

[Quotations from the judgments in that case; and reference to Purdy v. Grand Trunk R.W. Co., Printed Cases in the Court of Appeal for Ontario, N.S., vol. 150, in the library of the Law Society of Upper Canada; Rice v. Toronto R.W. Co., ante, 405, 406.]

The rules as to contributory and "ultimate" negligence are, it seems to me, based upon nothing more than the proposition that the fact that one acts negligently does not disentitle him to demand that others shall not be negligent toward him.

If, for example, one leave a donkey tied in the road, though that act be negligent or careless, others are not entitled to act negligently toward him or his property: *Davies v. Mann*, 10 M. & W. 548. And the inquiry must, in all cases in which both parties have been negligent, really be, what was the actual cause of the accident, as distinguished from a mere condition sine qua non?

Where "there has been negligence on the part of the plaintiff, yet, unless he might by the exercise of ordinary care have avoided the consequences of the defendants' negligence, he is entitled to recover:" per Parke, B., in *Budge v. Grand Trunk R.W. Co.*, 3 M. & W. 248; *Davies v. Mann*, 10 M. & W. 548. But, if he could by the exercise of ordinary care have avoided the consequences of the defendants' negligence, he cannot recover. If he continue his causal negligence up to the very moment of the accident, being able to discontinue it, and if the cessation of such negligence would have avoided all the consequences of the defendants' negligence, his negligence is the causal negligence, and he has no right of action. "The mischief is an instantaneous result of the operation of the joint negligence of the defendant and the plaintiff; in such cases no question of ultimate negligence arises:" per Anglin, J., in *Brenner v. Toronto R.W. Co.*, 13 O.L.R. 423, at p. 439.

The action should be dismissed with costs.

TEETZEL, J.

FEBRUARY 3RD, 1911.

SHAVER v. CAMBRIDGE AND RUSSELL UNION SCHOOL SECTION.

Public Schools—Religious Instruction Given by Teacher after School-hours—Resolutions of Board of Trustees—Regulations of the Education Department—Construction—Public Schools Act, sec. 8 (1), (2)—Teacher Acting as Representative of Parish Priest—Exclusive Privilege of one Religious Denomination—Right of others to same Privilege.