Counsel for the respondent corporation was evidently impressed with the difficulty of connecting Whitney's supposed act with the displacement of the risers, for an effort, which failed, was made to shew that the electric light pole bore the marks of spurs, recently made, and to connect these with something done by an employee of the appellant named Stewart, on the day before that on which the accident happened.

It appears to me also that it is unlikely that, if the displacement had been caused by Whitney, the condition of the risers would not have been noticed by those who had the superintendence of the town's electric light system, and the interval of time that elapsed between Whitney's supposed act and the happening of the accident is a circumstance—though, no doubt, not a conclusive one—tending to negative the theory which was put forward at the trial and adopted by the learned Judge. . . .

[Reference to the observations of Willes, J., in Lovegrove v. London Brighton and South Coast R.W. Co. (1864), 16 C.B. N.S. 669, 692.]

Upon the whole, I am of opinion that the respondent plaintiffs' case against the appellant failed, and that the appeal should be allowed, and judgment entered dismissing the action as against the appellant with costs.

It was contended by counsel for the respondent plaintiffs that, if we should come to that conclusion, the costs to be received by them from the respondent corporation should include all costs incurred against the appellant by reason of there being two defendants, and also the costs which they would have to pay to the appellant, and counsel cited in support of his contention Besterman v. British Motor Cab Co., [1914] 3 K.B. 181, in which such an order as to costs was made.

I am of opinion that a similar order should be made in this case. The test to be applied in determining whether such an order should be made is, "Was it a reasonable thing for the plaintiff in his action against a man who ultimately turns out to be in fact the wrongdoer to join the other defendant in order that the matter might be thoroughly threshed out?" . . .

In the case at bar, the respondent corporation in its statement of defence set up, and throughout the trial contended, that the act of the appellant was the *causa causans* of the death of the deceased, and that the appellant, and not the corporation, was liable to the respondent plaintiffs; and, in my opinion, it was reasonable for the respondent plaintiffs to join the appellant as a defendant.