

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

William Proudfoot, K.C., for the defendant.

G. S. Hodgson, for the plaintiff, respondent.

MIDDLETON, J., read a judgment in which he said that the trial Judge had found that the accident was caused by the negligence of the driver of the car, the defendant's servant; and the Court agreed with the trial Judge.

One Cullerton, who was in the livery business, was called upon to supply vehicles to convey guests from a wedding. He had not sufficient vehicles of his own; and, under some general understanding with the defendant, as the defendant said, Cullerton "ordered these two rigs to go to that address and get these people." The defendant's drivers went with his "rigs," and it was not suggested that Cullerton in any way assumed control of the cars or interfered with the drivers.

It was contended that the driver became the servant of Cullerton, and that Cullerton, and not the defendant, must be held liable for the driver's negligence.

The liability as master must cease when the relation of master and servant ceases; but, on the facts here, the defendant was always the master. He selected the driver, the driver was to be paid by him, and he alone had the judgment as to his fitness and the right to dismiss. The driver went, by the defendant's orders, to aid Cullerton in discharging his engagement to supply cars for the wedding, but the driver was still the defendant's servant.

Reference to Quarman v. Burnett (1840), 6 M. & W. 499; Laughner v. Pointer (1826), 5 B. & C. 547; Consolidated Plate Glass Co. of Canada v. Caston (1899), 29 Can. S.C.R. 624; Donovan v. Laing, [1893] 1 Q.B. 629.

Saunders v. City of Toronto (1899), 26 A.R. 265, distinguished. The appeal should be dismissed.

RIDDELL and LATCHFORD, JJ., agreed with MIDDLETON, J.

MEREDITH, C.J.C.P., agreed in the result, for reasons stated in writing.

*Appeal dismissed with costs.*