In the city of Toronto, Yonge street is the main north and south artery and Bloor street one of the main east and west arteries of traffic. There was evidence that the plaintiff drove his car south in Yonge street, turned into Bloor street, and, when proceeding west in Bloor street, at a rate of about 12 miles an hour, was overtaken by the defendants' street-car, and his auto-car smashed and damaged. There was evidence that the street-car was travelling at from 15 to 20 miles an hour; that there had been a recent fall of snow; and that the pavement and rails were slippery. The collision and damage were established.

The jury were asked to find how and why the collision occurred. The plaintiff's evidence was directed to the theory that the street-car overtook and smashed his auto-car because the motorman was either unable or unwilling to check the speed of his car. The defence theory was, that, after leaving Yonge street, the plaintiff drove his car past and on to the tracks in front of the street-car, and there stalled or otherwise suddenly checked the speed of his auto-car so that the motorman did not have an opportunity to stop the street-car in time to avoid the accident, and that the plaintiff was the author of his own damage.

The jury had accepted the plaintiff's theory; but, instead of finding that the motorman did not try to avoid the collision, they in effect said that he was unable to stop, not because the plaintiff did what the motorman said the plaintiff did, but because the motorman was driving his car at such a high rate of speed as to deprive himself of the control necessary to enable him on a slippery rail to check or stop his car quickly enough to avoid hitting the plaintiff's car travelling ahead of him at the rate of 12 miles an hour.

There was abundant evidence to support the jury's finding of negligence, and the finding that the negligence was "excessive rate of speed."

The negligence found was the proximate cause of the accident —a different case from Reed v. Ellis (1916), 38 O.L.R. 123. But the jury had not by their answers indicated the connection between the negligence found and the accident; and the question was, whether the Court should, as in Ryan v. Canadian Pacific R. W. Co. (1916), 37 O.L.R. 543, grant a new trial, on that ground, or dismiss the appeal on the ground that the jury, on the evidence, did reasonably draw the inference that the effective cause of the accident was "the excessive rate of speed:" Billing v. Semmens (1904), 7 O.L.R. 340, 344; Toben v. Elmira Felt Co. (1917), 11 O.W.N. 375.

The learned Judge said that the latter was the proper result, and he was assisted to that conclusion by the opinion that the