If the horses, in *Mitchell* v. *Rochester St. Ry. Co.*, had touched the plaintiff, however slightly, her right to recover for her injuries would have been undoubtedly perfect. No intent is necessary to constitute a battery; negligence and unpermitted contact are enough (*Weaver* v. *Ward*, Hob. 134). Actual impact is not essential to an assault; a putting in fear is sufficient to constitute the wrong. If no intent to strike is necessary to make a battery, why should an intent to put in fear be necessary to make an assault? If the law draws a line here between an assault and a battery, upon what reasoning is the distinction to be supported? The action of assault is not in the nature of a criminal proceeding against the defendant. Why, then, is his intent material? What matters it to the plaintiff whether the defendant intended to commit or negligently committed the act which put the plaintiff in fear of his life?

The authorities upon this subject are few, and, unfortunately, divided. The earlier New York case of *Lehman* v. *Railroad Co.*, 47 Hun. 355, is cited by the Circuit Court, and distinguished on the ground that no negligence was alleged in the case as it appears in the report. The opinion in that case was short, and there was no statement of reasons for the decision; but certainly the case does not appear to have proceeded on the ground assigned by the Circuit Court. The case in the Privy Council (*Commissioners* v. *Coultas*, 13 App. Cas. 222) is also cited, and its reasoning disapproved. The Irish cases which serve to counterbalance *Commissioners* v. *Coultas* (*Bell* v. *Railway Co.*, 26 L.R. Ir. 428, and *Byrne* v. *Railway Co.*, Court of Appeal, Ireland, unreported) are not noticed by the court, though the former contains perhaps the best-reasoned discussion of the subject. *Purcell* v. *Railway Co.*, 48 Minn. 134, is directly in point for the plaintiff, unless it be said that the contract duty of the defendant towards the plaintiff influenced the decision. There was a similar duty, indeed, in *Bell* v. *Railway Co.*, though the Irish court does not found its decision upon that fact. In *Mitchell* v. *Rochester St. Ry. Co.*, the court takes pains to point out that no contract duty existed, the plaintiff not having boarded the car. *Fell* v. *Railroad Co.*, 44 Fed. Rep. 248, and *Stutz* v. *Railroad Co.*, 73 Wis. 147, while distinguishable, tend strongly to uphold the plaintiff's contention. The whole subject is discussed, and a conclusion reached favourable to the plaintiff's recovery, in Beven on Negligence, 65, 2 Sedgwick on Damages, 8th ed., 643, and 1 Sutherland on Damages, 2nd ed., 44.—*Harvard Law Review.*