upon their care and prudence."* Why the common law in cases of contributory negligence should not divide the loss is a question to which different answers have been suggested, but which remain a puzzle to Judges of great ability;† just as the opposite rule in Admiralty, which does divide the loss, has perplexed high authorities among the civilians.‡ But the practice being thus established of depriving the plaintiff of all remedy, the ultimate justification of the rule is in reasons of policy, viz., the desire to prevent accidents by inducing each member of the community to act up to the standard of due care set by the law. If he does not, he is deprived of the assistance of the law. How much influence the rule exerts to accomplish the object aimed at cannot be known. That it does exert some influence is sure. A plaintiff who has learned the law of contributory negligence by the hard experience of losing a verdict, is likely to be more careful in the future. From his negligence, at least, accidents will be less likely to happen.

The general doctrine of contributory negligence being thus founded upon considerations of policy, the rule in *Davies* v. *Mann*, which is a part of that doctrine, rests upon the same ground. The plaintiff negligently left the donkey fettered upon the road, and the defendant some time afterward carelessly ran over it. To prevent an injury is a better service than to award compensation for an injury already done; and if it be any part of the policy of the law to prevent accidents, and if it have any means at its command to accomplish the object, the negligence of the defendant in *Davies* v. *Mann* is the negligence at which the law ought to strike. The negligence of the plaintiff having placed the animal in a situation of danger, the defendant had a full opportunity to avoid the peril by due care, which he did not use. The negligence of each is a necessary element, but that of the defendant is nearer to the accident. The plaintiff did an act from which harm was likely to follow; from the defendant's negligence harm was bound to follow.

It may be said that this is merely another way of stating that the negligence of the defendant is the sole proximate cause, and that of the plaintiff remote, and therefore the whole question comes back to the theory of proximate cause. The answer is, that although the negligence of the plaintiff is more remote from the accident than that of the defendant, it is still near enough to be contributory negligence, and is so conceded to be by the House of Lords, and is therefore a proximate cause; and on the theory of contributory negligence which holds that a plaintiff is disentitled to recover whenever his own negligence is a proximate cause of his injury, the plaintiff in *Davies* v. *Mann* ought not to recover. Another suggestion which may be made by the advocate of proximate causes is, that the negligence of the defendant in *Davies* v. *Mann* succeeded that of the plaintiff in time, and that the effect of the case is to decide that where there are several causes, the last cause to operate in point of time is the true proximate cause. The answer is, that the rule in *Davies* v. *Mann* does not inquire whether the

* 45 Ohio St. 471, 489. † Per Lindley, L. J., 12 P. D. 58, 89.
‡ See Marsden, Law of Collisions (2d ed.), 132-134.