

at which the agreement was made is not consistent—but it is of little moment.

As to the alleged variation made the following November even if I accepted his statement of it, it does not shew a definite nor a concluded bargain in any particular; certainly not one definite enough to be enforced. If, as I find, there was not an earlier bargain, then the later one by itself is of no moment, even if fully proved, which it was not. Speaking of that affair the defendant said, in reference to what was to be acquired from Sampson, "We couldn't tell what it would cost. . . I wouldn't have it at all if it cost more than \$5. I never bought it from Sampson." That was the first step and he never took it.

As to the alleged payment of \$5 in 1908, I need not say much. There was no bargain in existence to which it could be applied, while there was an undoubted liability on his part to give hay or its equivalent.

Mrs. Morrison didn't hear all the conversation on that occasion. She says she heard most of it, but it is impossible she should have. It extended over four hours, and meanwhile she was about her household work. But although admittedly she didn't hear it all, yet she was willing to swear she heard all that was said about the Bona field, and that, I think, was far too much for any careful witness to say.

It is equally impossible to believe the eleven-year-old girl, who was running about the house and in and out of it, while Boudrot was there, heard it all. She did not pay much attention to it, and it would not be expected she did. She admits frankly what her mother hedged about it, that just before her father went upstairs and got the money he and Boudrot were talking about hay, thus to this extent corroborating Boudrot. Unless schooled in the matter it is not at all likely she would have remembered with so much precision what was said when the money was paid. It is quite probable, too, the witnesses, mother and daughter, may not have caught the import of the words used, which I think were far more likely to have been to pay for or on account of the hay from the Bona field or Bona property, for which there was a liability—than for or on account of the Bona property itself for which no liability existed.

I do not attach any importance to the evidence of Nicholson and Dugas as to the admissions made by Boudrot. He