buy 30,000 bushels of May wheat at stated prices. The order was placed with a firm in Buffalo, and the price going down C. & Son forwarded money to the latter to cover the margins. P. having written the brokers to know how he stood in the transaction received an answer stating that "no doubt the wheat was bought and has been carried, and whether it has or not our good money has gone to protect the deal for you," on which he gave them his note for $1,500 which they represented to be the amount so advanced. Shortly after the Buffalo firm failed and P. became satisfied that they had only conducted a bucket shop and the transaction had no real substance. He accordingly repudiated his liability on the note and C. & Son sued him for the amount of the same.

*Held,* DAVIS and KILLAM, JJ., dissenting, that the evidence shewed that the transaction was not one in which the wheat was actually purchased; that C. & Son were acting therein as agents for the Buffalo firm; that the transaction was not completed until the acceptance by the firm in Buffalo was notified to P. in Toronto; and being consummated in Toronto it was within the terms of s. 201 Crim. Code and plaintiff could not recover.

*Held,* also, DAVIES and KILLAM, JJ., dissenting, that assuming C. & Son to have been agents of P. in the transaction, they were not authorized to advance any moneys for their principal beyond the sums deposited with them for the purpose.

*Held,* per DAVIES and KILLAM, JJ., that the transaction was complete in Buffalo and in the absence of evidence that it was illegal by law there the defence of illegality could only be raised by plea under rule 271 of the Judicature Act of Ontario.

Appeal allowed with costs.

*W. R. Smyth,* for appellant. *Lynch-Staunton,* K.C., for respondents.

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Ont.] [Dec. 14, 1904.

TRAPLIN *v.* CANADA WOOLLEN MILLS CO.

*Negligence—Master and servant—Dangerous works—Knowledge of master—Employers' Liability Act.*

T. an employee in a mill, entered the elevator on the second floor to go down to the ground floor and while in it the elevator fell to the bottom of the shaft and he was injured. On the trial of an action for damages it was proved that the elevator was over 20 years old; that it had fallen before on the same day owing to the dropping out of the key of the pinion gear which had been replaced; and the jury found that the vibration and general dilapidation of the running gear caused the key to fall out again occasioning the accident. On appeal from the judg-