the close of the case, that is, that the fence was not removed until after 1897. I give credit to the evidence of Sears, Maynard, and Mrs. Sollett, and do not credit the evidence of the defendant and those called by him to corroborate him. I think, therefore, that the arrangement was come to some time in the autumn of 1897. If this be the case, the statute does not begin to run until some time in 1898: R. S. O. 1897 ch. 133, sec. 5 (6).

The right of Mrs. Stewart is in the plaintiff, at the least by the deed of 1905, and I think the defence fails.

If the contention made on behalf of the defendant were true, namely, that he came in as a trespasser, I think the statute did not begin to run at all till the removal from the property of Mrs. Stewart. She having the legal title, being in possession of part of the property, was, in contemplation of law, in possession at all times of the whole.

My finding of fact relieves me from considering the question as to the onus of proof in respect of payment of rent. As at present advised, I think that where a claim is made to property under the Statute of Limitations, it is incumbent upon the person so claiming to prove affirmatively the non-payment of rent. I find that defendant has not proved that he did not pay rent to Mrs. Stewart; that, for all that I find proved, he may have paid rent each and every year that he worked the property, down to and including 1906. If the arrangement between Mrs. Stewart and the defendant, I had been able to find began in 1895, as at present advised I should have held that the defence was not made out. Section 5 of the Act provides that the right of the landlord to bring an action "shall be deemed to have first accrued at the determination of the first of such years or other periods or at the last time when any rent payable in respect of such tenancy was received, whichever last happened." As at present advised, I think the person claiming by the statute must, as part of his case, prove that "the last time when any rent payable in respect of such tenancy was received" was 10 years before the teste of the writ. Some support is to be found for this proposition in the judgment of Malins, V.-C., at p. 290 of In re Allison, 11 Ch. D. 284. I do not find a decision upon this point, though there are some cases, as e.g., Doe dem. Spence v. Beckett, 4 Q. B. 601, in which the plaintiff actually did prove affirmatively that