

(c) *Service in case of death.*—Where suit is brought under sec. 2 of the Massachusetts Act, the notice may be given by the widow (e). The amendment added to that Act by Laws, 1888, ch. 155, provides for the service of notice, in case of the death of the injured person, by his executor or administrator (f). The construction placed upon this provision is that, where the action is brought under sec. 2 of the Act, the widow may give the notice, the ground taken being that, as the action there specified is not maintainable by the executor or administrator, it cannot be implied that one or other should be appointed merely for the purpose of giving the notice (g).

(d) *Excuses for failing to serve the notice.*—Under the English and Colonial statutes the want of notice is not fatal to the right of action if there was a "reasonable excuse" for the failure to serve it. Want of notice has been excused on the ground that the widow of the deceased man was in an advanced state of pregnancy, and so excited in mind that the doctor ordered that she should not be consulted on the subject (h); on the ground that the plaintiff had been a long time in the hospital, and was not in a fit state to proceed with the action (i); and on the ground that negotiations for a settlement between the widow of the injured employé and the employer within six weeks after the accident, and letters of administration were not granted to her till nearly eight months after the accident (j). On the other hand, it is clear that the plaintiff's ignorance of the fact that it was necessary to give the notice does not constitute a reasonable excuse within the meaning of the proviso (k). It has been held in Scotland that no action can be maintained, although the party bringing the suit alleges that he was an old man and illiterate, and that it was not known whether the deceased would survive and bring suit himself (l).

(e) *Gustafsen v. Washburn &c. Co.* (1892) 153 Mass. 468.

(f) See *Daley v. New Jersey &c. Co.* (1891) 153 Mass. 1; *Jones v. Boston &c. R. Co.* (1892) 157 Mass. 51.

(g) *Gustafsen v. Washburn &c. Co.* (1891) 153 Mass. 468.

(h) *Bromley v. Oldham*, an unreported case cited in Ruegg on Empl. Liab. (3rd ed.) p. 60.

(i) *Miller v. Dalgety* (New So. Wales 1884) 1 W.N. 164, 2 W.N. 17.

(j) *Bulman v. Robertsen* (New So. Wales 1887) 4 W.N. 131.

(k) *Ex parte Hannan* (1897) 18 New So. Wales, L.R. (L.) 422.

(l) *McFadgen v. Dalmellington* (1897) 24 Sc. Sess. Cas. (4th Ser.) 327. [Son died a fortnight after accident, and notice was three days too late.]