

workman in the course of his employment under such circumstances as entitle him . . . to an action against some person other than his employer," he may have the alternative of an action; but here there was at most a failure on the part of the defendants to provide proper and adequate machinery, plant, or equipment; and, whatever common law liability this might create in case of injury to one of their own employees, it could create no direct liability for injury to the plaintiff where, as here, the relation of employer and employed did not exist. It was not anything in the nature of trap or pitfall giving a right of action in case of injury to even a bare licensee.

The common law obligation to provide adequate equipment or pursue a proper system is not a general obligation, but a duty arising out of contract to protect workmen and servants from unreasonable risks.

Reference to *Cory & Sons Limited v. France Fenwick & Co. Limited*, [1911] 1 K.B. 114; *Halsbury's Laws of England*, vol. 20, para. 421; *Mulrooney v. Todd*, [1909] 1 K.B. 165 (C.A.); *Skates v. Jones & Co.*, [1910] 2 K.B. 903 (C.A.).

No other provision of the Act affords any argument in favour of the plaintiff; and sec. 13 declares that "no action shall lie for the recovery of the compensation . . . but all claims for compensation shall be heard and determined by the Board." See also sec. 15. The plaintiff's rights, if any, are to be worked out under the provisions of the Act.

But, aside altogether from the Act, the plaintiff was not entitled to recover damages by action. Leaving open the question what his rights might be against his employers, upon proceedings taken under the Act; the plaintiff, upon the evidence, could not maintain the action against the defendants. He knew of the defect which caused the injury to him, and must be taken to have voluntarily assumed the risk, with a knowledge and appreciation of it—he was the author of his own misfortune.

*Action dismissed without costs.*