

the navigation company made a perfectly legitimate, honest, and usual agreement; they spent money on the strength of it; they are guilty of no fraud or impropriety; they are unquestionably entitled to the property unless their solicitors have made a slip in preparing documents. I think they would have every reason to complain if a slip of the solicitors of their opponent were healed by the Court to take advantage of a slip of their own solicitors which the Court cannot heal.

Of course, I could not limit the appeal to the one ground, which would not dispose of the case; the Court of Appeal has quite enough to do to give actual litigants their rights in actions properly before it, without taking up academical questions—at all events, if that be desired the initiative must come from another source.

The motion will be dismissed with costs.

HON. MR. JUSTICE BRITTON.

OCTOBER 24TH, 1912.

*QUIST v. SERPENT RIVER LOGGING CO.*

4 O. W. N. 159.

*Negligence—Master and Servant—Notice of Injury—Failure to give Within Proper Time—Reasonable Excuse—Mistake as to Name of Master—Absence of Prejudice—R. S. O. (1897), c. 160, ss. 9, 13, 14.*

BRITTON, J., *held*, that where plaintiff, a foreigner, had been confined to the hospital following upon a dynamite explosion by which he had lost his eyesight, and had through ignorance erroneously instructed his solicitors as to the name of his employers thus causing them to serve notice of accident upon the wrong parties, there was reasonable excuse for want of notice and defendants had not been prejudiced thereby as their foreman knew of the accident and all their witnesses were available, and that therefore the jury having found negligence plaintiff was entitled to recover.

Tried at Sault Ste. Marie, with a jury.

W. A. Henderson, for the plaintiff.

J. E. Irving, for the defendants.

HON. MR. JUSTICE BRITTON:—The plaintiff was a workman in the employ of the defendants. The defendants were constructing a road—over which, it was their intention to haul timber from limits owned by them. In the construction of this road, it was necessary to remove rock by blasting. The plaintiff alleges that he was inexperienced in the