

self guilty of contributory negligence? If the judge thinks there are facts in support of this contention, and there is no evidence of the defendant's negligence, a non-suit will be directed, as it is manifest the plaintiff could not recover under such circumstances. If there is negligence proved against the defendant, and contributory negligence on the part of the plaintiff shown either by himself or his witnesses, the defence is called upon, and the whole case will be submitted to the jury.

To determine under what circumstances cases of negligence will be left to a jury, a review of some of the more important of the later authorities may be consulted with advantage. Indeed, it is only by taking apt extracts from the judgments in such cases, that one can obtain anything like a fair idea of the position of the law in regard to such matters, and the principles enunciated by high authority will be found much more useful to the reader than all the comments made by a writer not speaking with binding force. A summary of the law on the point in question, therefore, properly follows this general introduction.

The first case calling for special attention is *Gee v. Metropolitan R. C.*, L.R. 8 Q.B. 161, decided in 1873.

The plaintiff got up from his seat and put his hand on the bar which passed across the window of the carriage, with the intention of looking out to see the lights of the next station; the pressure caused the door to fly open, and the plaintiff fell out and was injured. There was no further evidence as to the construction of the door and its fastenings. Held, that there was evidence, and the jury having found for the plaintiff, the verdict ought to stand.

Per Blackburn, J., at p. 166: "Then was the plaintiff conducting himself in such a way as amounted to want of ordinary care? As to that, I can only say it was a question for the jury, and they were right in the verdict they have found."

Per Kelly, C.B., at p. 168: "If there is evidence of negligence on the part of the defendants, and of contributory negligence on the part of the plaintiff, that must always be a question for the jury, and it is not a case for a non-suit."