

to the amount of damages, the defendants set up that no notice in respect of the injury was delivered to them in the form and manner required by sec. 13 of the Workmen's Compensation for Injuries Act.

The objection was not raised upon the former appeal, although the award of damages was manifestly based upon the Act; and, no doubt, the reason was, that the defendants had precluded themselves from making the objection by the arrangement made at the trial upon which the trial Judge entered judgment in their favour.

The objection was raised at the last trial, but was not finally dealt with by the learned Chancellor, for the reason, no doubt, that the amount of the damages awarded indicated that the case was not treated as one within the Workmen's Compensation Act.

It was contended for the plaintiff, before the learned Chancellor, that the circumstances shewn in evidence afforded reasonable excuse for the want or insufficiency of the notice. Whether this was so or not is a question that may be determined upon the appeal, if not earlier decided: sec. 13, sub-sec. 5.

There is no question that the defendants were not prejudiced in their defence by the want of the notice. Reports were made to them on the day of the accident by their officials, giving full details. Statements were obtained from the plaintiff giving his version of the affair within 6 days of the accident, and other reports and statements were received within 8 weeks of the accident. In addition, there are many circumstances shewn which make it proper to say at this stage of the case that reasonable excuse has been shewn, and that the defendants have not been prejudiced by the want or insufficiency of the notice.

There was evidence as to the manner of the construction and placing of the switch-stand and target with relation to the line of the rails, and also as to the effect of user and want of repair resulting therefrom, and from the sinking of the tie at the rail, and the neglect to restore the stand and target to their proper position and condition. Upon a question or direction addressed to the jury to state the manner and cause of the plaintiff's injury as follows: "3 . . . State in your own way how the plaintiff was injured?" they answered: "We find that the conductor coming down just at that point attracted the attention of the plaintiff, causing him to bend out, and, the target and stand being out of repair, struck him, causing him to be thrown off."