HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE KELLY, concurred.

HON. MR. JUSTICE MEREDITH (*dissenting*):—This is another of those cases in which the plaintiff's advisers seem to have chosen to leave the facts very much in the dark, entrusting to the jury the task of "helping a lame dog over the stile." It is easy to say that further evidence was not procurable; it is much more difficult for anyone of ordinary intelligence to give credit to the assertion. It is very difficult to believe that of the good many persons who must have seen all that occurred, not one could be found to testify as to the facts; of course, it may be that none could be found whose testimony would help the plaintiff; and it is quite certain that one might have called the plaintiff and have compelled him to testify and might have examined him thoroughly on all points as an adverse witness; and so have given the Court and jury the benefit of a connected story of the whole occurrence from one who must know the whole truth of the matter. Of course, that that course might have given the defendant the last word to the jury—if the case went to the jury—ought to be, obviously, no sort of reason for letting the case go to the jury without the plaintiff having given any evidence upon which reasonable men, acting conscientiously, could find in his favour.

And, as the plaintiff's advisers chose to thus leave his case, I have no doubt that the learned trial Judge was right in "nonsuiting" him.

The onus of proof that the defendant was guilty of a breach of some legal duty, which he owed to the plaintiff, and that such breach of that duty was the proximate cause of the plaintiff's injury, was upon the plaintiff; and that onus was not satisfied in the evidence adduced. It is idle to talk of assault or trespass or of *res ipsa loquitur;* because the plaintiff fared worse in the collision, is no evidence that the defendant was more, or at all, to blame for it; with quite as much reason, or want of reason, the defendant might declaim of assault and of trespass and of *res ipsa loquitur* if he had happened to fare the worse, as of course, might have been the case; nor because the plaintiff was on foot and the defendant on a bicycle; the bicycle was not invading a footpath, the pedestrian was stepping, or had stepped, into the horse road where bicycles had a right to be, and which was stepped into with a knowledge that, at that hour of the day—