

McDonald tenders a receipt for five dollars from the Treasurer's office for five dollars received from Donald McDonald, deposited for Crown lands in the County of Inverness, 24th January, 1878.

McDonnell, Q. C., objects. I sustain objection.

Witness—This is the only land I paid money to the Treasury on account of. I claim the land and the wood on it. I saw defendants hauling away from the place they had piled. They hauled away 68 trees. They were not piled on my land. They were outside of the line. I traced where they had come from by the trail. They had hauled the whole trees, tops and all. They came from the land I was claiming. They were mine first. They were cutting them up and hauling them 110 away. This was in the winter of 1878,—the winter before action was brought.

Cross-examined by Mr. McDonnell :—All the shore was settled when I came out. The 1st and 2nd divisions were settled. The nearest settler was a $\frac{1}{4}$ mile distant,—one McLeod, who left in 1852; my first clearing, $\frac{1}{2}$ acre, is grown up with wood. It has been growing up since 1845. The second clearing is covered with second growth. It may have been growing since 1846. Some of the third clearing is second growth, and some in pasture; one crop of potatoes and one crop of oats. Never took a crop off since. It has not been fenced since I made clearing No. 4. I took three crops out of it; the last about five years ago. I made the clearing six or seven years ago. Took no crops since. I fenced it last at the last crop. I have kept the fence up since 120 for my cattle. I have no cattle of my own. I live about a mile and three-quarters distant. I never lived on the lot. I am a married man. I live with my father. McLeod did not ask leave of me. I don't know how McLeod left it. There was a bargain between me and McLeod when he went there. He left over 20 years ago. The house he lived in was rotted away.

Mr. McDonnell admits that the defendants cut trees within the bounds described in the writ in the winter of 1878, but on forest land which had never been cleared or cultivated.

James H. Austen sworn :—This receipt is signed by Mr. Jean, Cashier's Department of Provincial Treasury. I think this money came first to the Crown Land 130 Department, and we handed it to the Treasury. It was paid for Crown lands. Sometimes the money is sent with a letter without a petition, and we prepare a petition. I have no doubt this was accompanied by a letter or petition. This is my writing to letters to plaintiff, dated 7th February, 1878. I am chief clerk in the Crown Land Department. This letter is from me. I usually reply to a letter addressed to the office. I think Mr. White was Commissioner then. Where there is any difficulty, as in this case, I usually consult the Attorney-General. Mr. White was then Attorney-General. I am not positive if I consulted him about it, as he was sometimes in C. B., and then I answered the letter on my own judgment.

Tenders letter, (objected.) I sustain objection.

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Plaintiff recalled to prove value :—I would not give the trees less than \$1.00 each, standing. There were 98.