

ration. I do not, however, hesitate to say, that in my opinion Moffatt is not chargeable with fraud. His dealings with the intervening parties may, or may not, be legal, but I do not think they were fraudulent.

For these reasons, being as I am of opinion that the action is founded upon the agreement of July, 1855, under which but one instalment was due when the action was brought; and that that instalment was satisfied by the two notes, one for £1,500 and the other for £800, I necessarily come to the conclusion that the judgment of the Court below upon the controversy between the plaintiffs and the defendant ought not to be disturbed.

I now pass to the consideration of the intervention of G. B. Symes & Co. If, as I think, the action of the plaintiffs must be dismissed, then as between the defendant and Symes & Co., I think the evidence unquestionably sufficient to maintain their intervention.\* I, therefore, deem it unnecessary to express my opinion upon two very important questions argued before us, the first being as to the effect of the two bills of sale in favour of the intervening parties, and the second, as to whether the intervening parties, at the date of the seizure, had such a possession of the timber as to enable them, as against third parties, to maintain their claim if they are to be deemed pledgees only.

But as, according to my view, the action of the plaintiffs must fail irrespective of the merits, I think it right to observe that although our judgment may rest upon merely technical grounds, yet that I think it meets the justice of the case, in so far as regards the intervention of Symes & Co. After the agreement of the 13th July, 1855, was entered into, it was as necessary for the interest of Egan & Co., as of Moffatt that advances should be made to the latter. Egan & Co. had extensive timber limits. Their debtor Moffatt was possessed of experience as a manufacturer of timber, but neither their timber, nor his business experience, could be turned to account without pecuniary advances. Mr. Egan, it appears from the evidence of Fitzpatrick, introduced Moffatt to Symes & Co., who during

the business season of 1856, made advances to Moffatt upon the usual terms, and, if not with the express consent, at least with the full knowledge of Egan & Co. They were perfectly aware that during the winter of 1855-6, Moffatt was working upon limits held in the name of Mr. Egan, by means of the advances furnished by the intervening party. Egan & Co., without any, even the least, objection on their part, allowed the timber so manufactured, as far as it was got out that season, to be delivered to Symes & Co., in the usual course, and sold by them to meet their advances. Egan & Co. knew that if any profits had been made upon the operations of Moffatt, they would have gone to discharge his debt to them; and it was after it had been ascertained that the business of that season had resulted in a loss, that they appear for the first time, namely, by the letter of the 20th November, 1856, to have in a formal manner drawn the attention of Symes & Co., to the necessity of a settlement being made respecting the debt due by Moffatt to Egan & Co., before Moffatt took any more timber from their limits. Even in that letter they did not express any wish that Symes & Co. should discontinue the making of advances to Moffatt, and when they protested against Moffatt, they did not in express terms require him to discontinue the cutting of timber on their limits, nor did they serve a copy of the protest on Symes & Co. On the contrary, even then, after they had written to Symes & Co., saying that Moffatt had worked upon their limits during the previous year to the extent of about 300,000 feet of timber, they were most anxious that Symes & Co. should not discontinue their advances. The evidence of Mr. Fitzpatrick as to this part of the case is very important. He says that when about the 18th or 20th December, 1856, he spoke of stopping the supplies then being furnished by Symes & Co., Mr. Egan "begged of him in God's name not to do anything rash," and pledged himself "to settle everything," and "make all right" with Mr. Symes in England, adding "if you now stop everything we will be ruined, for you know that just now I am in difficulties myself." It is to be observed that this took place some months after all the timber seized in this cause had been

\* As to the contract of pledge between the pledgor and pledgee, vide 2 Pardessus, Droit Com. no. 486.