

If I could accept this evidence, there could be no doubt as to the result of the action. The motorman was not present at the trial. His evidence was afterwards taken by commission, the trial being adjourned for that purpose. He contradicts Sinclair. At the time the evidence was given I found myself unable to believe Sinclair. I cannot account for his giving the evidence he did, but it did not impress me as being a true story.

Other evidence was given, which I did not find of much assistance; and the case ultimately falls to be determined upon the plaintiff's own story. I am satisfied that the plaintiff gave her evidence with perfect honesty and fairness. At about half-past eight in the evening she went down the east side of the street on her way home. The night was clear and very cold. There was little traffic upon the street, and the car in question was the only vehicle in sight. The plaintiff at Simcoe street saw the car, as she thought west of Duncan street. She bases the latter part of this statement upon the fact that she could see the Duncan street lights; but these would be visible even if the car were east of Duncan street. She says she realized that the car was getting close, yet she thought it was far enough away to enable her to cross safely. Before she succeeded in getting across the car had struck her. She did not hurry, because she thought the car was so far away that she would be safe. She did not look a second time, as she did not think there was any occasion to do so. She did not hear the gong, and is sure that it was not rung. Just as she was almost clear of the car-track she was struck and thrown to the south. She says: "If I had looked again I would not have been caught."

I think the plaintiff was guilty of negligence, and that her negligence was the proximate cause of the accident. When one ventures to cross in front of a moving car, rapidly approaching as this was, I think it is incumbent on the person to keep the car in sight, and not to trust blindly to the opinion formed on leaving the sidewalk that there is ample time to cross. If the plaintiff had exercised any kind of care, she could readily have escaped the disaster which overtook her.

I think it my duty to assess damages; and, in the event of the plaintiff being held entitled to recover, I assess them at \$2,500.

As I understand the defendants not to ask for costs, the action will be dismissed without costs.