

the judge to let the jury decide between such conflicting views. . . . The plaintiff has to make out that there has been some default or neglect on the part of the defendants, which was the *causa causans* of the accident."

And at p. 78, "I wish to say that in *Dublin, Wicklow & W. Ry. v. Slattery*, 3 Ap. Cas., 1155, the question for the House of Lords was whether the learned judge at the trial should have non-suited or not, and that the question divided itself into two parts: first, whether there was evidence of negligence in the railway company to go to the jury, and secondly, whether, even assuming there was such, that was negligence which could have caused the accident, or whether there was not some clear contributory negligence on the part of the plaintiff as rendered it impossible for a reasonable man to suppose the accident was caused by anyone except the plaintiff himself."

One of the latest and most important cases is *Smith v. S. E. Ry. Co.*, (1896), 1 Q.B. 178, decided about a year ago.

The plaintiff's husband was run over and killed by a train of the defendants. It was held in an action by the plaintiff under Lord Campbell's Act, to recover damages in respect of her husband's death, that there was upon the facts evidence to go to the jury of negligence on the part of the defendants by which, and not by any negligence on his own part, the death of the husband was caused, and therefore the judge at the trial was right in not withdrawing the case from the jury.

Per Lord Esher, M.R., at p. 182: "The question in this case seems to reduce itself to this: Could the judge properly have directed the jury as a matter of law that negligence on the part of the deceased was proved? It is an admitted proposition of law that, if there is no evidence of some material fact which forms an essential part of the plaintiff's case, then the judge is bound to withdraw the case from the jury."

Per Lopes, L.J., at p. 186: . . . "The case strikes me in this way. The deceased appears to have known the crossing and the practice then with regard to the signalling of trains. Was it not a question for the jury whether the