Bacon quoted in *Metropolitan* v. *Jackson*, 3 App. Cas. 193, at 210. Therefore damages for injuries depend on the "proximate cause" of the injury somewhat as follows:—1. Was negligence the proximate cause of the injury at all? If not, then there is no cause of action. 2. Was the plaintiff's negligence the proximate cause? Then of course he cannot recover. 3. Was defendant's negligence the proximate cause? Then plaintiff recovers. 4. Was their joint negligence the proximate cause? If so, plaintiff cannot recover anything.

It is in respect of the third and fourth questions that the doctrines of "contributory" negligence and "ultimate" negligence arise. Even though it involves repetition it is worth while remarking that contributory negligence presupposes carelessness on the part of the defendant; but involves the proposition that as the plaintiff might have but did not avoid the consequences of defendant's negligence he contributed to his injury by his negligence, and so the proximate cause was not defendant's negligence but the negligence of the plaintiff in failing to do what he should have done to avert the consequences of the defendant's neglect. See Beven on Negligence, 2nd ed., 156 and 157.

Ultimate negligence in theory involves proof of facts which removes the "proximate cause" a step further from the initial wrongdoing. The defendant was negligent but that does not create the cause of action because of the plaintiff's subsequent want of care; the plaintiff was negligent but that does not deprive him of his claim because the defendant was careless in not averting the consequence of the plaintiff's earlier negligence so that is the proximate cause and so plaintiff recovers. For this proposition the case of *Davies* v. *Mann*, 10 M. & W. 546, is usually cited. There the plaintiff hobbled his donkey and turned him out on the highway. The defendant was driving at a "smartish pace" which was construed as being negligent driving and killed it.

A majority of the court assumed that plaintiff was negligent but said that the defendant might but for his later negligence have avoided the accident and so the defendant was made liable. The question there really was whether the animal was lawfully on the highway and if not what duty one owed to an animal not lawfully there. It would seem almost as though analagous decisions would be those bearing on one's duty to a trespasser rather than cases bearing on questions of negligence or contributory or ultimate negligence; but the decision has always since been cited as authority for the statement that though plaintiff may have been negligent yet if defendant might by exercising proper care have avoided the accident his negligence is the proximate cause. See *Radley* v. *London and North Western Ry.* (1876), 1 App. Cas. 754. Such a decision as this does not involve any element of antecedent negligence on the part of the defendant. It is not a question of who began to be negligent first; but merely whether (1) the carelessness of the contestants is severable and (2) which of them had the last chance of avoiding injury. If (1), the combined carelessness is not severable then the proximate cause is joint negligence and so neither can sue or recover from the other; but if (2), the carelessness is severable then the court enquires who is finally responsible and that is the proximate cause which enables the other careless person to recover. It was thought that when there has been contributory negligence on the plaintiff's part there must be some new (*i.e.*, later) negligence on de-