

HON. MR. JUSTICE LENNOX:—The plaintiffs sue as executors of W. H. Allan, deceased, and ask for specific performance of a contract entered into on the 27th March, 1911, by which the defendant Petrimoulx agreed to sell his farm, bordering on the River Detroit, to the defendant Carnoot.

Carnoot is an intelligent man, but he was born in Arabia, is of French parentage, and has a very imperfect knowledge of the English language.

He assigned his contract to W. H. Allan, deceased. The issue is as to whether the agreement of the 27th March did or did not include the conveyance to Carnoot of an estate in fee simple absolute in the water lot in front of Petrimoulx's farm, or alternatively, whether as a matter of estoppel the defendants are precluded from denying the plaintiffs' right to such a conveyance by reason of the wording of this agreement whatever may have been the actual bargain between Carnoot and Petrimoulx.

It is in evidence and not denied, that the verbal bargain was for the sale and purchase of the Petrimoulx farm, a parallel strip of land running westerly from a highway to a dike at the water's edge of the river Detroit; and within these boundaries and east of the dike, some 15 or 20 acres are covered by water. This is all that has been patented by the Crown, this is what the defendant Petrimoulx owned and verbally agreed to sell and make title to, and this is what the defendant Carnoot verbally bargained for and understood would be conveyed to him. Legally it included, of course, without mention, all easements, privileges and riparian rights appurtenant to the property. Carnoot is positive and explicit in saying that he never imagined at any time that he was getting any right whatever, not even an easement or privilege west of the dike or water's edge. These two men having reached this agreement, including terms of payment, occupation and the like, went to Mr. Giguac, a conveyancer, to have the agreement put into writing, and the instructions to Giguac did not go further than the verbal agreement; but Giguac, without instructions, incorporated an agreement to convey what is called the water lot. This he did by concluding the description with the words: "And the water lot in front thereof." Petrimoulx objected, saying that he did not own this, and the words were struck out, but the conveyancer had the idea that there should be some