



**Compensation Act** R.S. 1989, c. 508.

The appellant was employed by MacKenzies Eastern Transport Limited. MacKenzies carried on business in a commercial warehouse at Musquodoboit Harbour owned by the respondent and leased to MacKenzie. On October 7, 1991 the appellant, while in the course of her employment was struck by tile which fell from the office ceiling. MacKenzies and the respondent were employers under Part 1 of the **Workers' Compensation Act**. The appellant received benefits under the **Act**. The appellant commenced the present action against the respondent for damages with the consent of the Workers' Compensation Board.

A chambers application was made before Mr. Justice Kelly to determine whether the action was barred by s. 18 of the **Act**. There was an agreed statement of facts. The following provisions of the **Act** are relevant:

"17(1) Where an accident happens to a worker in the course of his employment in such circumstances as entitle him or his dependants to an action against some person other than his employer, the worker or his dependants if entitled to compensation under this Part may claim such compensation or may bring such action, provided a written notice of election to bring such action or to claim compensation shall be made to the Board within six months from the date of the accident.

18 In any case within the provisions of subsection (1) of Section 17, neither the worker nor his dependants nor the employer of such worker shall have any right of action in respect of

such accident against an employer, his servants or agents, in an industry to which this Part applies, and in any such case where it appears to the satisfaction of the Board that a worker of an employer in any class is injured or killed owing to the negligence of an employer or of the worker of an employer in another class to which this Part applies, the Board may direct that the compensation awarded in such case shall be charged against the last mentioned class.

20 The provisions of this Part shall be in lieu of all rights and rights of action, statutory or otherwise, to which a worker or his dependants are or may be entitled against the employer of such worker for or by reason of any accident in respect of which compensation is payable hereunder or which arises in

the course of the worker's employment in an industry to which this Part applies at the time of the accident, and no action in respect to such accident or any injury arising therefrom shall lie."

After reviewing the provisions of the statute and the authorities

Mr. Justice Kelly concluded:

"In that case, Justice Patterson held that the messenger boy's action was barred. Although again, that decision did not deal specifically with the type of fact situation before this Court, in that case, and in the other Nova Scotia cases, there is no indication that s. 18 should be restricted in any way from what Justice Patterson has referred to as 'its clear language'. In s. 18, the ban is against actions of 'an employer', not 'his employer', and would appear to extend the ban to all employers to which Part I of the **Act** applies."

We agree with the reasons for judgment of the learned chambers judge. The appeal is dismissed without costs.

J.A.

Concurred in:

Chipman, J.A.

Roscoe, J.A.

