MIDDLETON, J.   APRIL 18TH, 1913.

MYERS v. TORONTO R.W. CO.

*Street Railways—Injury to Person Crossing Track—Car Tra-
velling at High Speed—Proximate Cause of Injury—Negli-
gence of Person Attempting to Cross—Evidence—Finding
of Trial Judge—Costs.*

Action for damages for injuries sustained by the plaintiff
by being struck by a street car of the defendants, while she was
attempting to cross Queen street, in the city of Toronto, on foot,
by reason, as she alleged, of the negligence of the defendants'
motorman.

The action was tried before MIDDLETON, J., without a jury.
W. E. Raney, K.C., for the plaintiff.
D. L. McCarthy, K.C., for the defendants.

MIDDLETON, J.:—The plaintiff is a woman, 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 hun-
dred 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.

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 Sin-
clair.   At the time the evidence was given, I found myself