

was the *causa causans* of the accident. . . . The question is whether the evidence being such as I have described, the judge ought to have taken the case out of the hands of the jury in the first instance. I am not aware of any authority for this being done, and none of the cases cited in the course of the argument can in my opinion be looked on as an authority for such a course." (After expressing dissatisfaction at the result of this litigation, his Lordship goes on to state): "But I cannot seek to prevent this by proposing to your Lordships, on the only part of the case which is brought for your determination, to do what it appears to me would seriously encroach upon the legitimate province of a jury."

Per Lord Penzance. "The proof of the defendant's negligence is upon the plaintiff, the proof of contributory negligence lies upon the defendants: Upon either of these issues it is competent to the judge to say negatively that there is not sufficient to go to the jury; but it is no more competent to him to declare affirmatively that one of them is proved than the other. In fact, there is no case that I am aware of, and certainly none was cited relating either to actions of this kind or any other form of action, in which the facts and the proper conclusions of facts to be drawn from them being in dispute, the judge has been entitled to tell the jury that they were bound to find the issue proved."

Per Lord O'Hagan, on the questions of negligence and contributory negligence. "As questions of fact they were proper to be submitted to the jury; and the learned judge who tried the cause was bound, in my opinion, so to submit them." . . . "I have no doubt, notwithstanding the conflict of judicial opinion, that the judge was not at liberty to direct, whatever may have been, in his opinion, the preponderance of proof on the one side or the other." . . . As to contributory negligence, "The circumstances establishing such negligence, and the inferences to be drawn from them, were equally and exclusively for the consideration of the jury. It was for the jury to find the facts, and to draw the inferences of fact, and the judge would in my mind, have transcended his jurisdiction in finding the former or making the latter." .