

dower, she would never sign it away for less than her then assured share of the estate. Kindly advise me by return if I may carry out the above. Truly yours, S. S. Cummins."

The plaintiff knew that this letter was to be sent to the defendant Newton for the purpose of obtaining his authority to carry out an arrangement, if it could be made with Mrs. Gore, for obtaining a release of her claim, and thereby clearing the title. He knew that her claim was the obstacle in the way of the defendant agreeing to sell to him. Cummins was determined not to enter into an agreement while the matter was unsettled. He told the plaintiff he could not and would not sign the option owing to the difficulty about Mrs. Gore's claim. And it was then agreed that the words "if in his power to do so" should be added in order to protect the defendant in case the proposed arrangement should not be carried out. And upon that understanding and upon the insertion of the words, he signed the option.

The plaintiff knew that the defendant Newton would not pay \$500 to Mrs. Gore, and that it was not certain that he would agree to pay the \$100 as recommended by Cummins.

And he also knew that it was an excess of Cummins's duty and authority to assume to sign an unconditional option or agreement until he knew whether the defendant Newton was willing to pay and Mrs. Gore ready to receive the \$100 and give a release.

But he was content to accept the document with the words inserted, in order to secure the purchase in the event of these two matters turning out satisfactorily. On 17th May the defendant Newton wrote agreeing to pay \$100 on production of a quit claim deed from Mrs. Gore. But the latter refused to accept that sum, and continued to claim \$500.

I think that in this state of the case the judgment should not have declared the plaintiff entitled, without any qualification, to have the agreement performed in case a good title can be made with the consequent directions. There is apparently no difficulty about the title, except the claim made by Mrs. Gore. If her claim is good, it is an objection to the title, but it is capable of being removed by the payment of money. Presumably, Mrs. Gore will release for the sum of