

Ought not then Mr. Justice Duff's proposition to be limited as indicated by the subsequent language of the Chancellor in the *Jones* case above quoted, that is to say, to cases in which "there were concurrent and simultaneous negligences of equal character by both parties, in which the defendant had no possible opportunity of avoiding the consequences of the plaintiff's carelessness!"

Cases of great authority in which the plaintiff's negligence was a direct, effective and concurrent contributory cause of the accident and in which the plaintiff was nevertheless given judgment, appear to call for an answer in the affirmative.²⁵

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INTOXICATION AS A DEFENCE.

A writer in the *University of Pennsylvania Law Review* discusses the subject of "Intoxication as a defence to an express contract." He thus summarizes the conclusions he arrives at:—

"If at the time of making the contract, the party seeking to avoid it was in such a state of intoxication that he was incapable of assenting to the agreement and has not ratified the transaction in his sober senses, the obligation is voidable, especially if any advantage has been taken of the intoxicated person and fraud or imposition has been practiced by the other party to the contract. A contract which may be invalidated by reason of intoxication can be ratified by the intoxicated party when sober and will thereafter be binding. Intoxication of the maker of a negotiable note may invalidate it as against a bonâ fide holder with knowledge of the circumstances, but is not available as a defence against a bonâ fide endorsee for value, without notice of the circumstances of the transaction. A drunkard may be held liable upon implied contracts for his actual necessities. If the intoxication was procured by the contrivance of the other party,

²⁵ *Halifax Street Railway Co. v. Inglis* (1900), 30 S.C.R. 256; *Toronto Railway Co. v. Mulvaney* (1906-1907), 38 S.C.R. 327; *The Sans Pareil* (1900), P. 267; *Tuff v. Warman* (1857), 2 C.B.N.S. 741, (1858) 5 C.B.N.S. 573.