ment" and "delivery" were not used in the contract as meaning the same thing. The lumber that was ready was to be delivered as soon as navigation opened. It would not all go in one shipment but would be shipped at different times but each cargo was to be paid for 60 days from "shipment."

The lumber was to be inspected by a national hardwood inspector to be agreed upon. Grant Hamson was agreed upon and it was well understood that he was not personally to inspect but that the inspection was to be done by his staff. It was so done and on the evidence there is nothing to satisfy me that it was not properly done, and it is, I think, conclusive on the parties.

The claim for damages for failure to deliver has no foundation. The vendor was ready, the purchaser was unready. The market was against the purchaser and he has suffered no damage, even if the default had not been his.

I think he should pay for the lumber he has received at the contract price, less $500, which allowance I make because the lumber supplied was, I think, below the average of the entire run. The defendant should pay interest from 60 days from shipment and the costs of the action.

HON. MR. JUSTICE MIDDLETON. APRIL 14TH, 1914.

FORTUNE v. NELSON HARDWARE CO.

6 O. W. N. 227.

Negligence—Master and Servant — Fall of Elevator—Evidence—Fault of Plaintiff or Fellow-Servant—Common Law Liability.

MIDDLETON, J., dismissed an action brought at common law for personal injuries sustained by the fall of an elevator, holding that no negligence on the part of defendants had been proven and that in any case plaintiff being in charge of the elevator should have seen that it was in proper running condition.

Action by plaintiff at common law to recover damages sustained on 29th March, 1912, when an elevator upon the defendants' premises in which he was, fell. The writ was not issued till 9th January, 1914, so no remedy could be had under the Workmen's Compensation Act.

T. M. Morton, for plaintiff.

M. K. Cowan, K.C., for defendant.