

cut; and that no part of that timber was cut after the date of the first letter which appears to have been written by Egan & Co. to Symes & Co., about the affairs of Moffatt, namely of the 20th November, 1856. It is true that after the date of that letter, Symes & Co. continued to make advances to Moffatt, and received from him the timber seized in this cause; but it was not to be expected, and Egan & Co., as I have already observed, do not appear to have expected that Symes & Co. would have ceased to make advances to Moffatt on their receiving the letter of the 20th November, 1856. At that time, the balance due by Moffatt to Symes exceeded £7000, and a large part of the timber manufactured from the advances of Symes & Co., was then lying in the forest, and there is every reason to believe that if Symes & Co., or some other parties, had not made advances to Moffatt, that timber would have been lost to all concerned. The course pursued by Symes & Co. was to make advances, not for the purpose of having more timber cut upon the limits of Egan, but in order to get out the timber already cut, and the whole of the timber delivered to Symes & Co. by Moffatt as well in the year 1857, as in the year 1856, did not even nearly amount to the quantity mentioned by Egan & Co., in their letter of the 20th November, 1856, as having been manufactured by Moffatt in that year alone. It may be added that as Egan & Co. allowed the timber brought down in 1856, to be delivered to Symes & Co., it is to be presumed that they thought that firm reasonably entitled to that timber; and if they had a just claim to the timber received by them in 1856, they had an equally just claim to the timber received by them in 1857.

That Egan & Co. have been losers by these transactions is plain; for their limits have been worked upon for two years without any advantage to them; but for this Symes & Co. are not to blame. They made advances in the usual course of trade, and upon the security usual in such cases, and they still appear to be unpaid to the extent of above £5,000; and if Egan & Co. had themselves continued to make advances to Moffatt, it seems more than probable that they would have lost, not only the timber which they now lose, but a part of

their advances in addition. The case upon the intervention, according to my view, may be reduced to this: the advances by Symes & Co. were as much for the advantage of Egan & Co. as of Moffatt. He was allowed to have possession of the limits of Egan, and to use the advances of Symes & Co., in manufacturing timber there, with the knowledge and consent of Egan & Co., and they now cannot reasonably object to Symes & Co. having the security for which they stipulated, and which was not beyond what was usual in such cases.

Duval, C. J., Mondelet, and Loranger, JJ., concurred.

*A. & W. Robertson*, for Appellants.

*R. & G. Laflamme*, for Respondents.

GIBSON, (plaintiff *par reprise d'instance*) Appellant; MOFFATT, (defendant in the Court below,) Respondent; and SUPPLE, (intervening party in the Court below,) Respondent.

#### *Revendication.*

*Held*, that a party cannot claim to be proprietor of the timber cut upon timber limits, while at the same time he brings an action for the price for which he sold the said timber.

MEREDITH, J. In the above case (No. 91,) in which Symes & Co. are intervening parties, the plaintiffs John Egan & Co., by a writ of *saisie-arêt*, seized as belonging to the defendant the timber which he made during the winter of 1855-6, and pledged for advances to Symes & Co., and in this cause, the plaintiff John Egan, one of the firm of John Egan & Co., seized under a *saisie revendication*, as belonging to the defendant, the timber which he manufactured in the winter of 1856-7, and pledged for advances to the present intervening party, John Supple. The whole of the said timber, as well that seized in the cause No. 91, as that seized in this cause, was cut upon the timber limits held in the name of John Egan, and which it was intended that the defendant should acquire under the agreement of the 13th July, 1855, to which reference is made in the course of my remarks in the case No. 91. The demand of the plaintiffs in the case No. 91, is founded on that agreement; and in the present case the same agreement is the basis of the defence.