and plaintiff was a voluntary passenger therein. It was held that the plaintiff was bound to rely upon the diligence of the driver for a recovery.

This distinction was adopted in one New York case—*Brown v. N. Y. Cent. Rd.*, 31 Barb. 385—but denied in others. In *Robinson v. N. Y. &. H. R. Rd., 66 N. Y. 11,* a female accepted an invitation to ride in a buggy with a person who was entirely competent to manage the horses. While crossing the defendant's railroad track the buggy collided with defendant's train. It was held that if she was free from negligence herself, she was entitled to recover, although the driver might be guilty of negligence which contributed to the injury. This case is criticised by RYAN, C. J., in *Prideaux v. Mineral Point, supra.*

The New York case, *Robinson v. Rd. supra,* is approved in *Dyer v. Erie Ry.* 71 N. Y. 228. In that case plaintiff was injured while crossing defendants' railroad track in a public thoroughfare, while riding by permission and invitation of a third person, the owner of the horses and wagon driven. It was held that as no relationship of principal and agent arose between the plaintiff and the driver of the vehicle, the former was not responsible for the negligence of the latter, where he himself is not chargeable with negligence, and where there is no claim that the driver was not competent to control and manage the train. This case affirms that of *Robinson v. Rd., supra,* and put this principle at rest in New York.

In *Metcalf v. Baker, 11 Ab. Pr. Rep. (N. S.) 431 ; s. c. 2 Jones & Sp. 10,* plaintiff was riding gratuitously in A.'s carriage, who was driving at the time of the accident, which was caused by collision of A.'s carriage with defendant's wagon, which was driven by defendant's servant. Both drivers contributed to the injury. The plaintiff was held entitled to recover, citing and approving *Colegrove v. N. Y. & H. R. Rd., 6 Duer, 382 ; s. c. 20 N. Y. 492.*

In *Knapp v. Dagg, 18 How. Prac. 165,* plaintiff was riding as a passenger in her brother's wagon, when they met and