

this case was not actually a party to the suit, and that the creditors were virtually the plaintiffs, and that the assignee was merely acting as their attorney by a special provision of the law.

His Honour, in deciding on the objection, said that without adopting all the reasons contained in the objection of the defendants, he held that a plaintiff cannot under our law be examined as a witness for the plaintiff, in an action brought by himself. Under our law, he explained, the rule of the Roman law, that a plaintiff could not be examined in his own behalf, was still in force, and to be followed in this case. A plaintiff cannot be a witness for himself in his own case, and nothing had been shewn to support such a proceeding. His Honour quoted the case of *Battersby v. The City of Montreal*, in which a similar motion was taken *en délibéré* 14 Oct. 1876, and maintained.

Mr. Laflamme said this was an important suit, and as there were still some points he would like to urge he would respectfully move, "that seeing the decision rendered this day, the plaintiff declares his intention to appeal from this judgment, and that the case be suspended until an application be made to the Court of Appeals on 11th June next."

Mr. Benjamin objected on the ground that the trial was virtually a jury trial, and such being the case the trial must proceed.

PER CURIAM. I think this is a case in which I should grant the motion.

Motion granted.

Laflamme, Q.C., for plaintiff.

L. N. Benjamin, for defendant.

#### SUPERIOR COURT.

MONTREAL, May 14, 1881.

Before TORRANCE, J.

CROWLEY V. CHRETIEN.

*Sale—Lesion—Circumstances amounting to fraud.*

*Where part of the price of immovables consisted of a number of shares really worthless but to which a fictitious value had been affixed by fraudulent means within the knowledge of the transferor, the sale was set aside at the suit of the purchaser.*

This was an action to set aside a deed of sale of land made by Crowley to Chretien on the 21st July, 1880. Part of the consideration was two *hypothèques*, one due to the Royal Institution for \$3,400, and the other to the Dundee Trust

and Investment Co. for \$4,500; and the balance of \$8,100 was declared by the deed to have been paid to Crowley by the delivery to him of 81 shares in the capital of a corporation called the Silver Plume Mining Company, of the par value of \$100 each share.

The complaint was that Crowley had been induced to accept of the shares by *dol* and fraudulent manœuvres on the part of Chretien.

The plea set up *litispence* in an action No. 709 hereafter to be referred to, and it was followed by the general issue.

The plaintiff had answered in law to the plea of *litispence*, and the decision on the law hearing had been reserved.

PER CURIAM. I may as well here dispose of the law hearing by deciding that the plea of *litispence* is not made out. Next, as to the merits of the action. The main issue is the charge of fraud brought against the defendant Chretien by which Crowley was induced, he says, to accept of eighty-one shares in the Silver Plume Mining Company for \$8,100. This company represented itself to be a corporation, but this Court has already decided that it was not so, by its judgment of date 15th March, 1881. It obtained a place on the stock exchange with a nominal capital of \$1,000,000. It had cost its shareholders \$15,000. Crowley says that fraudulent means were made use of to make the stock appear to be worth 72½ cents in the dollar, when in reality it was worthless. It is clear that the bargain was based upon the assumption that the stock had a commercial value, and that the quotations at the Stock Exchange were *bona fide*. Chretien is accused of having obtained Crowley's property, for what was not a real but only a nominal consideration, and to have arrived at this result by fraudulent means. There is no doubt in my mind that there was error as to the price in the mind of Crowley, for he imagined that he was obtaining the stock of a corporation regularly quoted on the Stock Exchange and having a commercial value, when no corporation, no *bona fide* quotation and no commercial value existed. Error and lesion as well as fraud are relied upon by Crowley. It was said against Crowley that Chretien was not responsible for the acts of Parent, unless they were immediately connected with the sale at the date of its execution. But Parent received \$10,000 of the stock for his