

Pennsylvania Morrow v Waltz, 18 Penn. St. 118

Wisconsin Warren v Bean 6 Wis. 120

In contracts for the sale of goods, the delivery of the goods and the payment of the price are presumptively intended to be concurrent acts; and readiness and willingness of both sides, at the proper time for completion, to perform their respective parts of the contract are mutual conditions precedent. So when the Boston Piano & Music Company has received and accepted the contract-order of the retailer, and has shipped the goods in accordance with the terms of the order, then it is up to the retailer to perform his part of the contract-order; and if he does so, and not until he does so in every respect, including the payment of his notes, then the Assurance of Trade clause comes into play between the parties to the contract. If the retailer pays part of his notes, and refuses to pay the balance claiming that he will have none coming on the Assurance of Trade clause to make up the balance still due on the notes, his position in such respect in law is utterly untenable, for the reason that a part performance or a defective performance of a condition precedent is not sufficient. 37 Mo. 104; 40 N.Y. 259; 11 N. Y. 25.

Where the Boston Piano & Music Company takes notes for the settlement of the goods sold and the notes are the property of the company and the maker refuses to pay the same, there is a double remedy, viz; to sue on the notes, or sue for the purchase price or for damages, as stated in my last letter to you.

If you will send me one of your order blanks, I shall endeavor to revise it so as to not make it vulnerable to the objection raised in my last letter to you.

Very truly,

Ralph Otto