

SMOLIK v. JOHN WALTERS, Limited.

*Alberta Supreme Court, Harvey, C.J., Scott, Beck and Simmons, JJ.
February 3, 1912.*

ALTA.

S.C.

1912

Feb. 3.

1. MASTER AND SERVANT (§ 11 A—70)—DUTY TO GUARD DANGEROUS MACHINERY—USE OF GUARD IN OTHER LOCALITIES.

Apart from any statutory obligation, no negligence is shewn on the part of an employer by his failure to place a guard on a dangerous machine where its presence would not have avoided the accident for which suit was brought, though such guard was afterwards placed on the machine, and it appeared that guards had been used in other localities prior to the accident.

[*Williams v. Western Planing Mills Co.*, 16 W.L.R. 13, specially referred to.]

2. LIMITATION OF ACTIONS (§ 11 F—131)—WORKMEN'S COMPENSATION—RIGHT TO COMPENSATION AFTER FAILURE OF ACTION FOR NEGLIGENCE.

Under the Alberta Workmen's Compensation Act, providing that a claim for compensation thereunder must be made within six months from the occurrence of the accident causing the injury and permitting the injured person notwithstanding his failure in an action for negligence to ask for compensation provided the action is brought within the time limited by the Act for taking proceedings, no compensation can be fixed by the Court in an action begun more than six months after the accident.

[*Cribb v. Kynoch, Ltd.* (No. 2), [1908] 2 K.B. 551, followed.]

APPEAL from the judgment of Stuart, J., dismissing the plaintiff's action for negligence and declining to assess compensation under the Workmen's Compensation Act.

The appeal was dismissed.

H. A. Mackie, for plaintiff, appellant.

G. B. Henwood, for defendant, respondent.

HARVEY, C.J.:—The plaintiff while operating a lath machine in the saw mill of defendants was injured by being struck in the eye whereby he lost the sight of his eye. The action is for damages for negligence and was dismissed by my brother Stuart, who came to the conclusion that no negligence had been shewn.

The lath machine in question consisted of several saws which sawed up into laths bolts of wood which being started by the operator under a feed roller were fed by it to the saw. The plaintiff was engaged in operating this machine at the feeding end, his work requiring him to place the end of the bolt of wood on the feeding table up immediately against the end of a bolt being fed under the feed roller so that there would be a continuous line of bolts passing through. To obtain the bolts to place on the table he was required to reach over to where they were, in which act he would bend his whole body. While in the act of reaching the accident occurred. No one saw it but the plaintiff and naturally he can give no very clear account of it, but the conclusion apparently reached by the only expert called by the plaintiff, and which seems, on the evidence, to be probably correct, is that for some reason the bolt was forced back by the saws under the feed roller (the plaintiff says it was