The contention of the defendant is that by the agreement of the 13th July, 1855, upon which he is sued in the cause No. 91, he agreed to pay Egan & Co., in four annual instalments, £8,500, in consideration of their transferring to him certain timber limits upon which the timber seized in this cause had been cut; that they received from him in part payment of the said sum of £8,500, negotiable paper to the extent of £2,300, on account of which there has been paid £1800, that they allowed him to enter upon and manufacture timber on the said timber limits; and that the plaintiff whilst he joins his copartners in enforcing the agreement in question, as being binding on the defendant, cannot, as he attempts to do in the present case, treat that agreement as if it were null, by exercising an unqualified right of ownership over the timber limits, in consideration of which the defendant so agreed to pay £8,500, and as already mentioned has actually paid £1,800.

The fact that Egan & Co. received from the defendant a negotiable note for £1,500, on account of which £1,000 has been paid, is not denied; and I think that the right of the defendant to have credit for the other £800 is, as I have explained in the case No. 91, also established. It is true that under the agreement of July, 1855, the defendant was bound to give security within a certain time and that he has wholly failed to give that security, and the pretention on the part of the defendant that Egan & Co. waived their right to security, by taking a part of the purchase money without exacting security, is quite untenable. I think that Egan & Co. had, and still have, a right either to enforce the agreement irrespective of security, or to cause the agreement to be rescinded in consequence of the failure of the defendant to give security; but I do not see how the agreement can be binding upon the purchaser without being at the same time binding upon the vendors and each of them; and I therefore think that Egan, whilst joining with his copartners in suing for the price of the property sold by the agreement of July, 1855, cannot, in his own name, claim the ownership of that property as if it had *not* been sold. In a word, Egan & Co. had their option: as the defendant failed to give the stipulated security, they had it in their power to cause the agreement to be treated as binding or as not binding, but they cannot treat it as binding upon one side, without admitting that it is binding upon the other, and in order to prevent misapprehension I may observe that I think Egan & Co. will have the same right after this action has been dismissed. They may, if they think fit, repudiate the agreement in consequence of the failure of the defendant to give them security, but they cannot, at one and the same time, claim the limits and also the consideration which the defendant agreed to give for those limits. According to this view, the judgment of the Court below, dismissing the plaintiff's demand, is right, and, as between the defendant and the intervening party, I think there can be no difficulty in maintaining the intervention which is not contested by the defendant.

Duval, C. J., Mondelet, and Loranger, JJ., concurred. [It was intimated by Judge Meredith that Judge Aylwin, who was unable to be present, also concurred in both these judgments.]

A. & W. Robertson, for Appellants.

R. & G. Laflamme, for Respondents.

BRAHADI, (plaintiff in the Court below,) Appellant; and BERGERON *et al.*, (defendants in the Court below,) Respondents.

Service of Declaration in cases of Saisie Gagerie—*C. S. L. C. Cap.* 83, *Sec.* 57.

Held, that under C. S. L. C. cap. 83, sec. 57, in cases of *saisie-gagerie*, it is sufficient service of the declaration to leave a copy at the prothonotary's office, and it is not necessary that the ordinary delays for service should be allowed between such service of declaration at the prothonotary's office and the return of the action.

This was an appeal from a judgment rendered by *Badgley*, J., in the Circuit Court on the 30th of September, 1865, (reported 1 L. C. Law Journal, p. 67.) The plaintiff having issued a *saisie-gagerie* for rent, the defendant pleaded by *exception à la forme*, that the usual delay of five clear days should have been allowed between the service of the declaration and the return of the writ. It appeared that service of the declaration had been made by leaving a copy for each of the defendants, at the office of the clerk of the Circuit