success has been divided, there should be no costs of the appeal or cross-appeal.

Of course, we express no opinion as to the effect (if any) of any action by the Supt. Genl. under the provisions of the Indian Act, R. S. C. (1906), ch. 81.

COURT OF APPEAL.

WOOLMAN v. CUMMER.

4 O. W. N. 371.

Negligence—Collision—Pedestrian and Bicycle Rider—Busy Street—Non-suit—New Trial—Res Ipsa Loquitur—Burden of Proof—Absence of Evidence.

Action for damages for personal injuries sustained by plaintiff, a pedestrian, from a collision with defendant, who was riding a bicycle, about noon-hour, on a much frequented street in the city of Hamilton. Plaintiff, who was blind in one eye, was crossing the street in a diagonal direction and was struck partially from behind by defendant. There was no evidence as to the actual speed at which defendant was riding, but there was evidence that he saw plaintiff before the collision, which was unusually severe. Plaintiff tendered no other evidence of positive negligence.

RIDDELL, J., non-suited plaintiff with costs.

DIVISIONAL COURT directed a new trial of action.

COURT OF APPEAL (MEREDITH, J.A., *dissenting*), *held*, that the facts as shewn constituted *res ipsa loquitur*, and the onus had been shifted to defendant of rebutting the presumption of negligence.

Appeal from judgment of Divisional Court dismissed, with costs.

Appeal by defendant from judgment of a Divisional Court reversing a judgment of nonsuit at the trial before Riddell, J., and a jury, and directing a new trial.

On the 28th of September, 1911, the plaintiff, aged 55 years, was crossing a street in the city of Hamilton at about noon, when he was run into by a bicycle upon which the defendant was riding, and knocked down and very severely injured. At the time, the plaintiff was crossing the street diagonally, with his back somewhat turned towards the direction from which the defendant came. There was some evidence that the defendant saw the plaintiff immediately before the contact, and that he ordered him to get out of the way. There was no direct evidence by any eye-witness as to the speed at which the defendant was riding, but it was shewn by his examination for discovery put in by the plaintiff at the trial, at what time he left his place of business, the distance from there to the place of collision, and also the time at which the plaintiff left the place where