

the year; that is, on the 22nd of November, 1912. It is endorsed laconically that the plaintiff's claim is for damages for negligence. The statement of claim, not delivered until the 10th of December—after the expiry of the year—is the first intimation that the claim is for anything other than personal injury to the plaintiff himself.

On the 2nd November, 1912, the father and mother, in consideration of one dollar, assigned to the plaintiff all damages they were entitled to receive by reason of the death of the brother; as his absolute property. It is conceded that this assignment is inoperative; and it is not referred to in the statement of claim. On the same day the father and mother constituted the plaintiff their attorney to sue to recover the damages in question. It is said that the existence of this document makes this suit by the father and mother. In the alternative it is said that the plaintiff will, if the action is delayed until he is of age, apply for letters of administration to the estate of his deceased brother and that his title as administrator will relate back to the death.

I do not think that either of these contentions is entitled to prevail. The person in whom the cause of action is vested, and not his attorney or agent, must be the plaintiff.

*Dini v. Farquhar*, 8 O. L. R. 712, undoubtedly determines that where the plaintiff brings his action as administrator it is sufficient to support the action if he can produce letters of administration issued at any time before the trial; the administration relating back to the death; but it is clear from all the cases cited that it is essential that the action should have been brought as administrator; the production of the letters of administration being merely proof that at the hearing the plaintiff fills the representative character alleged. There is no case which goes to shew that a plaintiff suing in his own right can succeed upon a cause of action vested in the administrator of another, merely because he produces at the hearing letters of administration constituting him the administrator of that other.

The plaintiff is an infant suing by next friend; and, as I understand the practice, such form of suit is only authorised with respect to an action where the right is vested in the infant personally. This plaintiff has no right, as he is not within the provisions of the statute.