

and occasioned by that branch of the case. The costs of the scrutiny should be reserved to be dealt with by the trial Judges or Judge by whom the scrutiny is continued and concluded.

And as on the appeal success is divided, there should be no costs of it to either party.

OSLER and GARROW, JJ.A., for reasons stated by each of them in writing, agreed with the conclusions reached by the Chief Justice.

MACLAREN, J.A., also concurred.

MEREDITH, C.J., agreed as to the scrutiny, but dissented as to the corrupt practices and proof of agency, and was of opinion that the election should be avoided.

JUNE 16TH, 1906.

C.A.

VALIQUETTE v. FRASER.

*Negligence—Injury to Person—Falling of Wall of Building—
Exceptional Storm—Defective Construction—Employment
of Competent Superintendent and Builder—Cause of
Injury.*

Appeal by plaintiff from order of a Divisional Court (4 O. W. R. 543, 9 O. L. R. 57), affirming judgment of TEETZEL, J. (4 O. W. R. 60), dismissing the action, which was brought by the widow and administratrix of one J. S. Valiquette to recover damages in respect of the death of her husband, a boiler-maker, who, while working for a contractor at a boiler-house in course of erection for defendants Fraser & Co., was killed by the falling of a wall of the building. After the walls and roof had been completed, machinery was brought into the building through large door openings left unclosed for that purpose. The wind during a violent storm, rushing in through the openings, forced off the roof, and the walls fell. The Court below held that leaving the openings was not a negligent act, and also that there was no liability by