

At that time, Irish said to Dunlop that Kent was selling all the timber, and would not have enough to fence the place, but he (Irish) did not care, so long as he did not sell the pine, as that belonged to him.

Robert Young said that in 1892 he went on the place to cut rails, and Irish was there in the bush, and asked him what he was doing, when Young told him he was cutting rails. Irish said he could take any cedar he wanted, as it was not his, but he must not cut any second growth pine, as that belonged to him. Young said there was at that time some very small second growth pine, varying from two to twelve inches, and one oak about eight inches in diameter.

Irish told Rowland Young he did not care what Kent did with the cedar, as he had no claim to it. And in 1890 Hawke bought balsam, spruce, and hemlock from Kent. Irish (who is Hawke's uncle) knew he was cutting, and asked him how he was getting along. At that time Irish made no claim to any timber but the pine; Blaney gave no written authority to Irish to cut timber.

On the 1st October Kent served a notice on Irish to deliver up possession of the land, and at the same time he caused notices to be posted up on the land forbidding any one trespassing or removing the timber therefrom. On the 18th October Irish purported to assign, by the agreement already referred to, all the timber on the land to the defendant, Orr. The price to be paid is not mentioned in the agreement, and, whatever the price was, it was not to be paid until Orr had removed the timber.

I find that there was a written agreement signed by Kent, when he sold to Casselman, and that it included the "timber" then on the land. As I have already stated, Casselman, as well as the plaintiff, denied that there was any writing; but the plaintiff admitted having signed a leaf in a book as to the sale and purchase of the lot. What he signed may have been in the nature of a receipt, but containing the terms of the contract for sale. Casselman desired to purchase the oak and pine "timber," which was the only timber of any value to him, and the only timber he cut. That was the only kind of timber cut by Yon; and the pine for shingle bolts was the only "timber" cut by Blaney except cordwood for his own use. And, although the agreement included "the timber on the land," I would, having regard to the kind of timber Casselman at that time considered of any value, and which alone he removed, have been inclined to hold that it was not intended to include the cedar, but for the admission of Kent that about four years after he sold to Casselman he obtained