to the plaintiff's motor car by a horse and waggon owned by one Temple, a liveryman, hired by the defendants, and driven by a man named Spera, a servant of Temple. Temple was brought in by the defendants as a third party.

The trial Judge found that the horse was being recklessly driven by Spera at the time the waggon ran into the plaintiff's car, and this was not disputed by the defendants; but they appealed from the finding that they were responsible for the recklessness or negligence of Spera.

The appeal was heard by RIDDELL, LATCHFORD, KELLY, and LENNOX, JJ.

H. A. Burbidge, for the appellants.

C. W. Bell, for the plaintiff, respondent.

The third party was not represented.

THE COURT held that, in driving the horse as Spera was driving it at the time of the accident, he was the servant not of the defendants, but of Temple. This was largely based upon Temple's own evidence: he said that the defendants had nothing to do with the actual driving of the horse, though Spera was helping in the work of the defendants and was under the orders, to some extent, of a foreman of the defendants. This, however, did not extend, as Temple said, to the actual driving.

Written opinions were given by LATCHFORD and KELLY, J., in which they referred to Consolidated Plate Glass Co. of Canada v. Caston (1899), 29 S.C.R. 624; Jones v. Scullard, [1898] 2 Q.B. 565; Donovan v. Laing Wharton and Down Construction Syndicate Limited, [1893] 1 Q.B. 629; Standard Oil Co. v. Anderson (1909), 212 U.S. 215; and Driscoll v. Towle (1902), 181 Mass. 416.

Appeal allowed with costs and action dismissed with costs; but the defendants not to have costs occasioned by bringing in the third party.