

exchange, and his wife said referring to the arrangement spoken of in 1903, that defendant was to have the piece measured they were to get and have the deed made to her, neither of which he did; and it never was located, defined, or bargained for by the defendant. This probably was the arrangement she referred to when talking with McNeil.

The defendant's first entry was upon Albert Bona's possession, and was in fact a trespass, and his conduct shows he so regarded it.

The same is true of his entry upon plaintiff's possession, beginning with 1903, and ending with 1905; he cut the hay upon the halves and gave the plaintiff half, or an equivalent. His possession so far as he had any was referable thereto. He avers in his pleadings that he was in possession when the alleged bargain was made in March, 1906. Whether this is so or not he was never given possession, nor did he obtain it, in part performance of any contract or bargain by way of sale or exchange, for the whole or any part of the locus.

Notwithstanding that before the haying season of 1903 he asked Boudrot if he had bought the Bona property, and was told he had, and then asked him if he would sell it, yet when the haying season arrived he went on as he had done in Bona's time without leave and cut the hay, which was a pretty high-handed trespass. When Boudrot found him cutting the hay they had an altercation which ended in defendant making the hay on the halves, and that by tacit consent continued for years afterwards.

I do not believe the defendant's story about Boudrot seeking permission to cut the ice upon a pond which he believed was his wife's, and which the deed covered to his knowledge, and for the purpose of which, according to defendant's own story, he negotiated at or about that time, that is, as I have said for the Bona property, which plaintiff had bought. The defendant, I fear has allowed his temper or cupidity to get the better of his conscience.

He is a man of considerable means while his opponent and her husband are very poor, and if the agreement which he says was made on the ice in 1906 was made—the part which he says was payable in cash would have been paid at once, and the transaction completed promptly, and he, shrewd man as he is, would have obtained his deed without delay. This statement as to the time in relation to the ice cutting