

as to the manner of instituting actions in ejectment only, and as to the jurisdiction of the Court before which they should be brought, when the term of the lease had expired, and when all the rent had been paid. It was further pointed out by the defendant that 25 Vic. cap. 12, sec. 1, states that "the costs shall be allowed and taxed in accordance with the amount for which judgment shall be rendered." Now here the judgment awarded no amount at all, and nevertheless the defendant was condemned to pay full costs of suit. If he had owed a month's rent, \$12, he would only have had to pay costs as of the lowest class, and because he owed no rent he was placed in a much worse position, and condemned to pay costs of an action for \$144.

DUVAL, C. J. The judgment in this case is confirmed.

Meredith, Drummond, and Mondelet, JJ., concurred.

*Lafrenaye & Bruneau*, for Appellant.  
*A. Germain*, for Respondent.

GIBSON, *et al.*, (plaintiffs *par reprise d'instance* in the Court below) Appellants; MORTATT, (defendant in the Court below) Respondent; and YOUNG, (Intervening party *par reprise d'instance*) Respondent.

*Practice—Declaration on Saisie-Arrêt—Special Answer—Promissory Note.*

*Egan* and *Moffatt* having been in copartnership, under the firm of *William Moffatt & Co.*, and *Egan* having subsequently entered into copartnership with other parties under the firm of *John Egan & Co.*, by an agreement in July 1855, *Moffatt* agreed with *John Egan & Co.*, to assume all the liabilities of *William Moffatt & Co.*, to pay the sum due *Egan & Co.* in four instalments, and to give security, on condition that he should be allowed to cut timber on certain timber limits of *Egan & Co.* He subsequently cut timber without giving security, and the timber was transferred to the firm of *Symes & Co.*, which had made advances to him. *Moffatt* paid *Egan & Co.* the first instalment of the above-mentioned debt by two notes, one for £1500, which *Egan & Co.* paid away to a third party, and one for £800, which *Egan & Co.* placed to the credit of *William Moffatt & Co.* *Egan & Co.*, having, by *saisie-arrêt* before judgment, seized

the timber cut as in the possession of *Moffatt*, and having sued for the whole debt:

*Held*, that *Egan & Co.*, having paid away the note for £1500 to a third party, could not sue for the debt for which it was given till they produced the note.

2. That *Egan & Co.*, having carried the note for £800 to the credit of *William Moffatt & Co.*, could not withdraw it from that account without the consent of *Moffatt*.

3. That the plaintiffs, not having alleged the insolvency of *Moffatt* in their declaration, could not base a right to sue for the whole of the debt on such insolvency; and that the allegation of his insolvency in their special answer could not avail to supply the deficiency in the declaration.

4. That the right to sue for the whole of the debt could not be based on the alleged fraud of the defendant in transferring the timber to *Symes & Co.*, unless such fraud had been alleged in the declaration, the allegation of fraud in the affidavit alone being insufficient.

The judgment appealed from in this case was rendered by *Lafontaine, J.*, in the Superior Court at Aylmer, on the 16th of December, 1863, dismissing an action together with a *saisie-arrêt* before judgment, by which the plaintiffs *John Egan & Co.*, now represented by the appellants, claimed from *William Moffatt* the sum of £7678 17 8, for which they attached as belonging to, and in the possession of the defendant, 2,500 pieces of red pine timber. The judgment set aside the attachment and maintained the intervention of *George B. Symes & Co.*, (now represented by *Young*, the surviving partner) who had intervened to claim the property of the said timber, as having purchased it from the defendant *William Moffatt*.

The nature of the contestation will be sufficiently explained by the remarks of Mr. Justice Meredith.

MEREDITH, J. In order that the observations to be made upon the points in controversy in this cause may be understood, it is necessary to give an outline of the transactions, in which the difficulties now to be adjudicated upon originated.

On the 25th of January, 1851, by a notarial deed, a copartnership was formed between *John Egan*, one of the plaintiffs in this cause, and *John Supple*, under the firm of *John Supple & Co.*, for the manufacturing of timber