

vide reason-
 oming to this
 r with regard
 ich, with due
 d which the
 hinery after
 guard as that
 , particularly
 ception. He

en that in this
 guards on such
 s being used in
 in Ontario and
 is not used.

now attached
 greater por-
 en in use for

The learned
 gests that he
 the evidence
 lberta. This
 is to Ontario.
 But it seems
 now one, and
 workmen for
 eard of, it is
 make use of
 ceeping up to
 euse him, nor
 s are not yet
 ive too much
 ry vague and
 and Alberta
 it in question
 rived at with
 ding that the

He goes on
 guard would
 seems he was
 put on, and
 of what was

ground; the
 the plaintiff
 ator had long
 e known of it
 nted the acci-

dent; the accident occurred in a moment and it is not possible to say with certainty what was the cause of the accident; under these circumstances the onus is on the defendant to relieve himself of responsibility; *McArthur v. Dominion Cartridge Co.*, [1905] A.C. 72; *Dominion Natural Gas Co. v. Collins*, [1909] A.C. 640; *Caledonia Milling Co. v. Grand Trunk Railway Co.*, 14 O.W.R. 394; *Lindsay v. Davidson*, 17 W.L.R. 588, 19 W.L.R. 433.

In my opinion, therefore, the appeal should be allowed and judgment entered for the plaintiff with costs in the Court below and the costs of the appeal and the case be sent back for an assessment of damages.

As the majority of the Court take the view that the appeal should be dismissed, I express an opinion on the other branch of the case with which, in that event, it is necessary the Court should deal.

The learned trial Judge having dismissed the action counsel for defendant then applied to the Judge to fix compensation under the Workmen's Compensation Act (ch. 12, 1908). This was refused on the ground that compensation can be fixed in such a case (sec. 3, sub-sec. 4) only if the action which is dismissed is brought "within the time hereinafter in this Act limited for taking proceedings," and was not brought within that time. Section 4 of the Act provides that "proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice in writing of the accident has been given as soon as practicable after the happening thereof, and before the workman has voluntarily left the employment in which he was injured and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury." Then follow provisions which declare that some of a variety of circumstances will cure the want of, a defect or an inaccuracy in the notice. It was virtually admitted on the argument that the plaintiff was entitled to the benefit of these curative provisions with regard to notice, and the argument was virtually directed to the point that "the claim for compensation" was not made within six months from the occurrence of the accident.

Powell v. The Main Colliery Co., [1900] A.C. 366 (H.L.), held that "the claim for compensation" means, not the initiation of proceedings before the tribunal by which compensation is to be assessed, but a notice of claim for compensation given to the employer.

Low v. M. Myers & Sons, [1906] 2 K.B. 265 (C.A.), held that "the claim for compensation" need not even be in writing.

Thompson v. Gould & Co., [1910] A.C. 409 (H.L.), held that the claim need not specify any sum.

Section 4, provision (c), provides that failure to make a

ALTA.

S.C.

1912

SMOLIK

v.

JOHN
WALTERS,
LIMITED.

Beck, J.