

the street walked into it, and hurt himself very much; being laid up for a considerable time under the doctor's care, and put to some expense and suffering. There can be no doubt about the main fact, nor of its consequences to the plaintiff; but the question of the defendant's liability has to be considered with reference to the law of negligence. This has been so frequently laid down that it is unnecessary to enlarge upon it now. I will merely refer to a short statement of the law applicable in this case, which I find at page 69, in the little treatise of Campbell: "In all cases where ordinary negligence is sufficient to infer liability it is a sufficient defence to show that there was contributory negligence on the part of the plaintiff; that is to say, to show, that although the negligence of the defendant was a cause, and even the primary cause of the occurrence, yet that the occurrence would not have happened without a certain degree of blameable negligence on the part of the other. The facts here are such, as to leave no doubt of the fatal application of this rule to the plaintiff's case. The coal hole was opened, and a cart had backed up to the kerbstone to discharge its load. The plaintiff, instead of looking before him, was attracted by the display of flash neckties and resplendent haberdashery in Mr. Carsley's shop window. He says himself, on going into the shop to complain, that he had been gazing at the window, and was stepping sideways, when he fell into the trap. Now Mr. Carsley had a right to make a lawful and prudent use of this convenience for taking in coal; and I am hardly prepared to say that he used it unlawfully or imprudently. He might undoubtedly have made his warehouseman stand sentinel while it was being used; but on the other hand, this thing took place in broad day light, and a man walking along a street is bound to take ordinary care of himself, and look before him, which it is clear this poor man did not. Holding then that there may have been slight negligence on the part of the defendant, I must say that the plaintiff is not entitled to recover under the circumstances, and the action has to be dismissed. The rules as to costs in