Let us put the holdings of the Master of the Rolls and the Chief Justice together for comparison.

The plaintiff is bound to prove—

As per the Master of the Rolls:

1. That the accident was caused by a negligent act of the defendants.
2. And that he himself was not guilty of any negligence which contributed to the accident.

As per the Chief Justice:

1. That there was negligence on the part of the defendant.
2. And that the negligence in fact caused the injury.

The Chief Justice therefore divides the first requirement of the Master of the Rolls into two, and omits the second.

In many cases the distinction is unimportant; for it being admitted that the plaintiff must show that the accident was caused by the defendant's negligence, it lies upon him to detail all the circumstances of the accident, and in doing so he necessarily describes his own actions. In other words, usually a plaintiff cannot prove that the defendant's negligence *caused* the accident—was the effective cause of it—which he must do, without, at the same time, showing his own carefulness.

This is a different thing, however, from saying that in all cases the plaintiff must prove the propriety of his own conduct. He is not bound to prove affirmatively, for instance, that he looked up and down the railway track to see if the train which ran over him was coming (though if he did not this would constitute contributory negligence); for if such were the law, and the man, instead of being wounded, were killed, his executors could, in all probability, never prove their case. See *Peart v. Grand Trunk Ry. Co.* 10 *Ont. App. R.* 191.

We submit, therefore, that the opinion of the Chief Justice is correct.