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Chappell's Ltd. v. County of Cape Breton, [1963] S.C.R. 340

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Chappell's Ltd. v. County of Cape Breton, [1963] S.C.R. 340.

No difficult point of law faced the court in *Chappell's Ltd. v. Municipality of County of Cape Breton,* but rather a question of what relationships between the parties concerned was established by the evidence. Speaking for the Court Martland J. found the facts were that McInnes the foreman of the appellants who were engaged in repairing a municipal building requested George Garland to solder a hole in the roof. McInnes did this upon instructions from Carmichael the county clerk. Garland's son James in the negligent performance of the work caused the building to be set on fire.

The Nova Scotia Court of Appeal[1] found that the work to be done by James Garland was inherently dangerous and as a result the appellant was caught by the exception to the general rule that a person is not responsible for the negligence of an independent contractor employed by him.

Martland J. disagreed with the characterization of the relationship found by the Court of Appeal to exist between the appellant and George Garland. First, he points out that the work to be done by George Garland was not covered by any contract between the appellant and the respondent municipality. Not only was it not established that a contract for the work existed between the litigants, but in the opinion of Martland J. no contract could be inferred "from the converstion between McInness and George Garland."[2] There were two equally plausible inferences to draw from the evidence: (1) that the county clerk had asked the appellant to undertake the additional repairs as a matter of contract, or (2) that the county clerk had simply asked the appellant's foreman to engage another to do the work for the municipality directly. The non-existence of any contract for the particular work between appellant and respondent makes it unlikely the first inference should be accepted. But even if this inference is drawn, Martland J. considers a careful distinction must be made between the liability of a contractor who has subcontracted work which he was obliged to do himself, and liability of a contractor for work which the owner required to be done but which the contractor was not himself liable to perform. Thus the issue was narrowed down to this question:

> . . . the extent of the duty owed to a claimant by a person who contracts with an independent contractor to do work not for himself but for the claimant at the claimant's request, if the claimant's own property is then damaged because of negligence on the part of the independent contractor who is working on it.[3]

The duty, in the Court's view, is no more than the "exercise of reasonable care in the selection of a competent independent contractor to do the work."[4]

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1 (1962) 36 D.L.R. (2d) 58.
2 [1963] S.C.R. at p. 344.
3 *Ibid.,* p. 346.
4 *Ibid.*

With respect, it is submitted the nice distinction drawn by Martland J. between contractors liable to do the work themselves and those liable only to have it done by others has no justification in the normal factual situation. The reliance in both instances is the same. General contractors could have avoided liability by insisting that the owners make direct contracts with subcontractors whose selection they might advise. This distinction reduces the already fading margin of liability for the work of independent contractors.