

plaintiff's testator and his solicitors were fully informed of the purport of the verbal bargain and of the facts and circumstances attending the execution of the agreement of the 27th of March, as above stated. More than this, both he and his solicitors knew that not only did the vendor repudiate any actual agreement to convey the water lot, but that Carnoot emphatically disclaimed any contract to get anything westerly beyond the dike. The right to the farm proper was all Carnoot professed to have or agreed to sell, and this is all the testator under the circumstances could acquire—except a law suit.

An argument was pressed based upon the acceptance of payments by Petrimoulx. But Petrimoulx had a right to payment without prejudice to his rights in Court based upon the undisputed facts. He had a right to accept the stipulated payments, and to say "I will leave it to the Court to say what I sold."

I was asked to relieve the plaintiffs from payment of costs in any event. I do not think this is a case calling for exceptional treatment of this character. There is more than a suggestion that the haste and urgency of Mr. Gauthier and the testator was actuated by a desire to obtain the property from an untutored foreigner before he would become aware of the sudden rise in the value of his farm. This is, of course, not illegal, but it is also not very commendable.

Carnoot was upon the verge of throwing up the whole transaction, but the plaintiffs insisted upon taking chances against the protests of both Carnoot and Petrimoulx.

The plaintiffs should be content with what they knew and know Petrimoulx agreed to convey. They repudiated the bargain and have failed in their attempt to substitute another. They are not now, strictly speaking, entitled to revert to the actual contract and claim specific performance of it, as admitted; and at the trial they were not even prepared to say then that they desired a conveyance under the contract as set up by the defendants.

If within fifteen days the plaintiffs serve notice in writing stating that they desire to obtain conveyance of the land without the water lot, there will be judgment for specific performance—limited in this way—in the usual form, and if