

And as from a careful consideration of this contract it appears to me, a court of law would not be able to furnish a complete and satisfactory remedy, I think a specific execution of the agreement should be decreed.

It is stated in the answer of the defendant, that expenses have necessarily been incurred by him in getting the crops ready for market, and he insists that if the complainants shall be adjudged entitled to the relief they seek, those expenses should be paid out of the proceeds of the sales.

My first impression was against this position, but upon reflection it seems to me to be well taken. It was his duty to complete and take care of the crop, for which purpose he might employ the necessary agents—*Lee vs. Lee and Welch* 6 G. & J., 316—and I can see no good reason why the expenses incurred by the executor in the discharge of this necessary duty, shall not be deducted from the proceeds of the crops, when sold, like the freight which must be paid upon the transportation to market. In case the growing crops were the only assets in the hands of an executor, which is a state of things which might happen, it is obvious the expenses in question must be paid out of them, or not paid at all.

I think, therefore, the expenses incurred by the defendant, as the executor of Mr. Bowie in getting these crops ready for market, should be paid out of the proceeds of the sales.

There is a small item in the complainants' account, for commissions on advances, which as it formed no part of the consideration upon which the promise of the deceased was made, cannot be regarded as a special charge upon the crops. In respect of that item, if established, the complainants can only be considered as general creditors, upon a footing with others.

A decree was passed by agreement in accordance with the foregoing opinion, and allowing the complainants their costs to be paid out of the general assets of the estate of the testator.

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[No appeal was taken from this decree.]