VANVLECK ET AL. V. STEWART ET AL.

(1860), 19 U.C.Q.B. 489
Upper Canada Queen's Bench, Robinson C.J., McLean and Burns JJ., 1860

Indian lands -Power of commissioners- 2 Vic., ch. 15; 12 Vic. chaps. 9, 30; 13 & 14 Vic., ch. 74; 20 Vic., ch. 20.

***Semble,* that the commissioners for restraining trespasses on Indian lands are not authorised to seize and sell timber cut by the Indians themselves, or by white people with their consent.**

This was an action of replevin for 400 pine saw logs, tried at Cayuga, before *McLean* J., and a verdict rendered for the plaintiff.

As to the greater portion of the logs, the question was only whether they had been bought by the plaintiff Vanvleck at a sale made by the public commissioners acting on behalf of the Indians, whose right to sell was not disputed; but as to a small number there was some evidence to shew that they had been purchased by the plaintiff from the Indians, or cut by their assent on their lands, and afterwards seized and sold by the commissioners to defendants. The learned judge charged the jury that logs cut by the Indians on Crown lands, called Indian reserve lands, in the township of Oneida, without license of the Crown, were not unlawfully cut, and that the Indians could legally cut and sell timber off of said lands without license from the Crown.

J.R. Martin obtained a rule nisi for a new trial upon the evidence, and for misdirection. He cited Regina v. Hagar, 7 C.P. 380; Regina v. Baby, 12 U.C.R. 346; Miller v. Clark, 10 U.C.R. 9; Chisholm v. Sheldon, 1 U.C. Chy. Rep. 318; Regina v. Strong, lb. 392; Totten v. Watson, 15 U.C.R. 392; Concol. Stats. U.C., ch. 81; Consol. Stats. C., ch. 23.

Upon the evidence, which it is not material to report, the court thought the verdict warranted as to all the logs, and it therefore became unnecessary to determine the legal question raised, but the Chief Justice in his judgment said upon this point:

"If it were necessary to consider whether these logs- supposing they had gone through the process of a previous sale by commissioners as having been illegally cut on Indian lands- could be properly seized and sold to the defendant, as it seems they were in the latter part of the year 1859, then I suppose that question would have to be determined upon a consideration of the statutes 2 Vic., ch. 15; 12 Vic., chs. 9 & 30; 13 & 14 Vic., ch. 74, and 20 Vic., ch. 26. I shall only at present say, that if it be thought advisable, as I dare say it is, for other reasons besides the preservation of the timber, to prevent white persons from buying from the Indians pine and other merchantable timber growing upon their lands, I take it the intention to protect it should be made more clear than it seems to be upon the existing statutes, for I do not see that saw logs cut on Indian lands by the Indians themselves, or cut by white people by the assent of the Indians themselves, or cut by white people by the assent of the Indian occupants, are liable to be seized and sold by the commissioners for restraining trespasses upon the lands under any of the statutes referred to; but further consideration of the question might lead me to a different opinion.

Rule discharged.