he was employed, and the time which he probably consumed in arriving at the place of collision. In his examination for discovery, the defendant admitted striking the plaintiff and knocking him down.

Under these circumstances RIDDELL, J., held that the plaintiff had not given any reasonable evidence of negligence, and upon this ground withdrew the case from the jury.

The Divisional Court was of a different opinion and directed a new trial, against which the defendant now appeals.

The appeal was heard by HON. MR. JUSTICE GARROW, HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MEREDITH, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE KELLY.

D. L. McCarthy, K.C., and E. F. Appelbe, for the defendant.

J. G. Farmer, K.C., for the plaintiff.

HON. MR. JUSTICE GARROW:—The judgments in the Divisional Court were it is said orally delivered, and all that appears in the appeal-book is in the form of a note of what was said, from which it appears that the Court was of the opinion that enough had been shewn to place the onus upon the defendant, a conclusion with which I entirely agree.

The defendant was not approaching directly towards the plaintiff, but rather from the opposite direction. It was midday, and so far as appears there was nothing to prevent the defendant from seeing the plaintiff. He was certainly in a better position to see the plaintiff than was the plaintiff to see him. The evidence indeed shews that the defendant did see the plaintiff before the actual collision, long enough at least to order him out of the way. These circumstances even apart from the great violence of the collision seem to me to call, and to call rather loudly I would have thought, for justification or excuse by the defendant rather than for more evidence from the plaintiff.

The facts *prima facie* at least, indicate a case of trespass, in which the element of negligence is not a necessary ingredient: see *Sadler* v. *South Staffordshire, etc., Co.*, 23 Q. B. D. 17. But even, if it were otherwise, it is in my opinion a case clearly calling for the application of the maxim *res ipsa loquitur*.

I would dismiss the appeal with costs.