

having been disengaged, and the shaft passing through this drum and the niggerhead beyond it were being used for the purpose of attempting to haul a carload of sand, weighing about 40 tons, along a contractors' siding close to the foot of the hoist. The rope was found unequal to the strain and broke. This occurred at the very instant of the fall of the elevator. The plaintiffs' theory is that this in some way caused the accident, that it was entirely improper to use the niggerhead for any such purpose when the hoist was suspended outside the building. The plaintiffs further say that although the hoist was not a passenger hoist, and was not intended to be used by the workmen as a passenger hoist, they were using the hoist as a temporary platform for the purpose of enabling them to complete the brick work in question, in obedience to the express orders of Stephan, the defendant's foreman. Stephan, on his part, denies giving any such instructions, and says that his instructions were to leave the outside completion until the hoist had been removed, when that work could have been done from a swing platform which had already been used for the purpose of cleaning and tuck-pointing the bricks at other parts of the wall. The defendants also contend that the accident more probably happened by the negligence of the engineer, Sullivan, who must have pulled the wrong lever, and so freed the dog from the ratchet, in a moment of excitement when he realised that the rope had broken and men were suspended. If Sullivan was negligent, then the defendants claim immunity from liability because he was not a workman having superintendence over the plaintiffs. The plaintiffs claim liability not only under the Workmen's Compensation Act but also at common law.

After very careful reflection I find myself compelled to accept the evidence of Schofield, corroborated by Johnston, not because of the corroboration, but because I believe Schofield; and although I am therefore compelled to find against Stephan, I desire to say that I believe he must have forgotten the orders which Schofield says were given on the morning in question and to exonerate him from any intentional misstatement. Nothing in the story told by Schofield is in any way improbable. The platform of the hoist was a much better place from which to complete the brick work, which required considerable bricks and mortar, than the comparatively narrow swinging platform. So long as due care was exercised there was no particular risk in doing this work