There should be judgment for the plaintiff for $866.15 with interest from the 15th December, 1918, and costs. E. S. Wigle, K.C., for the plaintiff. F. C. Kerby, for the defendants.