

was but an agent, and to make such admissions evidence it should have been shewn at what particular time they were made and that so near to the period of agency and the business done as to bind the plaintiff.

Neither has been shewn. Nicholson, a very dull, stupid sort of witness, placed his conversation in April following the severe winter recently experienced. The heavy winter was in 1905, a year before the alleged bargain was made. Consequently Boudrot could not then have truthfully said what he imputes to him.

With respect to any expenditures made by defendant he had no right to make any, and was a trespasser in making them, and has no claim to be allowed for them. Moreover, if his contention in one respect is allowed that he owned the pond and south of it, the bulk of them were made in or outside of the pond and in this view upon his own land.

Regarding the facts as I do and giving credit to such of the witnesses as I deemed reliable and discrediting those whom I regarded otherwise, I feel obliged to find the facts in the plaintiff's favour, and to award judgment with costs accordingly.

I should, perhaps, add that Boudrot and defendant were in conflict as to the reason why some work was done by the defendant. One says it was under the bargain. The other says it was not.

It was argued that because the plaintiff did not seek hay in 1906-7-8 (she did in 1908), it corroborated the fact of a sale, but if there was a sale in 1906 she was equally negligent in seeking the cash payment thereon. The argument has no force.