

did not act within the scope of their authority or employment, nor for the general benefit of the defendants. The doctrine of holding-out did not apply to this class of case. If the learned Chief Justice had been in favour of the plaintiffs on this point, he would have had to consider the further question (not raised in argument) whether the mere assertion of a supposed right without any actual malice is actionable. The proof of damage was rather shadowy and hypothetical. It was not a case in which costs should be awarded to the defendants. Action dismissed without costs. Hamilton Cassels, K.C., for the plaintiff. J. M. Farrell and A. E. Day, for the defendants.

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KUPNICKI V. NODEN HALLITT & JOHNSON LIMITED—BRITTON, J.—  
Nov. 12.

*Negligence—Death of Man Caused by Falling into Elevator-shaft in Store—Action under Fatal Accidents Act—Negligence of Deceased—Findings of Trial Judge.*—Action, under the Fatal Accidents Act, to recover damages for the death of a man who was injured in the defendants' store and died from his injuries. The deceased intended to step into an elevator or hoist for the purpose of being carried up to the second storey, where he wished to select and buy a mattress. A salesman of the defendants was in the act of pulling the hoist down from an upper storey, when the deceased, mistakenly supposing that the hoist had come to a level with the floor upon which he was, stepped into the elevator-shaft, below the hoist, fell to the bottom, and was so injured that he died. The negligence charged was, that the defendants' agent and salesman negligently and wrongfully invited the deceased into the elevator-shaft; that the defendants had not sufficient light in or near the elevator and shaft; that there were insufficient guards at the shaft; that the system whereby the gate was raised was defective; and that the defendants neglected and failed to comply with the Factory Shop and Office Building Act, R.S.O. 1914 ch. 229, sec. 58. The action was tried without a jury at Toronto. BRITTON, J., in a written judgment, examined with care the various grounds of negligence alleged, in the light of the evidence, and concluded that the death was caused by the rashness and want of reasonable care of the deceased himself, and that the defendants were not to blame. Action dismissed without costs. F. J. Hughes, for the plaintiff. H. H. Dewart, K.C., and A. J. Anderson, for the defendants.