

5. That the laws relating to champerty were introduced into Lower Canada by the "Quebec Act, 1774," as part of the criminal law of England and as a law of public order the principles of which and the reason for which apply as well to the Province of Quebec as to England and the other provinces of the Dominion of Canada. *Price v. Mercier*, 18 S.C.R. 303, referred to. Appeal allowed with costs.

*Beaudin*, K.C., and *Martin*, K.C., for appellants. *Beique*, K.C., and *Robertson*, for respondents.

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PAGNUELLO v. CHOQUETTE.

[Nov. 10, 1903.]

*Vendor and purchaser—Misrepresentation—Fraud—Error—Rescission of contract—Sale or exchange—Dation en payment—Improvements on property given in exchange—Option of party aggrieved—Action to rescind—Actio quantum minoris—Latent defects—Damages—Warranty.*

An action will lie against the vendor to set aside the sale of real estate and to recover the purchase price on the ground of error and of latent defects, even in the absence of fraud.

In such a case the purchaser alone has the option of returning the property and recovering the price or of retaining the property and recovering a portion of the price paid; he cannot be forced to content himself with the action quantum minoris and damages merely, upon the pretext that the property might serve some of his purposes notwithstanding the latent defects.

Where the vendor has sold, with warrant, a building constructed by himself he must be presumed to have been aware of any latent defects and in that respect, to have acted in bad faith and fraudulently in making the sale. The vendor, defendant, represented that a block of buildings which he sold to the plaintiff, had been constructed by him of solid stone and brick and so described them in documents relating to the sale. The walls subsequently began to crack and it was discovered that a portion of the buildings had been improperly built of framed lumber filled in and encased with stone and brick in a manner to deceive the purchaser.

*Held*, that the contract was vitiated on account of error and fraud and should be set aside, and that, as the vendor knew of the faulty construction, he was liable not only for the return of the price, but also for damages.

*Held*, further, that the action quantum minoris and for damages does not apply to cases where contracts are voidable on the grounds of error or fraud, but only to cases of warranty against latent defects if the purchaser so elects; the only recourse in cases of error and fraud being by rescission under art. 1000 of the Civil Code.

In the present case, the sale was made in part in consideration of vacant city lots given in payment *pro tanto*, and, during the time the