

on s. 25(5) of the Judicature Act, ((Ont. Jud. Act, s. 58(4)), as entitling the plaintiff to sue, but the learned judge held (as the Court of Appeal found, rightly) that that section did not apply to actions for breach of covenant to repair; but in the Court of Appeal the plaintiff relied on the provisions of the Conveyancing and Property Act, 1881, s. 10, as enabling the plaintiff to maintain the action. That section provides that the "benefit of every covenant" contained in a lease having reference to the subject matter thereof shall be annexed to and go with the reversionary estate in the land immediately expectant on the term, and shall be capable of being enforced by the person for the time being entitled to the income of the land leased and under that provision, the Court of Appeal held that the plaintiff was entitled to maintain the action in his own name, notwithstanding the mortgage.

PRINCIPAL AND AGENT—SHIP BROKER—CHARTER-PARTY — CONTRACT MADE BY PERSON MISREPRESENTING HIMSELF AS AGENT —RIGHT OF PERSON CALLING HIMSELF AGENT, TO SUE AS PRINCIPAL—COSTS.

*Harper v. Vigers* (1909) 2 K.B. 549. In this case the plaintiffs who were ship brokers in February, 1908, entered into a contract misrepresenting themselves as agents of an undisclosed principal to furnish a steamer to carry a cargo for defendants at a specified rate. The plaintiffs were not in fact agents for anyone, but were themselves the principals. In May, 1908, they entered into a contract of charter-party with the owners of the steamer "Hektos" for the carriage of the cargo of the defendants representing themselves as agents for the merchants and inserted the name of the defendants as the charterers, the freight agreed to be paid being less than that named in the contract of February, 1908. The cargo was duly consigned and delivered by the "Hektos," and the defendants then claimed that they were only liable to pay the freight payable under the charter-party of May, 1908. The present action was brought therefore to recover the difference, and it was contended that the plaintiffs having purported to make the contracts of February and May as agents were not entitled to sue as principals. Pickford, J., who tried the action, held that the plaintiffs being in fact themselves principals were entitled to sue, but inasmuch as, but for the misrepresentation, he considered it probable that the defendants would not have entered into the contract, he refused to give the plaintiffs costs as against the defendants.