

had been made they would have had no effect in preventing the accident. The defendants appear also to have discharged their duty in the instructions and oversight they gave to the plaintiff. The case appears to me to be an even stronger one in the defendants' favour than that of *Williams v. Western Planing Mills Co.* (1910), 16 W.L.R. 13, in which this Court held there was no negligence shewn, in that, in the present case, a more probable inference of the nature of the accident can be made.

Having failed to establish negligence the plaintiff's counsel applied under sec. 3, sub-sec. 4, of the Workmen's Compensation Act (ch. 12, 1908). This application was refused on the ground that the Court's jurisdiction to fix compensation was limited to cases in which the action had been brought within six months of the date of the accident, being the time prescribed by sec. 4 within which the claim for compensation under the Act is to be made. The Act distinctly provides (sec. 3, sub-sec. 2(6)) that an injured person may either claim compensation under the Act or may claim damages for negligence without regard to the Act. It also provides (sec. 3, sub-sec. 4), that, if having elected the second alternative and having failed on that, he may still ask for compensation, but only on the conditions mentioned, namely, if the action is brought within the time limited by the Act for taking proceedings. The only limit of time fixed by the Act is that in the next section, which provides for a notice of accident, as soon as practicable, and a claim for compensation within six months. In *Powell v. Main Colliery Co.*, [1900] A.C. 366, it was held that the making of an informal claim for compensation within six months was a sufficient commencement of proceedings and in *Cribb v. Kynoch, Ltd.* (No. 2), [1908] 2 K.B. 551, the opinion was expressed that in an action such as this begun after the six months the Judge would have no jurisdiction to fix compensation under the Act, the English Act being in the same terms. It is urged that this opinion being *obiter* is not binding on this Court. I should hesitate, however, to disregard the opinion of the Judges of the Court of Appeal, even though I held a different view, but I have no hesitation in accepting it when it appears to me the only reasonable interpretation that can be given to the wording of the provision.

The appeal should be dismissed with costs.

SCOTT and SIMMONS, JJ., concurred with HARVEY, C.J.

BECK, J.:—The learned trial Judge stated that he rests his judgment on the question of negligence on the ground that "it was not established to his satisfaction that the accident would not have occurred if the guard, which is now there, had been there when the accident happened." The learned Judge in an earlier place says that with a good deal of hesitation he had

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WALTERS,

LIMITED.

HARVEY, C.J.