

ago, and he admitted it had been cut in Shunk's bush, and paid him for it. This would be about 1887.

In view of the fact that the title was vested in Shunk, he would be legally in possession of the 5 acres, though it was separated by a brush fence from the rest of his land from 1876 on, unless there is proved some actual visible possession inconsistent with his legal ownership. The acts relied on are of isolated and temporary character, and, as proved, are of two kinds only: one in summer, when Campbell's cattle pastured in this and the other slash (which was his own); and the other in winter, when resort was had to this place and the other slash for firewood. But there was a common user in winter for this purpose by Shunk. At that point of time, then, and on this vague evidence, does the statute begin to run against the legal owner, who was living alongside and exercising such enjoyment of the land as he desired, and not objecting to his neighbour having a like use of it? We must not unduly legalise the stealing of a neighbour's land by attributing significance to slight concessions of kindness which might pass between adjoining farmers.

As a matter of evidence it is not proved that the land owned by Campbell was enclosed by fence by him during the time that he was having the intermittent use of the 5 acres for firewood and summer pasture. Any one could see and know that this crooked and zigzag brush construction was not meant to be and could not be a line fence of the Shunk farm. There was no overt act on the part of Campbell which necessitated the assertion of Shunk's rights until perhaps the cutting of the valuable pine tree. The taking off of the scrubby growth for firewood would be welcomed in those early days, as helping towards the ultimate clearing of the land, if indeed this soil is worth that trouble.

When Downey bought the lot in 1907 he tried to get a deed of the 5 acres, but Campbell's executors refused, saying that they did not own it. When he proceeded to repair this old fence by putting in new rails, he was checked by the plaintiff, who pulled down part of his work, and when he went on and cut some new growth of pine trees, that ended in this litigation.

I think the evidence insufficient, in the circumstances of this case, to start the Statute of Limitations in favour of the third party Campbell. As against defendant, who has little claim to consideration, the action should succeed; possession should be given to plaintiff, and damages for