

1897
 *Oct. 9.
 *Oct. 12.

LOUIS *alias* WILFRID DUROCHER.....PETITIONER ;
 AND
 LOUIS DUROCHER.....RESPONDENT.

Petition in revocation of judgment — Requête civile — Concealment of evidence—Jurisdiction—C. P. Q. art. 1177—R. S. C. c. 135, s. 67.

Where judgment on a case in appeal has been rendered by the Supreme Court of Canada and certified to the proper officer of the court of original jurisdiction, the Supreme Court has no jurisdiction to entertain a petition (*requête civile*) for revocation of its judgment on the ground that the opposite party succeeded by the fraudulent concealment of evidence.

PETITION by way of *requête civile* to have a judgment of this court, pronounced on 1st May, 1897, set aside and the proceedings in the cause re-opened.

The petitioner was plaintiff and appellant in the case decided on 1st May, 1897, in the report of which (1) will be found a statement of the matters there in issue. The petition in revocation (*requête civile*) now presented asks to have the judgment of the Supreme Court of Canada and of the courts below set aside on the ground that the dismissal of a petitory action brought by the petitioner had been obtained through fraudulent concealment by the respondent of a deed of lands, which the petitioner had discovered only since the judgments were rendered. Prior to the presentation of the petition, the certified judgment of the Supreme Court of Canada had been transmitted to the court of original jurisdiction under the provisions of the sixty-seventh section of "The Supreme and Exchequer Courts Act."

Belcourt for the petitioner, quoted C. P. Q. arts. 505 and 1177; R. S. C. c. 135, ss. 59, 61, 96 & 98; and cited *Cooke v. Caron* (2).

*PRESENT :—Taschereau, Gwynne, Sedgewick, King and Girouard JJ.

(1) 27 Can. S.C.R. 363.

(2) 11 Q. L. R. 268.

Geoffrion Q.C. for the respondent. So far, at least, as this court is concerned, the judgment in question is final and conclusive, between all parties and privies, as to material facts; C. C. P. arts. 505 to 509 and art. 1166; See also *Law v. Hansen*, (1); and cases cited by Mignault (2) at 505 C. C. P. also R. S. C. c. 135 s. 67. The petition cannot be entertained.

1897
 DUROCHER
 v.
 DUROCHER.

The judgment of the court was delivered by :

TASCHEREAU J.—The appellant, in 1894, brought a petitory action against the defendant. His action was dismissed by the Superior Court and the Court of Appeal in Montreal, by a judgment which was confirmed by this court in May last. The case is reported at page 363 of vol. 27, Supreme Court Reports, where the details fully appear. The appellant now seeks to set aside the judgment of this court, and the judgments against him in the courts below, by a *requête civile*, under article 1177 of the new Code of Civil Procedure. The conclusions of his petition are :

That by the judgment to be rendered upon this present petition, he will be held and declared to be the proprietor of five-twelfths of the lot above described, and bearing the number 22 of the official plan and book of reference for St. Louis Ward of the City of Montreal, as he would have been so held and declared, pursuant to the conclusions of his said action, cited in the course of the proceedings taken on the present petition, had the defendant declared the truth at the trial, and the judgment of the Superior Court of the District of Montreal, rendered in this suit on the thirteenth of April, one thousand eight hundred and ninety-five, the judgment of the Court of Queen's Bench sitting in appeal side for the District of Montreal, rendered in this suit on the twenty-ninth of October, one thousand eight hundred and ninety-six, and the judgment of the Supreme Court of Canada, rendered on or about the first day of May last (1897) be considered as not having been rendered, and be set aside and annulled.

The ground upon which this petition is based is that he has since the judgment of this court discovered a

(1) 25 Can. S.C.R. 69.

(2) Code de Procédure Civile (annoté).

1897
 DUROCHER
 v.
 DUROCHER.
 —
 Taschereau
 J.
 —

deed of the 25th November, 1867, which said deed, he alleges, was fraudulently concealed by the respondent, and that it is by fraud that the respondent obtained the dismissal of appellant's action.

Without entering upon the merits in law of the allegations of the petition, or upon their sufficiency or insufficiency, if proved, to support a *requête civile*, we dismiss it upon the simple ground that we have no jurisdiction to entertain it.

Section 67 of The Supreme Court Act enacts that:—

The judgment of the Supreme Court in appeal shall be certified by the registrar of the court to the proper officer of the court of original jurisdiction, who shall thereupon make all proper and necessary entries thereof, and all subsequent proceedings may be taken thereupon as if the judgment had been given and pronounced in the said last mentioned court.

Now, in this case, the judgment and the record have been sent back to the Superior Court at Montreal, and this court has now no jurisdiction over it of the nature of the remedy asked for by the petitioner. We do not, of course, determine whether the Superior Court has, or has not, in this case, upon the allegations of the petitioner, jurisdiction to entertain his demand. We determine nothing but that we have no jurisdiction.

There are cases in which this court has, as every court must have, power to annul errors in its own judgments, as we did for instance, in *Rattray v. Young* (1), but this is clearly not one of them. See also *Providence Washington Insurance Co. v. Gerow* (2); and *Dawson v. Macdonald* (3).

Petition dismissed with costs.

Solicitors for the petitioner: *Robidoux, Chênevert & Robillard.*

Solicitors for the respondent: *Geoffrion, Dorion & Allan.*

(1) Cass. Dig. 2 ed. 692.

(2) 14 Can. S. C. R. 731.

(3) Cass. Dig. 2 ed. 587.