

## COURT OF QUEEN'S BENCH.

MONTREAL, January 19, 1882.

DORION, C. J., RAMSAY, CROSS, &amp; BABY, JJ.

CHRETIEN (deft. below), Appellant, &amp; CROWLEY (plff. below), Respondent.

*Consolidation of Causes—Principal and Agent—Misrepresentation.**A suit instituted under the Lessors and Lessees' Act may be united with a cause proceeding between the parties under the ordinary jurisdiction of the Superior Court, in which the same question is involved.**Where an agent in making a contract suppressed a material fact within his knowledge, his principal cannot profit by the fraud, although he was himself ignorant of the fact suppressed.**Where shares were sold, purporting to be the shares of an incorporated company, when, in fact, no such corporation was in existence, the error into which the purchaser was led was sufficient to annul the contract.*

The appeal was from a judgment of the Superior Court, Montreal, Torrance, J., which will be found at p. 171 of vol. 4, Legal News.

RAMSAY, J. The appellant sued the respondent under the provisions of the Lessor and Lessees' Act for rent, and in expulsion from certain premises leased to respondent by appellant by deed of lease dated 21st July, 1880. The respondent met this application by a plea in which he, in effect, set forth that the deed of lease resulted from a deed of sale made on the same date, of the house mentioned in the deed of lease and of other property, and which he was induced to make by the fraud of appellant, that the deed of sale ought to be declared null, and that it being declared null the lease also must fall, and with it appellant's demand for rent and in expulsion. Respondent also brought a direct action to set aside the deed of sale as regards all the property so sold by him to appellant, alleging the same fraud. Both cases were in the Superior Court, and both came at the same time before the same judge, the case under the Lessor and Lessees' Act on the merits, and the suit to set aside the deed of sale, on a demurrer to a plea of litiſpendence. Seeing that the cases involved the same question, and that they should have the same fate, the learned judge in the Court below ordered them to be united, and that they should proceed together.

There can be no doubt as to the equity of the order, but the authority of the judge to make it is questioned. The appellant says: that the jurisdiction of the Superior Court acting under the provisions of the Lessor and Lessees' Act differs from the ordinary jurisdiction of that Court, that the delays are different, that an action in nullity could not be brought under the special Act and with these delays, and that the two issues cannot be mixed because of their different mode of trial.

I think appellant is wrong in the foundation of his argument. The Superior Court proceeding under the Lessors and Lessees' Act is exercising the same jurisdiction as in every other case. By certain rules of procedure it in certain cases proceeds summarily, and in other cases less expeditiously, but it remains the same Court, just as the jurisdiction is the same whether the proceedings begin by a *capias* or by a writ of summons. The mode of exercising the jurisdiction only is different. This being the case, in what does appellant suffer? If he had been compelled to proceed in the action in nullity on the short delays of the Lessors and Lessees' Act, he would have had a serious ground of complaint; but all that has happened to him is that he has been hindered from snatching a judgment under that Act, without affording the fuller information which the judge required in order to guide him to a safe conclusion. Again, I think it is unimportant whether the judge united the cases on his own movement or by consent of the parties, and it is equally unimportant whether he united them from information gained on an incident where the appellant must succeed or the reverse. Again, if the action under the Lessors and Lessees' Act ought to have been brought in the Circuit Court, it is no reason why it should not proceed *pari passu* with an action properly instituted in the Superior Court. It is also clear that if the Superior Court had no jurisdiction *ratione materie* over the case under the Lessors and Lessees' Act, it was an additional reason for dismissing the action.

On the merits, the alleged fraud consisted in appellant having given by machinations to which he was a party, a false value to certain shares of the Silver Plume Mining Company.

The whole question resolves itself into one of fact, and a very narrow one; namely whether the