

negligence, and if any injury result from it the party suffering the injury cannot recover damages without shewing circumstances tending to excuse or justify the act. I am disposed to think that the rule of conduct as stated by the defendants is not strictly accurate, but, if it be the rule, then it must follow that when circumstances are stated it is for the jury to consider and determine as to their sufficiency. In this case there were circumstances stated which could not have been withdrawn from the jury. And it was for the jury to say upon the evidence whether the plaintiff's injuries were caused by the negligence of the defendants or were the result of his own carelessness and negligence. Upon the motion for nonsuit the question for the learned Judge was whether, assuming, as for the purposes of the motion for nonsuit it was to be assumed, that the defendants were negligent in not stopping their train for a sufficient time to enable the plaintiff to alight, there was evidence upon which the jury might find that the injury was the result of that negligence and was not occasioned by the plaintiff's own negligent and imprudent act in attempting to alight while the train was in motion. And if the jury could reasonably find in favour of the plaintiff on this question, the damages would not be too remote. The nonsuit was, therefore, rightly refused. There was evidence upon which the jury might find, as they did, that the train was not stopped for a sufficient time to enable the plaintiff to alight. The jury having so found, a case for negligence has been established against the defendants. To relieve themselves of liability for such negligence, they were obliged to shew that it did not contribute to the plaintiff's injury. The next inquiry, therefore, is, whether the learned trial Judge properly submitted the question of the plaintiff's conduct to the jury, and whether there was evidence to support their finding. The point to be determined by the jury was whether the plaintiff acted in a reasonable and prudent manner in endeavouring to alight from the car, while it was moving at the rate spoken of in the evidence. The question involved consideration of the circumstances. Finch station was the plaintiff's point of destination on the defendants' line. The train was leaving it without his having been afforded a proper opportunity of alighting. It was for the jury to consider and say whether, taking into consideration the plaintiff's position when the train began to move, the speed it had attained, the point it had reached before he got on the step, the place on which he could alight, the effect upon his movements of the bundle or parcel which he carried, and the other circumstances, the plaintiff was guilty of negligence in attempting to alight.