

SUTHERLAND, J.

JANUARY 10TH, 1914.

## KOSTENKO v. O'BRIEN.

*Master and Servant—Injury to Servant—Negligence — Defective System—Cause of Injury—Finding of Fact by Trial Judge—Damages.*

Action for damages for injuries sustained by the plaintiff while working for the defendants, owing to the negligence of the defendants, as alleged.

The action was tried without a jury at Port Arthur on the 15th December, 1913.

A. G. Slaght, for the plaintiff.

T. W. McGarry, K.C., for the defendants.

SUTHERLAND, J.:—While a claim under the Workmen's Compensation for Injuries Act was set up in the statement of claim, it was admitted at the trial that, as no notice that the injury had been sustained had been given within the time limited by that Act, and the action itself had been commenced too late, the plaintiff could have no remedy thereunder.

At the conclusion of the argument, I disposed of the general facts and fixed the damages at \$900, in case I should determine that the plaintiff was entitled to succeed at common law. I reserved judgment mainly to consider whether, upon the evidence, it could be held that the defendants were doing their work under a defective system, and that the accident resulted in consequence thereof, but also to enable counsel to put in additional authorities.

The system under which the defendants were carrying on their work was discussed by me in dealing with the general facts of the case. The work which the plaintiff was directed to do, and was doing at the time of the accident, namely, assisting other men in carrying the logs from the pile to the dump, was a part of the system adopted by the defendants in carrying out their construction contract, as was the work of those who were felling the trees.

For the defendants to perform their work in such a way as that trees would be felled so close to as to fall across the paths along which men were obliged to carry logs, and thus make it likely that the trees would fall upon the men, without any super-