

and the misrepresentation being material was fatal to the contracts. *Cerr v. Ancient Order of Foresters* (1898) 25 A. R. 22 followed.

On appeal to a Divisional Court.

Held, that as the matter was not one of pedigree, hearsay evidence should not have been received; that there was a novation and a new contract of insurance between the American company and the assured which came into effect and existence after the Ontario statute of 1892, as the former were validly doing business in Canada, being licensed under R.S.O. c. 124, s. 39. That the completion of the contract by the signature of the agent in Canada made the contract subject to Canadian law; that the association doing business in Canada must be subject to statutory conditions imposed for the benefit of the public, and that the claimant was entitled to the benefit of ss. 33 and 34 of 55 Vict., c. 39 (O). Judgment of the Master in Ordinary reversed.

Marsh, Q.C., for Robert Allan. *H. R. Smyth*, for Harriet O'Dea. *Watson*, Q.C., for liquidator.

Meradith, C.J., Rose, J.] LEEMING v. ARMITAGE.

[June 16.

Judgment—Setting aside—Fraud—Procedure—Petition—Action—Rule 642

In this action the plaintiff alleged a wrongful interference with his property under a judgment obtained against him by the defendant by fraud in a former action in the High Court of Justice for Ontario, and his claim was to have the judgment set aside and to recover damages for the wrong. Rule 642 provides that a party entitled to impeach a judgment on the ground of fraud shall proceed by petition in the cause.

Held, that the provisions of the Rule were not applicable to this case, and were only applicable to and imperative, if imperative at all, in a simple case where no consequent relief is sought, or, if sought, where it may be granted upon the petition in the original action.

Tietzel, Q.C., for plaintiff. *Monro Grier*, for defendant.

Armour, C.J.]

HOFFMAN v. CRERAR.

[June 16.

Judgment—Default—Writ of summons—Special endorsement—Nullity—Abandonment of action—Joint contractors—Release of some after judgment—Effect of—Costs—Amendment—Execution.

The writ of summons was indorsed with a claim for \$404 for service rendered and money expended for the defendants, indicating the nature of the services and of the expenditure, but not the items;

Held, not a special endorsement, and that there was no right to sign final judgments thereon for non-appearance of certain of the defendants, and the judgments which the plaintiffs purported to sign were nullities, and the plaintiffs by proceeding against the other defendants without taking any