THE
Canada Law Journal.

VOL. XXXI. JULY 15, 1895. No. 12

THE *Canadian Law Times* for June contains a criticism of the decision of Mr. Justice Killam in the case of *Stover* v. *Marchand*, noted in the current volume of THE LAW JOURNAL at page 325. The writer of that article seems to think that the decisions in the cases of *Jamieson* v. *Harker*, 18 U.C.R. 590, and *Dowsett* v. *Cox*, 18 U.C.R. 594, would apply, and, as the Crown patent for the land in question had not issued until 1887, the Statute of Limitations would not have begun to run against the plaintiff until that date. The cases, however, seem to be distinguishable, for in both the Ontario cases the plaintiffs relied upon their patents, and were very properly held to have acquired the rights of the Crown as existing at the dates of the patents, and such rights were, of course, free from any claims arising out of the possession of any other parties; but in *Stover* v. *Marchand* the patent was to the defendants, and the plaintiff did not derive title under it, but under mortgage from the defendants' ancestor. The plaintiff relied upon the recitals in the patent to show that the deceased was entitled to the land when he gave the mortgage, and, therefore, that the defendants were estopped from setting up title in themselves under the patent as against the mortgage, and from denying that the deceased was the owner of the property at the time of the mortgage. The patent recited that the deceased had made a claim to the land, and that his claim had been investigated by the Department, and that he had been found duly entitled to the land, and that the grantees (the defendants) were respectively the widow and children, and the patent was issued to them as such. It would seem, therefore, notwithstanding the Ontario cases cited, that Mr. Justice Killam's decision can be supported.