

HON. MR. JUSTICE MIDDLETON:—The elevator fell because the wire hoisting cable had become worn and frayed and so weakened, and the safety device for some reason did not work. There was no defect in the elevator and the safety device was one which ought to have been sufficient. No reason for its failure on this occasion was shewn or in any way indicated.

The plaintiff as the senior clerk in the shop, had a general charge over the whole place, and knew of the condition of the rope, and failed to either report it or to have it repaired. At the time of the accident he assumed the whole blame had no thought of making any claim, thinking he was under the circumstances well treated by being paid full wages, etc. Recently he was discharged for stealing money, and in revenge brings this action.

Mr. Lech, a shareholder of the company, was general manager and the only person occupying a superior position in the shop. He confined himself mostly to office work and general direction of the business, leaving the care of the staff and premises very largely in the plaintiff's hands.

The master, the company, did provide a safe place for the employees to work, and if the place became unsafe, as it did, this was, I think, the plaintiff's own fault. At most it was the fault of a fellow-servant. Mr. Morton cannot at this late date successfully attach the well settled law that the relative positions which the servants occupy in the undertaking makes no difference in the application of the fellow servant doctrine which as is pointed out in Halsbury, vol. 20, p. 133, in the case of corporations, resulted in this defence nearly always succeeding for the corporation itself could scarcely ever be convicted of negligence.

In this case the claim is quite without merit, and I do not experience the regret I generally entertain when this rule prevents a recovery, for the fault here was, I think, with the plaintiff himself.