

using this hoist for this temporary purpose; but all agreed that it was an entirely improper thing to operate the nigger-head while these men were suspended in the elevator. I think Stephan was negligent in that he failed to forbid Sullivan using the hoisting engine for any other purpose while these men were at work upon the temporary job.

I do not think that this constitutes liability at common law. The hoist was not being used for the erection of brick work as part of a system of construction. What was done that day was merely using a temporary expedient resorted to to meet the then present need—the completion of the brick work; and if Stephan erred in ordering the men to take a position of peril in the elevator or in ordering the machine to be operated for other purposes while they were in the elevator, this was a negligent and improper act on the part of an entirely competent and fit superintendent entrusted by the master with the care of the details arising in the general construction of the work.

The plaintiffs further contend that the rope was defective and that its breaking caused the accident and that this is sufficient to create common law liability.

This contention fails. The rope was not in any way defective. It was supplied for general use and was improperly used to draw the cars as it was too light for the purpose. This was an abuse of good material supplied by the master. Beyond this it is not shewn that this was the cause of the accident.

Mr. Hobson placed the case upon what appears to me to be much safer ground. The Building Trades Protection Act, 1 Geo. V. ch. 71, contains drastic and far-reaching provisions. Section 6 applies to this case. "In the erection . . . of any building no scaffolding, hoists . . . shall be used which are unsafe . . . or which are not so . . . operated as to afford reasonable safety from accident to persons employed or engaged upon the building."

I do not need to go so far as he invites me and to hold that this makes the master liable whenever an elevator or hoist is in fact "unsafe" in the sense that an accident has happened, for it is enough to find as I think I must, on the undisputed evidence, that this elevator was not so "operated as to afford reasonable safety from accident." This liability is created by statute and is not made subject to the limitations imposed by the Workmen's Compensation Act.