deceased, finding that the signalman remained sitting in his lodge and was making no attempt to signal any train, might not reasonably have supposed that he could safely cross the rails without taking the precaution of looking up and down the line or listening for the whistle of a train? On consideration I have come to the conclusion that on this question there was evidence for the jury, and if I had been trying the case, I do not think I could have withdrawn it from the jury."

Per Kay, L.J., at p. 188: "I think there was evidence for the jury of negligence on the defendants' part . . . . I venture to say with all respect to those who hold a different opinion, that as long as we have trials by jury, and jurors are judges of the facts, it should be a very exceptional case in which the judge could so weigh the facts and say that their weight on the one side and the other was exactly equal. The House of Lords seems to consider there might be such cases."

The judgment in *Wakelin* v. *London & S. W. Ry. Co.*, 12 App. Cas. 41, is appended to the case above reported for the benefit of the profession.

In our own courts, there is the important case of *Morrow* v. *C. P. R.*, 21 A. R. 149, decided in 1895, wherein it was decided that where contributory negligence is set up as a defence, the onus of proof of the two issues is respectively upon the plaintiff and the defendant, and though the judge may rule negatively that there is no evidence to go to the jury on either issue, he cannot declare affirmatively that either is proved. The question of proof is for the jury.

The plaintiff was run into while crossing the defendants' line, and was severely injured, his horse killed and wagon broken. He charged many acts of negligence: not ringing the bell, not sounding the whistle, etc., etc., which the defendants denied, and not in terms pleading contributory negligence.

Per Burton, J.A., at p. 152: "Whether the evidence be strong or weak, or in the opinion of the judge incredible, it is equally the province of the jury to decide upon it, and as has been said by a learned judge, the judge would be arrogating to himself, if he were on that account, on the trial of a