

veyor Alexander Aitkins. This was apparently the only plan in existence when the said patents were issued, and it shews an island lying opposite lots 47, 48, and 49. This was, doubtless, Cotter's (otherwise called Bernhardt's) island. According to this plan the distance from the concession road, which forms a southerly boundary of lots Nos. 47 and 48 to the water's edge of the Bay of Quinte, was 58 chains and corresponds with the distance given in the patents. The distance from the road allowance to the northerly limit of the island opposite lot No. 47 is, according to this plan, 70 chains and that of lot No. 48 is 78 chains. If it had been intended to include the west portion of the island in the patents, the distances should have read 70 and 78 chains respectively.

Further, the plan shews open water opposite the main-land, and the northerly limit of these lots, as described in the patents is (except as to the west part of the east part of lot No. 48), stated to be the water's edge of the Bay of Quinte. The northerly limit of the island would not be the water's edge.

The description in the patent of the westerly limit of the west part of the east part of lot No. 48 thus begins, "Commencing at the water's edge of the marsh on the Bay of Quinte." It then runs 58 chains more or less south to the road allowance. Its easterly limit runs 58 chains more or less northerly from the road allowance to "the aforesaid edge of the marsh," and the northerly limit is described as being along the edge of the marsh. The marsh here referred to undoubtedly means the shallow, marshy water lying between the island and the shore; not the open water to the north of the island. The only marsh of which there is any evidence is that between the island and the shore. This last-mentioned patent was issued on the 23rd January, 1808, and gives the distance from the water's edge of the marsh to the road allowance as being 58 chains, and it is clear that the distance of 58 chains mentioned in the subsequent patents also meant the distance reaching to the water's edge of the marsh, or, in other words, of the main-land.

For these various reasons I am of opinion that the land in dispute was not covered by the patents in question and that the plaintiff has no paper title thereto.

The other question to determine is whether he has acquired a title by possession. The fee in the island remained