Review; Queen v. Filion 1894, 24 S. C. R. 482; Robinson v. C. P. R. Ry, 1887, 14 S. C. R. at p. 114.)

Contributory Negligence.

2. The second defence of the English common law, to which I wish to refer, is the familiar plea of contributory negligence. It was a doctrine of the Roman law, (Grueber, Lex Aquilia, p. 228.)

This defence has in modern times occasioned a great deal of legal metaphysics as to "proximate cause," "principal and determining cause," "cause directly contributing to the accident" "*causa causans*" and so on. The principle itself is not very obscure, though it has often been presented in a very obscure way. I will make an attempt to state it in few words.

1. The plea of contributory negligence does not arise when the accident occured solely through the negligence of the employer or of the victim.

2. There must be two distinct faults or negligences, one on the part of the employer or of some one for whom he is responsible, and the other on the part of the victim.

3. Without the combination of both faults the accident would not have happened.

4. If the two causes operated at the same moment, or in other words, if the accident was due to the simultaneous negligence of both parties, neither of them can recover damages.

5. If the two causes were not simultaneous in their action, but if one was prior to the other, the question is which of them was the last in time, or in other words the proximate cause of the accident.

6. If the last or proximate cause was the negligence of the plaintiff himself he cannot recover. He is said to be barred by contributory negligence. On the