otherwise, we could take no peculiar course with regard to him individually, which we could not be required as a matter of right to adopt with respect to all others.

We have no doubt that whenever any person conducting himself respectfully desires to make a search into the state of any particular title, or into the registration of judgments, in order to see whether any certain individual has one or more judgments registered against him, the registrar would, from courtesy, and as a general rule, willingly allow the person interested in the search to run his eye over the index with him, in order to give greater assurance that no entry respecting the party in question shall escape attention, but that would be only when the registrar sees the object to be the single one of making the specific search more satisfactorily.

We can easily suppose there might be cases where it would neither be safe as regards the public, who have the utmost interest in the careful preservation of the books and documents in the registry offices, nor fair towards the registrar himself, that he should be compelled to throw his indexes and books and certificates before any one who might choose to come in and ask for them; and at all events, if the legislature would really approve of such a method of dealing with these important public books and documents, they must, so far as our opinion is concerned, give us plain evidence by some statute that that is what they do intend and desire. In the acts which they have passed we see no evidence of such an intention, but the contrary. In the first registry act, 35 Geo. III, ch. 5. sec. 8, the provision is, that every such registrar or his deputy "*shall make searches*," &c., not that he shall place his books, &c., in the hands of whoever calls for them, and let them search for themselves

So the 9th clause gives to the registrar a fee for "every search in the office," which we take to mean searches made by himself respecting some certain person or parcel of land about whom or or which he is requested to make a search, and perhaps to finish a certificate. The existing registry act 9 Vic., ch. 34, secs. 15 & 16, is to the same effect.

The 16 Vic., ch. 187, sec. 8, shews what fees the registrar is entitled to, and for what services, and we need hardly say that while fees are allowed to him, with a proper limitation as to amount, for all searches, there is no fee assigned to him for standing by and watching his books and papers while others are searching.

If the present applicant can demand as a right to go into the office, and have the registrar's books and documents placed before him, every one else must have the same right, and how the public business could be conducted with convenience and despatch, and the safety of the documents secured under such a system, it is not easy to understand.

It was candidly avowed in the argument that the real object of this application is to save fees for searches. If by that is meant that a person, while ostensibly searching for judgments registered against one person, should have it in his power to make use of the opportunity for making either a general search, or a general search through any particular letter, and so avoid paying the established fee for one or more other searches which it is his real object to make, though he said nothing about them, then it appears to us that it is not unreasonable that such a pretension should be resisted.

At the same time we must say that we do not assume that any registrar would object to give to any person conducting himself properly a fair opportunity to inspect any particular entry or document which is referred to in the index, and has been searched for at his request, or an opportunity to satisfy himself that the registrar has not accidently missed some entry in passing through the the index. This, however, may be fairly entrusted to the registrar himself, and we must say we have never before heard of a complaint that persons desiring to have a search made in a registry office met with any obstruction. One would suppose that in the course of sixty years this matter would have adjusted itself, so that the course pursued under the act, and constantly submitted to, would be generally understood. If we were to grant a mandamus in the terms moved, meaning it to be used for the purpose for which it was stated in the argument to be desired, we could not profess to found the command upon anything laid down in the statutes as being the duty of the registrar; and if it should happen that a leaf or more of an index, or the index itself, should disappear, or any document be altered or mutilated, it would be little *satisfaction to the public that the registrar should be enabled to* say that these documents had been freely and unavoidably put into the hands of any and every body by the order of this court, though that would certainly go far towards relieving the officer from all blame. The registrar may put his index or other books into the hands of others to make a search, instead of searching himself, but he does that in his discretion, and upon his responsibility. If he were commanded to do it freely whenever asked, he must be taken to have no discretion in the matter, and would be relieved from responsibility, and unable to answer for the security of his books and papers.

Rule discharged, with costs

REGINA v. MCCORMICK.

Waste lands—Effect of possession as against the Crown—Nullum Tempus Act, 9 Geo. III ch. 16—Point au Pele Island.

The *Nullus Tempus* Act, 9 Geo. 3, ch. 16, is in force in this province, but it does not apply to the unsurveyed waste lands of the Crown.

Point au Pele Island, in Lake Erie, and forming by law part of the township of Mersea, had been occupied by defendants and those under whom they claimed, without interruption, since 1789. It was not shewn that the possession held had been other than that of trespassers, nor that the Crown had ever taken charge of or received any rents from the Island, nor that it had been surveyed, or the title of the Indians extinguished, and it had never been assessed or returned as assessable.

Held, that the Crown was not barred by such possession.

This was an information filed by the Attorney General for Upper Canada to recover from the defendants possession of the lands known as Point au Pele Island, in the township of Mersea, in the county of Essex, which is an Island in lake Erie, near the said township.

The defendants pleaded not guilty, and issue was joined thereon: and by consent of the parties the following case was stated for the opinion of the court:

In the year 1789, Alexander McKee was in the actual possession and occupation of the land in question, and so remained until his death, some years afterwards, when he left a will devising it to his son Thomas McKee, who shortly afterwards died intestate, leaving Alexander McKee his eldest son and heir at law. On the first of September, 1823, this Alexander McKee by deed conveyed to William McCormick the land in question, and all his interest therein.

William McCormick went into possession and so remained until his death. He left a will devising the land by certain described parcels to and among his children, most of whom were then residing on the portions so devised, which had been previously allotted to them by the testator. The children were as follows. Alexander, John, David, William, Thomas, Lucinda, Elizabeth, Charles, Mary, Sarah, Peregrine, and Arthur. All were then living: Alexander, John, and Charles have since died. All the children continued to occupy their portions, and those living and the representatives of those deceased still do so, except that Alexander and David have by deed conveyed their portions to purchasers.

No grant from the Crown has ever issued, nor has any interruption or intermission in the possession or occupation of the premises by Alexander McKee and those claiming under him taken place since the year 1789. Neither has the same been assessed nor returnable as assessable.

The question for the opinion of the court is, whether the Crown can recover the land, or whether the possession for upwards of sixty years does not bar the Crown's right.

If the court should be of opinion that the Crown should recover, then judgment should be entered for the plaintiff, with the costs of suit. If the court should be of opinion that the Crown is barred, then judgment shall be entered for defendant.

R. A. Harrison, for the Crown. *Prince*, contra.

Co. Lit. *b.* 277 *a*; *Doe West* v. *Howard*, 5 U.C. O.S. 462; *Elvis* v. *Archbishop of York*, *Hobart* 322. *Doe Fitzgerald* v. *Finn*, 1 U. C. Q.B. 70; 21 Jac. 1, ch. 14; 4 Wm. IV. ch. 1, secs. 16, 17; 9 Geo. III., ch. 16; Bac Ab. "Prerogative" E. 5 p.; 14 Geo. III., ch. 83, were referred to on the argument.