

Casselman's consent to cut cedar for fencing. Casselman had at that time no interest in the timber, as he had in 1872 assigned his interest to Yon, but the admission of Kent shews that he considered the cedar as "timber" and as included in the contract. Casselman was called on behalf of the plaintiff, and denied that there was any agreement in writing, but said that he tok a receipt for the money in a pass-book which he stated was afterwards worn out by being carried in his pocket.

Casselman was a most unsatisfactory witness. He admitted having made, on other occasions, statements regarding the contract differing from his statements in the box. He admitted having a conversation with Dr. McGill on the 30th April last, when Mr. Jarvis, the solicitor for the defendant, was present, and with Dr. McGill in August last, when Sylvester Campbell was present, and also Blaney and Orr. He denied telling Dr. McGill in April, 1903, that he had a written agreement from Kent and that he afterwards sold what remained to Yon; and said he did not remember telling Dr. McGill in August that he had bought all the timber on the lot from Kent, and that he afterwards sold what remained to Yon. He also denied that he told Blaney and Orr that Kent had signed the writings, and that he (Casselman) had prepared a document to take to Kent, and brought a witness with him to see it executed. Dr. McGill, Mr. Campbell, Blaney, and Orr were all called, and swore that these statements that Casselman denied making were made to them on the occasions deposed to in the evidence. The manner in which they gave their testimony satisfied me that the statements were made by Casselman to them, and that the evidence which he gave at the trial could not be relied upon.

I find that the agreement between Kent and Casselman was handed to Yon, and an assignment of Casselman's interest was executed by him to Yon, and that Yon afterwards assigned his interest to Blaney.

I find that Irish did not consider he was entitled under the assignment to him from Blaney to cut the cedar, white-wood, basswood, balsam, spruce, hemlock, etc. His claim was confined to the second growth pine and the oak; and "timber" under the contract would not include cordwood which he either removed surreptitiously or had Kent's authority to cut, the latter assuming he was cutting under the license he had given him (Irish).

I find also that Irish was aware, prior to 1890 and during all the subsequent years, that Kent was disposing of timber on the land to Parker, Dunlop, Rowland Young, Robert