

in the Crown until granted to Peter Williams, through whom the defendant claims by patent, dated 14th August, 1900.

The plaintiff claims to have acquired title by possession as against the Crown, but if this contention fails says that he has by ten years possession since patent issued acquired title as against the defendant.

The evidence shews that from the year 1834 until the year 1911, the plaintiff by himself and others, of whose possession he is entitled to the benefit, have each season cultivated the land in dispute. No one ever resided upon it and no buildings were ever erected upon it. There is some vague evidence as to fencing, but the only fence of which there is any proof is a fence running northerly across the island to the north side. The course of this fence is the boundary line produced northerly between lots 46 and 47, and the fence was doubtless intended to prevent persons who used the east part of the island from trespassing upon the west part. The user of the land was limited to cultivating and cropping during the summer season. There is no evidence shewing possession by anyone except in connection with these operations, so that for at least one half of each year no one was in possession. During the winter seasons throughout the whole period from 1834, there was at most only constructive, but no "actual, exclusive, continuous, open, or visible and notorious possession," on the part of the plaintiff or his predecessors. *Sherren v. Pearson*, 14 S. C. R. 585. The lawful owner was not prevented from taking peaceable possession, and there was no trespasser against whom he could have maintained an action to recover the land. For about one-half of each year the possession was vacant, and on each such occasion the right of the true owner would attach and the Statute of Limitations cease to run, beginning again, but only from a new starting point, when the plaintiff took possession each spring. His withdrawal during each winter lost to him the benefit of his possession up to the time of such withdrawal. *Coffin v. North American Land Company*, 21 Ontario 81. I, therefore, think that the plaintiff has failed to acquire title by possession, and that this action should be dismissed with costs.