

mark out the dividing line, and would have gone to the expense of employing the County Surveyor to make out a plot and certificate, showing the precise limits of the portions to be held by each, and the contents of each parcel. All this appears to me indicative of an intention to separate the parts permanently, and it may be, that they were only waiting for the final extinguishment of the debt to the Bank, to interchange deeds.

But the Court is not now asked to enforce the agreement specifically, and therefore the doctrine urged in the argument, of the necessity of proving the agreement precisely as stated in the bill, when a specific execution of a parol agreement in relation to lands, is asked upon the ground of part performance, does not apply. All that is intended to be said now is, that upon this bill, and at the suit of this complainant, I am not disposed to disturb that division with which all parties (except the complainant), including the widow of Henry Purdy, appear to be satisfied.

The Court will sign a decree to lay off the dower of the complainant in that portion of the land assigned to her husband and Henry Purdy, after first giving dower to Susan Purdy, the widow of John Purdy.

Something was said, in the course of the argument, in relation to the character of the estate which these parties took, in the portions of the land assigned to them by the persons selected to make the division. The Surveyor has noted upon the plot, that No. 1 is "to be held jointly by Henry and Galen Purdy," and lot No. 2 "is to be held jointly by Thomas and John Purdy;" and it was suggested that this might constitute them joint tenants of the respective lots so assigned them. I do not think, however, that this memorandum of the Surveyor can have the effect attributed to it. In the first place, it was no part of his duty to prescribe the estate, or the qualities of the estate, which the parties should hold in these parcels of land, nor did the parties selected to make the partition, possess any such power. They were to divide the land, but not to say how, or by what title it should be held, and con-