

vehicle, it seems to me that that alone presents a case that calls for some explanation on the part of the proprietors. It is said that it is the nature of horses to kick, but I think it ought not to be the nature of a horse drawing a public vehicle to kick. The mere fact of his having kicked out was, I should say, *prima facie* evidence for the jury."

In *Skinner v. L. B. & S. C. Railway Co.*, 5 Exch. at p. 789, Pollock, C.B.: "Surely the fact of a collision between two trains belonging to the same company is *prima facie* evidence of negligence on their part."

Alderson, B. "It is not necessary for the plaintiff to trace specifically in what the negligence consists, and if the accident arose from some inevitable fatality it is for the defendants to show it." Denman, C.J., to the same effect in *Carpie v. London and Brighton Railway Company*, 5 Q.B. at 751. In *G.W.R. of Canada v. Fawcett*, 1 Moore P.C.N.S., at p. 116, Lord Chelmsford, in delivering the judgment of the Privy Council, after referring to the two last mentioned cases, goes on to say: "There can be no doubt that where an injury is alleged to have arisen from the improper construction of a railway, the fact of its having given way will amount to *prima facie* evidence of its insufficiency, and this evidence may become conclusive from the absence of any proof on the part of the company to rebut it."

See also *Kearney v. London B. & S. C. Railway Co.*, L.R. 5 Q.B. 411, in Exch. Ch. L.R. 6 Q.B. 759; *Briggs v. Oliver*, 4 H. & C. 403; *Scott v. London & St. K. Docks Co.*, 3 H. & C. 596.

The case of *Davey v. London & South Western R. W. Co.*, 12 Q.B.D. 70, cited by Mr. Johnston, cannot be said to be law in the face of *Patterson v. Wallace*, 1 McQueen H.L. Cas. 748, where it was held by the House of Lords in a case where there was no controversy about the facts but only a question whether certain facts proved established negligence on the one side or rashness on the other. The judge at the trial withdrew the case from the jury, but it was held to be a mere question for a jury—so Bagallay, L.J., who dissented in the Davey case, would appear to be right and the other judges wrong.