

minate his relation to the land—according to whatever understanding he had with Archibald. Christie Cummings, sister of John and Archibald, was about 22 years of age when Archibald left. Archibald said to John, “Keep the house, pay the taxes, and take care of mother.”

If Mrs. Cummings is strictly accurate, there was nothing said about Archibald’s land other than what would be implied from the request to John to pay the taxes. I find that John regarded himself as a caretaker for Archibald; he, John, was not placed in possession of any part of Archibald’s land, and he did not go into possession so as to be in actual, visible, exclusive, and continuous possession or occupation. That he, and George for him, tapped trees to make sugar in some of the spring-times—that some of the trees were cut from the slash—was proved—but nothing more than recurrent acts of trespass. John’s statements, before he executed the conveyance to George, are evidence, not against his title, if he had acquired title, but to shew how he regarded himself in reference to the land.

He had a letter written informing Archibald of the railway construction, and asking him to come home to look after this business. He always spoke of this parcel as Archibald’s land. On more than one occasion he sent Archibald money. It seems clear that he did not send it as rent—or for use and occupation. It is consistent with a theory that, Archibald owning land adjoining land of John, John would be willing to send money as to which there would be a subsequent reckoning.

I am not able to find possession in John of any particular part, so as to bar the right of Archibald to that part—much less to carry with it the possession of the whole parcel; and so I am of opinion that *Heyland v. Scott*, 19 C.P. 165, cannot be invoked in the defendant’s favour. Even if there has been possession of any part of the land between the forced road and the railway, for a sufficient time to bar the plaintiff’s title, such possession would not carry with it the land north of the railway. The part north of the railway is not, even yet, wholly enclosed—the fence to the north not extending all the way across the west half of the lot. Before 1895 trees were tapped and a small amount of timber cut, but only such acts were committed as to be fairly called acts of trespass. Fire went over the north part in 1908, and some timber has been taken off since. That, of course, does not affect questions now up for determination.

There was not in this case any claim by John under colour of right or title. He knew and stated that the land belonged to Archibald. As to him I am of opinion that the conveyance made