not only with the evidence of negligence, but with the relation of negligence to contributory negligence and the onus of proof, topics which come to the surface daily in the Courts, and on which authoritative views are of great practical value. When the case was before the Court of Appeal, some demur was made in the profession to certain observations of the Master of the Rolls, which were supposed to suggest that the plaintiff must in some cases negative contributory negligence. His words, however, hardly bore that construction, and the case, with great discretion, was at that stage not reported; but the words used now afford a text for the illustration of the views of the law lords.

The facts in question were brief and bare. They concerned a public level crossing on a part of the defendant's railway between Chiswick Station and Chiswick Junction. Mr. Wakelin lived in a cottage which was ten minutes walk from the crossing. He left his home after tea-time on the day in question, and his body was found on the down line the same night. Those were really all the material facts. On the part of the company it was admitted that Mr. Wakelin was killed by one of their trains. This, as Lord Halsbury pointed out, only admitted that his death was due to contact with the train, but whether he ran against the train or the train against him was left in doubt. There was evidence that from eight in the evening to eight in the morning, a watchman was in charge of the gates; but, as the exact hour of the occurrence does not seem to have been fixed, nor was there any indication one way or the other that the absence of a watchman affected the event, this fact was not material. It appeared, too, that the railway was so placed that a man standing on the down side near the line would have seen a down train approaching a mile off. It was probably this fact that struck the Master of the Rolls, and gave rise to the double view, so to speak, of the case which he took. In considering the question whether there was evidence of negligence on the part of the company, it was of course open, and, in fact, imperative, not to overlook the characteristics of the place where the event happened. This, however, would not be to insist that the plaintiff must show that he has not been guilty of contributory negligence, but rather to understand the conditions of the situation to see whether the defendants' servants had been guilty of negligence. Mr. Justice Manisty allowed the case to go to the jury, who gave the plaintiff, Mr. Wakelin's widow, £800. Mr. Justice Manisty must not be taken to have had an opinion on the question whether there was evidence of negligence. He was simply carrying out his own invariable practice, common with other judges, and especially appropriate in this case, of taking the verdict of the jury to save the parties a possible new trial, and leaving the unsuccessful party to his remedy in the Court. Probably no lawyer would form the opinion that on these facts there was evidence fit to be left to the jury. The judges in the Divisional Court set aside the verdict and entered judgment for the defendants, and this decision was affirmed by the Court of Appeal. In fact, the only glimmer of reason to be found in the verdict was the vague impression that if a railway train and a passer-by came into collision, the train being the bigger and the least likely to be hurt, is most likely to have been in the wrong. The rest was purely the usual prejudice for a widow and against a rich corporation.

Lord Halsbury contented himself almost entirely with discussing the actual question in point, but Lords Watson and Fitzgerald entered to some extent into the more general discussion which the case had raised. After pointing out that there must be both negligence on the part of the defendant and an absence of negligence on the part of the plaintiff to entitle him to succeed, he proceeds to distribute the burden of proof, and puts it on the plaintiff to show the defendant's negligence, and on the defendant to show plaintiff's negligence in the first instance—that is, subject to the defendant being able to show some *primâ facie* evidence of negligence in the plaintiff which, unexplained, would amount to contributory negligence. At the same time he points out the source of the error that the plaintiff need deal with contributory negligence at the onset, by observing that in many cases it is impossible to separate the facts tending to show the defendant's negligence from those tending to show the plaintiff's.