the part of the plaintiff in leaving his donkey on the public highway, was no answer to the action, unless the donkey's being there was the immediate cause of the injury; and that, if they were of opinion that it was caused by the fault of the defendant's servant in driving too fast, or, which is the same thing, at a smartish pace, the mere fact of putting the ass upon the road would not bar the plaintiff of his action. All that is perfectly correct; for, although the ass may have been wrongfully there, still the defendant was bound to go along the road at such a pace as would be likely to prevent mischief. Were this not so, a man might justify the driving over goods left on a public highway, or even over a man lying asleep there, or the purposely running against a carriage going on the wrong side of the road."*

Since the ass was lawfully in the highway, the words "although the ass may have been wrongfully there," in the above passage, must mean negligently there, and the argument of the Court, supposing it to be addressed directly to the defendant, may be stated thus: Granting that the plaintiff was negligent in leaving the ass in the highway, and that his negligence contributed to the injury he now complains of, it was still your duty to travel along the road with due care, so as to avoid accidents; and not having done so, you are liable for the injury resulting.

There is nothing in the facts to show that the defendant's conduct was wilful, and the last clause of the passage quoted has therefore no application to the case. The passage is also open to criticism upon another ground. The argument there suggested is, that if the defendant were not held responsible for running over the ass negligently, he could not be held for running over it purposely or wilfully. But that does not follow; for the law is well settled that if a man purposely or wilfully does damage to another, contributory negligence of the plaintiff is not a defence.† If the act of a defendant sounds in *dolus, culpa* is out of the case.

Bridge v. *Grand Junction Railway Co.*, although referred to by Baron Parke in support of his decision, has not usually been cited as an important case in connection with the rule in *Davies* v. *Mann*. It is chiefly conspicuous for the support it lent to *Thorogood* v. *Bryan*,‡ and was an important authority for consideration in the decisions‖ overruling that case.

The rule in *Davies* v. *Mann* was received with approval by the English courts, and has been applied in a number of important cases,§ one of which, and the last in which the principle was directly involved, was carried to the House of Lords, where that principle was distinctly affirmed. In one of the intervening

* 10 M. & W. 541.

† 2 Thompson, Negligence, 1160; *Ruter* v. *Foy*, 46 Iowa, 132.

‡ 8 C. B. 115.

‖ *The Bernina*, 12 P. D. 58; s. c. *nom. Mills* v. *Armstrong*, 13 App. Cas. 1.

§ *Mayor of Colchester* v. *Brooke*, 7 Q.B. 339 (1845); *Dimes* v. *Petty*, 15 Q.B. 276 (1850); *Dowell* v. *Steam Navigation Co.*, 5 El. & Bl. 195 (1855); *Tuff* v. *Warman*, 2 C.B. N.S. 740 (1857); 5 C.B. N.S. 573 (1858); *Witherly, admxr.*, v. *Regents Canal Co.*, 12 C. B. N.S. 2 (1862); *Springett* v. *Ball*, 4 F. & F. 472 (1865); *Radley* v. *London & Northwestern Ry. Co.*, L. R. 9 Ex. 71 (1874); L. R. 10 Ex 100 (1875); 1 App. Cas. 754 (1876). See also *Spaight* v. *Tedcastle*, 6 App. Cas. 217 (1881); *Cayzer* v. *Carron Company*, 9 App. Cas. 873 (1884).