

ALTA.

S.C.

1912

SMOLIK

v.

JOHN
WALTERS,
LIMITED.

Beck, J.

claim (*i.e.*, a claim for compensation as distinguished from notice of accident) within the period above specified (*i.e.*, six months from the occurrence of the accident) shall not be a bar to the maintenance of such proceedings (*i.e.*, "proceedings for the recovery under this Act of compensation") if it is found that the failure was occasioned by mistake, absence from the province or other reasonable cause: see *Roberts v. The Crystal Palace Football Club*, 3 Butt. W.C.C. 51 (C.A.).

Cribb v. Kynoch, Ltd. (No. 2), [1908] 2 K.B. 551 (C.A.), held that the latter proviso could not be given effect to, so as to sustain proceedings under the Act after the dismissal of an action for negligence in respect of the same occurrence.

It would seem that all the members of the Court were of opinion that, as was the case there, the action having been brought after the lapse of six months from the occurrence of the accident, the plaintiff had had no right to have an assessment of compensation under the Act made in the action inasmuch as that right is given only under sec. 3, sub-sec. (4), wherein that right is limited "if, within the time hereinafter in this Act limited for taking proceedings (*i.e.*, under the Act) an action is brought to recover damages independently of the Act. The question was not before the Court whether the words "within the time hereinafter . . . limited" refer solely to the words "six months" occurring in sec. 4, or embrace also the words of the proviso (*b*) (which I have already quoted) to that section, whereby it is provided that the failure to make a claim "within the period specified above shall not be a bar, if it is found (as a fact) that the failure was occasioned by mistake, etc. With some little hesitation I have come to the conclusion that in order to entitle a plaintiff to an assessment of damages in an action, the action must be brought within six months of the occurrence of the accident, and that there is not in the Act anything which for that purpose extends that period or enables it to be extended. The plaintiff's action was brought after the lapse of six months from the occurrence of the accident, and on this ground, therefore, I concur in the opinion that he cannot succeed in his claim for compensation under the Act.

Appeal dismissed.

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