give written notice to his vendors of particulars of objection thereto; if he failed to do so, he was to be deemed to accept and be bound by such title as the vendors had.

The plaintiffs contended that this provision had the effect of estoppel, in so far as any claim put forward in the action with respect to the water-lot patent was concerned. The cases, however, seemed to shew that a condition which enables a vendor to cancel a sale if a purchaser should make any objection to his title with which he is unwilling to comply, does not enable the vendor to rescind when he has no title whatever: Want v. Stallibrass (1873), L.R. 8 Ex. 175; Brown v. Pears (1888), 12 P.R. 396; and other cases.

Where, as here, the plaintiffs had in fact no title to the water-lot, i.e., the land covered with water extending from the water's edge in front of lot A to the channel bank, the provision referred to would not preclude the defendant from insisting that the description in the agreements executed by the plaintiffs covered that land, and that the plaintiffs must make an abatement in the price.

The amounts in respect of which the defendant was in default under the contracts were definitely known, apart from the matter of abatement in price.

Where a vendor contracts to sell land to part of which he can shew no title, the purchaser may sue for damages for non-performance: Bowman v. Hyland (1878), 8 Ch. D. 588, and other cases; and further, in such a case as this, the purchaser cannot be compelled to continue making payments under the contracts without the plaintiffs agreeing either to make an abatement in the price in respect of the land they contracted to sell and to which they cannot make title, or giving a satisfactory undertaking that they can and will put themselves in a position to procure a title thereto and convey it to the defendant, or, in default of their doing either, submit to have the extent of the abatement determined by the Court.

The learned Judge said that he had come to the conclusion that he should allow the defendant $1,600 as an abatement in price with respect to lot A and the failure of the plaintiffs to make title to the channel bank, and the sum of $200 each with respect to lots 1 and 2 for any damage by way of abatement on account of there being no patent to the water lot in front of the 30-feet right of way.

The evidence was not sufficient to determine a question which was raised by the defendant as to sums which he had paid for local improvements. If the parties could not agree upon an adjustment, and the defendant desired a reference, he might have one on this point, at his own risk as to costs.

The plaintiffs should have judgment for the instalments proper-