

# The Ontario Weekly Notes

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## APPELLATE DIVISION.

JANUARY 23RD, 1914.

### LEAR v. CANADIAN WESTINGHOUSE CO.

*Master and Servant—Injury to Servant—Liability at Common Law—Workmen's Compensation for Injuries Act—Negligence.*

Appeal by the plaintiff from the judgment of the Senior Judge of the County Court of the County of Wentworth in favour of the defendants in an action for damages for injury sustained by the plaintiff while working for the defendants in their factory in attempting to hold up a heavy plate. The plaintiff alleged negligence on the part of the defendants.

The appeal was heard by BOYD, C., RIDDELL, MIDDLETON, and LEITCH, JJ.

C. W. Bell, for the plaintiff, the appellant.

S. F. Washington, K.C., for the defendants, the respondents.

The judgment of the Court was delivered by BOYD, C.:—The plaintiff cannot recover at common law. There was no defect in the works or appliances; a crane was provided for the hoisting-up of large plates; the smaller ones were handled by men called in for the occasion from other work. It was left to the discretion of the foreman as to how many men should be employed in lifting the smaller plates; and, if he erred in judgment or was negligent in putting on the men too heavy a load, it was the fault of the foreman, who was no more than a fellow-servant, and so (as before the Workmen's Compensation for Injuries Act) the master was not liable. The judgment should be affirmed. No costs.

Young v. Hoffman, [1907] 2 K.B. 646, may be referred to.