

ing out of money on the property see Fry, sec. 281, citing *Wills v. Stradling*, 3 Ves. 378; *Howard v. Patent Ivory Co.*, 33 Ch. D. 156.

I find the following facts proven. The defendant entered into possession of the 75 acres under the first lease, and continued in possession to March, 1890, when Howard took possession of 25 acres and continued in possession of them until his death. The defendant remained in possession of the 50 acres until this action was commenced. In April, 1890, a line fence was built between the 25 and 50 acres, each party paying half the cost. Between March, 1890, and May, 1895, the defendant fenced in 5 acres with a post and wire fence worth \$45; cleared and stumped 7 acres worth \$140; stumped 2 acres and cleared off stumps worth \$50; cleared off an old fence worth \$50, and built 3 acres of rail fence worth \$6. In 1896 he removed a stable worth \$60, and in 1898 built a hen house worth \$20; shingled the dwelling house, and made other improvements thereto, worth \$20; and in 1899 built a frame barn 30 x 40 worth \$250, and a Page wire fence worth \$34. Howard had knowledge of this work as it was performed.

Having regard to the nature and character of the work; of its value, which is about one-half of the whole value of the property without these improvements; of the nature and occupancy of the land by the defendant from March, 1890; of the change which took place in such occupancy in March, 1890; and, so far as the plaintiff is concerned, the unexplained reason for such change; of the rather significant amount, \$98 per annum, thereafter paid, which would be equal to interest at the rate of 7 per cent. on \$1,400, the alleged purchase price; and of the payments made by defendant after March, 1890, which were, as I find, for interest and not for rent, I am of opinion that these acts or most of them were acts of part performance referable only to the agreement for purchase, and not to any tenancy, and that they or most of them are unequivocal, and in their own nature referable to such an agreement; see further Fry, sec. 611.

I find that in March, 1890, a verbal agreement was made between Howard and the defendant for the purchase of the 50 acres at \$1,400 to be paid by the defendant when he was in a position to do so, and that in the meantime defendant was to pay interest at the rate of 7 per cent. per annum, and it continued in force to the death of Howard, and was not affected by the lease of 1895 or the extension of it. I find also that the evidence of the defendant is