THE

MANITOBA LAW JOURNAL.

VOL. II. NOVEMBER, 1885. No. 11.

CONTRIBUTORY NEGLIGENCE.

ON whom does the *onus* of proving the existence, or absence of, contributory negligence lie?

"There are two things for him (the plaintiff) to establish, one is affirmative, and the other negative. It is for the plaintiff to shew that the accident which happened to him was caused by a negligent act of the defendants, or of those for whose negligent acts the defendants are liable, and that that accident was produced as between him and the defendants solely by the defendants' negligence in this sense, that he himself was not guilty of any negligence which contributed to the accident; because even though the defendants were guilty of negligence which contributed to the accident, yet if the plaintiff also was guilty of negligence which contributed to the accident, so that the accident was the result of the joint negligence of the plaintiff and of the defendants, then the plaintiff cannot recover; it being understood that, if the defendants' servants could by reasonable care have avoided injuring the plaintiff, although he was negligent, then the negligence ol the plaintiff would not contribute to the accident." *Per Brett. M. R., in Davey v. London and South Western Ry. Co. 12 Q. B. Div. 70 (1883).*

This language is clear enough, and it is the holding of the Court of Appeal in England. Is it law?