

under "The Fatal Accidents Act, in the County Court of the County of York, Ontario, and heard before Denton, Co. J., turned upon this point.

The plaintiff in this action sued on behalf of herself and others for \$10,000 damages for the death of her husband, who was killed over two years before the action was commenced. The defendant pleaded that the action was barred by section 6 of the Fatal Accidents Act, which is as follows: "Not more than one action shall lie for and in respect of the same subject matter of complaint, and every such action shall be commenced within twelve months after the death of the deceased and not afterwards."

In her reply the plaintiff set up fraud. Particulars of the alleged fraud were served, and a rejoinder delivered. The pleadings were followed by a motion to dismiss the action, which was successful. The learned Judge found that the matters enumerated in the particulars delivered did not constitute fraud. He did not think it necessary to pass upon the argument that the restriction as to when action must be brought is not to operate as a Statute of Limitations, so as to be a time limitation upon the remedy; but is rather a qualification of the right of action. He based his judgment on the higher ground that even if this restriction is a Statute of Limitations, and even if the defendant had been guilty of fraud, the plaintiff could not set up the fraud as a reply to the defence that the action had not been brought in time. The learned Judge expressly followed the decision in *Osgoode v. Sunderland*, holding this action to be a purely Common Law action, and the plaintiff therefore to be unable to set up the fraud if there had been any. Thus we find that even in our own day and generation it is sometimes of importance to consider what is really the nature and origin of our cause of action.

CECIL CARRICK.

[It may be well to note that the Statute of Limitation referred to by our contributor is the statute of James, and is not the Real Property Limitation Act, nor the provision therein contained in reference to concealed fraud. (See R.S.O., ch. 75 sec. 32).—EDITOR.]