

erected by him for plaintiff, and which plaintiff alleges defendant guaranteed would be done in a skilful and workmanlike manner.

S. D. Biggar, Hamilton, and W. S. McBrayne, Hamilton, for plaintiff.

W. M. German, K.C., for defendant.

FALCONBRIDGE, C.J.—The turning point is, who is responsible for the construction of the roof? The work of building the wall was done in a good and workmanlike manner, and the wall would have stood any vertical pressure which could fairly have been imposed on it, but no such wall could resist the outward pressure or “thrust” of a roof constructed as the one in question. . . . This is a case of hardship, while the result is, as a matter of law, that plaintiff cannot claim to have relied on defendant’s plan, yet it probably contributed to the accident; therefore I shall not give costs against the plaintiff. Set-off of amount for extra work against plastering and pointing still to be done. Judgment for defendant for \$230, balance of contract price, without costs.

Biggar & McBrayne, Hamilton, solicitors for plaintiff.

German & Pettit, Welland, solicitors for defendant.

LISTER, J.A.

JANUARY 29TH, 1902.

COURT OF APPEAL—CHAMBERS.

HUNTER v. BOYD.

Leave to Appeal—Matter of Public Interest—Construction of Statute
—R. S. O. ch. 129, sec. 11.

Motion by plaintiff for leave to appeal from order of a Divisional Court, reversing order of LOUNT, J., appointing an administrator *ad litem* to estate of defendant Boyd, deceased.

G. G. S. Lindsey, K.C., for plaintiff.

R. McKay, for defendants.

LISTER, J.A.—Action for damages for malicious prosecution. The Divisional Court held that in an action such as this such an administrator is not included within the description “administrators” in R. S. O. ch. 129, sec. 11. I think there is jurisdiction to entertain the motion. The question whether LOUNT, J., had jurisdiction, under the circumstances here, to appoint such administrator, depends upon the construction of sec. 11, and, having in view the