

THE KING V. WATSON

(1828), 1 N.B.R. 188

New Brunswick Supreme Court, Saunders C.J. et al., 1828

On an information for intrusion on Crown land, where it appears by the evidence given on the part of the Crown, that the Crown was out of possession for twenty years before the suit brought, the Crown cannot recover.

In such a case the defendant may plead the general issue under 21 Jac. 1, c. 14.

This was an information for intrusion into Crown land an *Meductic Point*, in the county of *York*. The defendant pleaded not guilty.

The case was tried at bar during this term; and a witness called by the Crown proved that the land in question was claimed by the Indians, who carried their claim back for 100 years; that about twenty years before the trial he was sent by the Government to negotiate with the Indians respecting their claim, and that in consequence of this negotiation an agreement was entered into by him as the agent and with the sanction of the Government and the Indians, and a paper drawn up and signed. This paper was produced by the Attorney General and put in evidence by the consent of the defendant's counsel, *G.F. Street*.

It was dated in *July*, 1807, and recited that "the Government had agreed to purchase from the present proprietors or claimants thereof under grants from the Crown, two tracts of land on the *Meductic Point*, part thereof being generally known by the name of 'Atwood's farm.' "

The dispute was between the Indians, who rested on their ancient title, and these proprietors.

The Attorney General rested his case here, and contended that the defendant was not entitled to the benefit of the statute, 21 Jac. 1, c. 14, which allowed defendants to plead the general issue to informations of intrusion in cases where the Crown had not been in possession for 20 years, and declared that in such cases the defendants should not be ousted of their possession until the title was found or adjudged for the King. He contended that the defendant ought to have pleaded his title specially. *Chitty on Prerog.* 333; and *Com. Dig. :Prerogative* (D.) 74, were cited; and he distinguished *Harper v. Charlesworth*, 4 B. & C. 574, as to an intruder on Crown lands maintaining trespass and as to a license from the Crown being a good defence to an action for intrusion, referred to by *Street*.

The *Court* thought it was unnecessary to call upon the defendant for any defence, being of opinion that the document put in evidence by the Attorney General. Clearly showed that the Crown was not in possession of the land at that date (1807) more than twenty years before the information was filed; that the defendant was therefore entitled to plead the general issue under the statute of James; and the document also reciting that the land in question was in possession of grantees from the Crown, was *prima facie* evidence by the Crown's own showing that it had now no title to the property. *Saunders, C.J.*, therefore, with the assent of the whole Court, directed the jury to find a Verdict for defendant.