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had his usual elbow and secured the whole door and had
on thought of making any claim thinking that he was under the
circumstances with treated being paid full wages, etc.
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HIGH COURT DIVISION.

MIDDLETON, J.

APRIL 14TH, 1914.

FORTUNE v. NELSON HARDWARE CO.

*Master and Servant—Injury to Servant—Fall of Elevator—
Fault of Plaintiff or Fellow-servant—Negligence—Defec-
tive Condition—Evidence—Finding of Trial Judge.*

Action for damages for injuries sustained by the plaintiff
in the defendants' shop, where he was working for them, by
reason of the fall of an elevator in which he was being carried.
The plaintiff alleged negligence.

The action was tried without a jury at Sandwich.

T. M. Morton, for the plaintiff.

M. K. Cowan, K.C., for the defendants.

MIDDLETON, J.:—The plaintiff sues at common law to recover
damages for injuries sustained on the 29th March, 1912, when
an elevator upon the defendants' premises, in which he was,
fell. The action was not begun till the 9th January, 1914; so no
remedy can be had under the Workmen's Compensation for
Injuries Act.

The elevator fell because the wire hoisting cable had be-
come 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 either to report it or to have it repaired. At