

It is not, however, in the result, necessary to discuss at any length this point of view, because it seems to me that the plaintiff must fail upon the question of the want of notice.

The right to recover damages caused by the negligence of a fellow-servant is, of course, based entirely upon the statute; and that right is conferred upon condition (sec. 9) that notice that injury has been sustained is given within 12 weeks, and the action commenced within 6 months from the occurrence of the accident, or, in case of death, within 12 months from the time of death, provided that in case of death the want of such notice shall be no bar to the maintenance of the action, if the Judge shall be of the opinion that there was a reasonable excuse for such want of notice: see also secs. 13 and 14.

The death occurred on 19th September, 1907. The plaintiff heard of it on 7th November, 1907, while at Kenora in this province. He came to Toronto on 5th December, 1907, and, not later than 7th December, had consulted his present solicitor and instructed him to obtain a settlement of the claim, or in default to bring suit.

The time for giving the notice did not expire until 12th December, 1907, and, however sufficient the excuse may have been for the time lost before the solicitor was instructed, after that it would be entirely another matter. The interval from the 7th to the 12th was, of course, ample in which to have given the notice, and the only excuse offered for not having done so during that interval is the solicitor's mistaken idea that he could not give the notice until he had obtained leters of administration.

The question, therefore, really resolves itself into this: is ignorance of the law a "reasonable excuse," which question must, I think, be answered in the negative, if any useful effect is to be given to the provision.

In *O'Connor v. City of Hamilton*, 10 O. L. R. 529, at p. 536, 6 O. W. R. 227, 231, Osler, J.A., says: "In the present case it is enough to say that the plaintiff was not misled by any one into not giving notice, and was under no disability except that of ignorance (of the law), which can hardly be invoked as excuse for omitting to observe the requirements of the Act." The question there, it is true, arose under the Municipal Act, in which it is said the requirements as to notice are somewhat more strict than under the Workmen's Compensation for Injuries Act (see *Armstrong v. Canada Atlantic R. W. Co.*, 4 O. L. R. 560, 1 O. W. R. 612); but