

UNITED STATES v. BROWN.

[4 McLean, 378.]¹

Circuit Court, D. Michigan.

June Term, 1848.

TRESPASS—CUTTING

TIMBER—JUSTIFICATION—PREEMPTION RIGHT.

At law.

Mr. Norvell, U. S. Dist. Atty.

Mr. Seaman, for defendant.

OPINION OF THE COURT. This was an action of trespass, for cutting timber upon the public lands. On the part of the defendant, it was proved that he claimed the land, under the act of congress of the 4th of September, 1841 [5 Stat. 453). It was objected, by the district attorney, that a pre-emption right under that act can not be shown by parol. Last May, it was proved that defendant admitted that he had not paid for the land. THE COURT instructed the jury that the defense of the defendant could only be sustained by his showing that he had taken some steps to secure his pre-emptive right set up. That short of this, he could plead no justification or excuse for the trespass charged.

Verdict for plaintiff. Judgment

¹ [Reported by Hon. John McLean, Circuit Justice.]

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