

collision the car was going "very slow." Wainwright, the conductor on the north-bound car, said the south-bound car, when passing his car, was only going at a walking pace. Blainey, the conductor on the south-bound car, did not see the accident, because he was at the rear end, attending to the trolley, but the speed at that time did not, he said, exceed 5 miles an hour. Reynolds, the motorman, said he had turned off the power at Queen street, and was "rolling down" the slight incline towards the next compulsory stop at Richmond street; the speed at the time of the collision was between 4 and 5 miles an hour, and he stopped the car in about 10 feet. No evidence was called in reply.

The question upon this appeal is, therefore: was there, either at the close of the plaintiff's case or of the whole case, any evidence from which the jury, acting reasonably, could find that the speed of the car on the occasion in question was excessive. And, however much I may sympathize with the unfortunate woman, I feel it to be my duty to answer the question in the negative. And my impression is that, even at the close of the plaintiff's case, the proper ruling would have been that the plaintiff's case, so far as it was based on excessive speed, had not been proved by any evidence on which a jury could properly act. But the uncontradicted evidence of every witness upon the subject called by the defence, leaves the matter quite beyond reasonable doubt.

There is abundant authority that a mere scintilla of evidence is not sufficient. There must be enough to justify reasonable men to reach the desired conclusion. Otherwise, the burden resting upon the plaintiff has not been discharged, and the action fails.

Ecker and the plaintiff Sarah Brill swore, it is true, that the car was going "fast," "very fast," and "quick," although they both shew that it was stopped within about 10 feet, but neither was asked to supply for the information of the jury a definite statement of what, in their opinion, the actual speed was, or what would have been a reasonable speed. They were, in fact, simply allowed to sit in judgment, and to pronounce that the speed was "too fast," I suppose because the car struck the plaintiff—a judgment which the jury was, as usual, only too ready, in face of all the other evidence, to echo.

If I had not been able to reach this conclusion, I would still have had some difficulty in supporting a judgment in favour of the plaintiffs, for, in my opinion, the proper con-