

LENNOX, J.

JUNE 28TH, 1915.

JOHNSTON v. HAYNES.

*Fraud and Misrepresentation—Recovery of Moneys Obtained by
—Statute of Limitations—Rescission—Amendment.*

Action to recover a number of sums aggregating \$29,000 paid by the plaintiff to the defendant, the plaintiff alleging false and fraudulent representations by which he was induced to pay over the money, and also to recover interest upon the sums from the dates at which they were respectively paid.

The action was tried without a jury at Toronto.

W. J. Elliott and H. D. Anger, for the plaintiff.

R. McKay, K.C., for the defendant.

LENNOX, J., in a considered judgment, found that every dollar of the total sum in question was obtained by the defendant from the plaintiff dishonestly and in pursuance of a fraudulent scheme, and upon material and false and fraudulent allegations knowingly made by the defendant with the intention to mislead; and that the plaintiff relied and acted upon these false statement, believing them to be true.

The defendant set up the Statute of Limitations, and contended that it ran against the plaintiff whether it was a case of undiscovered fraud or concealed fraud, and cited *Dixon v. Jarvis* (1839), 5 O.S. 694; *Gibbs v. Guild* (1882), 9 Q.B.D. 59 (C.A.); *Osgood v. Sunderland* (1914), 30 Times L.R. 530; and *Oelkers v. Ellis*, [1914] 2 K.B. 139.

The learned Judge pointed out the distinction between the common law and equity which existed before the Judicature Act; and said that as to all actions in which the Courts of law and equity had concurrent jurisdiction, as they had in an action such as this, the effect of the Statute of Limitations was, since the Judicature Act, to be governed by the law enunciated by Courts of equity; and the decision in *Oelkers v. Ellis* was in harmony with this.

This action was in effect for rescission, although the prayer of the statement of claim was not specifically for rescission; and an amendment should be permitted.

The Statute of Limitations did not avail the defendant, the whole basis of the action being fraud.