

where no notice at all has been given. It does not empower the trial judge to proceed with the case on the ground that the writ and declaration gave the defendant notice, and that he had also actual notice because his manager saw the accident or saw the plaintiff immediately after the accident (*c*).

8. —but not if the facts constitute a cause of action at common law.—As these statutes do not deprive an injured servant of his common law rights of action, it follows that, if the circumstances alleged are such as will enable him to sue either at common law or under the statutes, he cannot be thrown out of court by proof that he has not complied with the statutory requirement as to notice, unless he insists on relying upon the statute alone (*a*). But an action at common law cannot be converted into one under the statute simply because it has been discovered that the notice required by the statute had been given within the prescribed period by a former agent of the plaintiff who had died before the common law action was instituted (*b*).

If the servant is relegated to his common law rights alone, by reason of the fact that the proper statutory notice was not given, his ability to recover will depend upon the doctrines applied in the jurisdiction where the cause of action arose (*c*).

9. Notice must be given in writing.—That the notice is not valid, unless it is given in writing, is deemed to be a necessary inference from the provisions in sec. 7 of the English Act, that notice of the injury shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date, and shall be served on the employer, and may be served by delivery

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(*c*) *Thompson v. Southern R. Co.* (1894) 15 New So. Wales, L.R. (L.) 162. On a subsequent hearing of the case, 15 L.R. (L.) 166, it was further held that, where an application of the plaintiff to proceed notwithstanding that he gave no notice has been refused, he cannot turn round fifteen months after the accident and make another application to proceed, on the ground that a letter sent by his attorney after the expiration of the statutory period constituted a valid notice under the circumstances.

(*a*) *Ryalls v. Mechanics Mills* (1889) 5 L.R.A. 667, 150 Mass. 190, 22 N.E. 766.

(*b*) *Clark v. Adam* (1885) 12 Sc. Sess. Cas. (4th Ser.) 1092.

(*c*) In a Canadian case where the servant failed to satisfy the statutory requirements, it was held that the action could not be maintained, as the jury had found that there was no defect in the machinery, nor in the system used in operating it. *Dixon v. Winnipeg &c. R. Co.* (1897) 11 Man. 528.