gun to litigate, although it may not be connected with the particular contract or transaction set forth in the complaint. We think that the doctrine of set-off may well be enlarged so as to embrace all cases falling within the the latter intrepretation of this clause of the New York code. Jurists of no mean repute have asserted that all cases should be dealt with and disposed of as in matters of arbitration where the reference is of the cause and all matters in dispute between the parties Then the totality of all causes of action and cross-causes on both sides is to be investigated and finally adjusted. Others have contended, and in our view with greater reason, that all quarrels and disputes touching the subject matter of the controversy--the property, in respect of which the litigation has arisen, should be heard and determined in one and the same suit.

The short-comings of English law, as found in the decisions of the mother-country and of this Province, will be seen in the cases which we now proceed to cite as specimens of the state of the law in this branch. In *Clarke* v. *Dickson*, Ell. Bl. & Ell. 150, the Courts treat the rule as well-established, that where a person is induced by fraud to enter into a contract under which he pays money, he can at his option on discovering the fraud, rescind the contract and sue for money had and received, if he can return what he has received under the contract. But when the parties cannot be replaced *in statu quo*, the right to rescind does not exist and the remedy of the party injured is by cross-action for deceit, when he will recover the real damages sustained. So in *Sully* v. *Freeman*, 10 Exch. 535, a plea was held bad which set up in an action on a bill of exchange that it was part purchase money of a ship (which the defendant had retained) which the defendant was induced to buy on certain false and fraudulent representations and that there was no value or consideration for the bill. Such a defence, even on equitable grounds, is not tenable. This point was considered by the Court of Common Pleas in *Best* v. *Hill*, L. R. 8 C. P. 10, where Bovill, C.J., says "When the cross-claim for unliquidated damages arises out of the subject-matter of the action, the Court of Chancery could at most but impose terms, as that the damages should be ascertained in the cross-action, and the execution stayed in the original action till that was done." In *Rawson* v. *Samuel*, Cr. & Ph. 177, the Court of Chancery laid down the rule more strictly, as follows:—Matters arising out of one contract in this way,—the one for an account of transactions under the contract, and the other for damages for the breach of it,—cannot form the subject of equitable set-off, nor will equity restrain an action for these damages till those accounts are taken. In *Hamilton* v. *Banting*, 13 Gr. 484, the late Chancellor (Vankoughnet) refused in a suit for the foreclosure of a mortgage given by the purchaser for a part of the price, to direct an inquiry and set-off as to the loss sustained by the partial failure of title and by incumbrances and charges on the land sold. These claims, he held, did not form a proper subject of set-off to the amount secured by the mortgage. But he goes on to observe: "I regret to find that such is the state of the law. The tendency of all modern decisions is to avoid, as far as possible, circuity of action, and I do not see why, when the cross-claims spring out of the one transaction, they should not be disposed of in the one suit. This Court has as difficult matters of calculation as those raised here to dispose of every day, and it seems hard that the defendant should be forced to go to law to ascertain the amount of the set-off, which, it seems to me, he must have the right to claim eventually in reduction of the plaintiff's mortgage."