

HON. MR. JUSTICE MIDDLETON.

APRIL 18TH, 1913.

## MYERS v. TORONTO RW. CO.

4 O. W. N. 1120.

*Negligence—Street Railway—Plaintiff Crossing Street—Struck by Street Car—Contributory Negligence—Evidence.*

MIDDLETON, J., dismissed without costs an action by an elderly woman for damages for injuries sustained from being struck by a street car of defendants, holding upon the evidence that the action was caused by plaintiff's contributory negligence in that she crossed the street in front of the car without taking sufficient precaution to avoid being struck.

Action by plaintiff for damages on account of being struck by a street car of defendants by reason of the alleged negligence of the motorman in charge thereof.

W. E. Raney, K.C., for the plaintiff.

D. L. McCarthy, K.C., for the defendants.

Action commenced at the non-jury sittings, Toronto, November 6th, 1912, and resumed on several different occasions.

The plaintiff is a lady, fifty years of age, who maintains herself by her own exertions. On the 15th January, 1912, walking down Simcoe street, she was struck by a street car travelling east along Queen street. She was seriously injured, and, if entitled to recover, should receive a considerable sum.

The plaintiff's case was supported by the evidence of one Robert Sinclair, who said that he was a passenger on the car, and, intending to get off at University avenue, rose and went to the vestibule so that he could ascertain how near he was to the corner, as the windows of the car were frosted. On opening the vestibule door the first thing that attracted his attention was this woman crossing the street. The car was then three hundred feet west of her. He said to the motorman, "You are going to hit that woman." The motorman responded, "Let her get out of the way;" and did not slow the car at all until after the woman was struck, nor did he sound the gong to warn her of his approach. The car was then travelling, according to this witness, at from 20 to 27 miles an hour.