

had resided continuously on the property since 1881, cultivating and improving it. The plaintiff, a sister of the defendant, resided on the property off and on till 1887, when she went away. Rogers had two other children who had not been in possession of the land. This action was brought in 1895.

Held, that Rogers must be presumed to have been dead by 1884, and the defendant had acquired by the operation of the Statute of Limitations a good title as against the children who had not been in possession, but the plaintiff's claim as to one-quarter was as good as the defendant's, and in making partition the Crown should recognize the right of the defendant to the improvements.

The Statute of Limitations applied because the rights involved upon the record were merely private rights not affecting the pleasure or the sovereignty of the Crown.

As both parties to these proceedings had put themselves upon the Court, and the whole case had been investigated without any objection to the jurisdiction to decree partition, the fee being in the Crown, no effect should be given to any such objection to the jurisdiction. Moreover, under R.S.O., c. 44, sec. 21, sub-sec. 7, there is jurisdiction to "decree the issue of letters patent from the Crown to rightful claimants," and declaratory relief may in a suitable case be given which will work practically the result of a partition of the property, if the Crown is willing to act upon the judgment of the Court.

Kingston, Q.C., for the plaintiff.

W. H. Blake, for the defendant.

ARMOUR, C. J., STREET, J. }
FALCONBRIDGE, J. }

[March 16.

SPENCER *v.* GRAND TRUNK RY. CO.

Railways—Mail car—Posting letters on—Moving train—Invitation—Licensee—Post office department.

A person who posts a letter on a mail car attached to a train about to start, although the car is furnished with a slit for posting letters under instructions from the post office department, is a mere licensee.

The invitation to post, if any, is the invitation of the post office department and not the railway company.

Held, that the plaintiff, who in attempting to post a letter on a moving train, tripped and fell over a peg placed in the ground by the company and was injured, could not recover.

Judgment of MEREDITH, C.J., affirmed.

Maclaren, Q.C., for the plaintiff.

Osler, Q.C., for the Grand Trunk Ry. Co.

Wallace Nesbitt and *MacMurchy*, for the Canadian Pacific Ry. Co.

WINCHESTER, Master. }
DIVISIONAL COURT. }

{ Feb. 17.
{ Mar. 16.

REGINA EX REL. SUTHERLAND *v.* LEVETT.

Municipal election—Returning officer—Refusal of vote to qualified elector—Awarding seat to relator—Municipal Act, s. 118.

Application to unseat the respondent from the office of town councillor, and to declare the relator entitled to the seat, on the ground that the clerk of