

(a). He did not shew that the Plaintiff and his grantors had been out of possession for twenty years before action (8th Oct., 1873), or, in fact, that the possession, under which he claimed was in any way exclusive.

(b). The possession of Stanford was that of a tenant, and he paid rent for such possession.

(c). Stanford had relinquished his possession after the expiration of his lease, and there was no possession by him or his agent after he moved away in 1856.—Defendant was away for three years thereafter, and neither he nor anyone else had possession for Stanford then.

(d). The possession of Stanford, while he did occupy the lot, on either side of 150 the locus, was quite consistent with the rights of the Plaintiff's grantors to the bed, banks and waters of the stream, and the fencing on the road and at either end of the lot, even if made as alleged by Defendant's witnesses, is consistent with the title of the Plaintiff's grantors in the bed, banks and waters—the Deed put in evidence conveyed such lots as he appears to have so enclosed, but with a reservation of all that is claimed in relation to this lot (see line 82 as an illustration).

3rd. There was in Plaintiff's grantors such possession as the locus was capable of.

4th. The Defendant did not controvert the evidence of admissions by Stanford, and the Court below erred in disregarding such admissions.

5th. The Court below misapprehended the title of the Plaintiff—the judgment 160 of the Court is framed to shew that Plaintiff did not derive documentary title from the "Inland and River Navigation Company." There never was any such Company, and the Plaintiff, therefore, did not claim through any such. The judgment below confuses the Inland Navigation Company and the Lake and River Navigation Company.

6th. The Plaintiff's rights to the possession and his possession of the locus were each sufficient to enable him to maintain the action, and were not denied in the pleadings—

*Grotto vs Farish, Thompson's Report (N. Scotia), 292.*

*Churchwardens vs. Vaughan, 2 Russ. & Ches., 443.*

*Chap. 94, sec. 145, Rev. Stat. of N. S., 4th series.*

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7th. The preponderance of evidence as to possession and right of possession in Plaintiff's grantors was so much in favor of Plaintiff that judgment should have been in his favor.

8th. The evidence of Defendant's witnesses was contradictory as to the dates of the acts of possession which they testified to, and vague and inconclusive as to that possession covering the whole locus.