

RULE NISI.

INVERNESS, SS.

IN THE SUPREME COURT AT PORT HOOD, 1880.

DONALD McDONALD, *Plaintiff.*

vs.

DUNCAN CAMPBELL and
FARQUHAR M. FADEGAN, } *Defendants.*

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Upon reading the Judge's minutes taken at the trial hereof, and the other papers put in evidence at the said trial, and the pleadings herein, and upon motion it is ordered that the non-suit granted herein be set aside, with costs, upon the following grounds :—

1. That the said non-suit is against law and evidence.
2. The improper rejection of evidence.
3. The improper reception of evidence.
4. Because the defendants in their pleadings do not deny the plaintiff's property 180 in the timber trees and poles mentioned in and claimed by the plaintiff in the first count of this declaration ; and because the said pleadings of the defendants do not operate as a denial of the plaintiff's property therein, and inasmuch as the same is not denied, and the defendants having admitted the taking, cutting, and destruction of the said property by them, the verdict should be for the plaintiff.
5. Because the defendants, by their attorney, having acknowledged on the trial that the defendants cut, carried away and destroyed the said timber trees and poles and wood, and that the same were taken from off the lands claimed by plaintiff, and described in the first and second counts of his declaration, and of which land he gave evidence of possession ; the verdict should have been for the plaintiff, as 190 against the defendants, being mere wrong-doers, entering without any right or title.
6. Because the plaintiff was proved to have been in possession of the lot by metes and bounds, from which the said timber trees and poles were cut, taken and destroyed at the time of the trespass, and had good title and right against the defendants, who were wrong-doers, and proved neither right, title, nor possession in themselves.

Unless cause to the contrary be shown within the first four days of the ensuing term of the Supreme Court, in *banco*, at Halifax, and that the plaintiff have twenty-two days to file sufficient bail under the Statute in the sum of one hundred and sixty dollars, to respond the judgment to be finally given in this cause, and to give 200 notice thereof.

By the Court.

JAMES McDONALD,
Prothonotary.

On motion of
MR. GILLIS, }
P. *Plaintiff.* }

Dated at PORT HOOD, June 18, 1880.