

COUR SUPÉRIEURE.—Montréal, 29 Novembre 1873.

Coram.—MACKAY, J.

GAGNON *vs.* FORSYTH.

SERVITEUR, RESPONSABILITÉ DU MAÎTRE, DOMMAGES.

The declaration says that on the 30th September, 1872, the plaintiff was in defendant's employ, hoisting stone by means of a hoist from the ground story to the fourth story of the new Merchant's Bank; the Plaintiff going up for tools about 6 p. m. that day, the hoist fell and plaintiff with it, and was hurt dreadfully. The reason of the hoist falling was the rottenness and used up condition of the rope, of which defendant had been notified eight days before. The hoist was the property of defendant. Doctor's bills, loss of time, &c., are sued for, \$471.25; on account of which defendant has paid \$15, leaving the difference due, so says plaintiff. Plea: that the hoist was never intended as conveyance for the men; that ladders were provided as means for the men to go up and down in the building in question; that plaintiff was hurt by his own carelessness and foolhardiness, having risked himself in the hoist merely to save himself the labor of going up and down by the ladders. It is quite plain from the proofs that plaintiff suffered in the performance of no duty for defendant. The defendant did not provide that hoist for the use of his men to go up and down by; rather he had cautioned them against so using it. Plaintiff was, when on the hoist, in a place in which he had no business to be; but he sues as if he had had right to be there. There are cases in which workmen can recover, some in which they cannot, under circumstances resembling those in this case. A lift in a shaft of a mine is a necessity, and the mine owner may be liable if he be negligent about providing safe ropes or chains, pullies and boxes; but the lift here was not provided, as in a mine, as means for men to go up and down, but only to send materials up by. The Plaintiff's case is not so favorable as it would have been had the lift fallen down upon him during the *working* hours, and while being used for its appointed purposes, plaintiff being in