GARROW, J.A.:—The plaintiffs' paper title to the land in question is not disputed. The defendant never had, and never had any reason to believe that he had, any right or title whatever. The onus was of course wholly upon him to prove by satisfactory evidence such an occupation by him to the exclusion of the plaintiffs and their predecessors as would confer a title under the statute—an onus which in my opinion he has signally failed to satisfy.

In McIntyre v. Thompson, 1 O.L.R. 163, Osler, J.A., quotes with approval from the judgment in the Supreme Court in Sherrin v. Pierson, 14 S.C.R. 581, the following applicable to the facts in this case; "To enable the defendant to recover he must shew an actual possession, an occupation exclusive, continuous, open or visible, and notorious . . . it must not be equivocal, occasional, or for a special or temporary purpose." And Harris v. Mudie, 7 A.R. 414, determined that the doctrine of constructive possession has no application to the case of a mere trespasser such as the defendant originally was: see also Reynolds v. Trivett, 7 O.L.R. 623-632.

The defendant owns the adjoining lot upon which he resides with his family. The lot in question is of rough, uneven surface, cut into by marshes and a lake. It is unsuitable for ordinary agricultural purposes, its value consisting in its minerals for which alone it was purchased by the plaintiffs. There are some fences, but as I understand the evidence, no continuous fence enclosing the whole land. And the use made of the land by the defendant, according to his own testimony, was almost entirely for pasturage purposes. This occupation, originating in trespass, in its nature occasional and imperfect, would probably if it stood alone have been sufficient to confer a title by possession under the circumstances. But it is not necessary to so determine, because there are still greater and more decisive difficulties in the defendant's way.

This use of the land as pasturage, originating as I have said in mere trespass, seems to have been afterwards authorized and continued to the defendant by the owners. And it is even said that a written lease to that effect was executed, although the document itself was not produced. The defendant denied that there had been a lease, but he quite failed to give a reasonable explanation of his own letters, or of the very material circumstance that he had for a number of years paid the taxes and forwarded the receipts to the owners who resided at a distance. There are two of these letters produced, and that they were