of the lot by the Montreal road, and the evidence clearly established that during the lifetime of the patentee the portion north of the road was preserved in a state of nature. The southerly 125 acres was the portion of lot 9 partly cleared and occupied by the plaintiff's grandfather. Farquhar McRae, the devisee of the grandfather, never took possession by residing upon or by cultivating any portion thereof, as required by sec. 6 (4), nor did the plaintiff before he left Canada; unless the occupation by the grandfather of the portion south of the road could be regarded as an occupation also of the portion north of the road, it was clear that the lands in question fell within sec. 6 (4); and from the evidence it was clear that there was no such possession by the defendant for over 20 years as would make out a title by possession and deprive the plaintiff of his land.

But, assuming that the case was not brought within sec. 6 (4), the defendant had not made out a title by 10 years' possession. The acts of ownership and care of the property said to have been done and exercised by the defendant were more consistent with his intention to take care of the premises for the plaintiff, to whom the defendant stood in loco parentis, than to acquire title to the property.

None of the alleged acts of ownership, nor all of them together, were sufficient. The fencing was partial only, and not done with the object of taking possession, but to protect the pasture for a few months in summer, and not effective for that. For the rest of the year the lands were wholly vacant, except for occasional acts of trespass in taking some wood and timber. Isolated acts of trespass by one man will not bar the true owner.

The defendant's position was that of bailiff of the plaintiff in respect of the premises, and that relationship was not changed until at least the 15th July, 1908, when the defendant conveyed about 3½ acres to a railway company and received payment therefor. If he thereby repudiated his position as bailiff, ten years from that date had not expired before this action was begun.

The learned Judge referred to a number of authorities, among others to Kent v. Kent (1890-2), 20 O.R. 158, 445, 19 A.R. 352; Taylor v. Davies (1917), 13 O.W.N. 323.

The appeal should be allowed with costs, and judgment for possession should be entered in favour of the plaintiff with costs.

MULOCK, C.J. EX., and FERGUSON, J.A., agreed in the result, for reasons stated by each in writing.

RIDDELL and SUTHERLAND, JJ., also agreed.

Appeal allowed.