opinion of Judge Porter is one of the ablest to be found in our reports. He makes these excellent observations on nonsuits: "Our law is framed upon the theory that on such questions the citizen can rely with more security on the concurrent judgment of twelve jurors, than on the majority vote of a divided bench. Unanimity is not required in our decisions on questions of law. It is otherwise with jurors charged with the duty of determining issues of fact; and such issues should not be withheld from the usual arbiters, unless the evidence leads so clearly to one result, that there is no room for difference between honest and upright men. A nonsuit should always be granted where the proof is so clear as to warrant the assumption, in good faith, that if the question were submitted to the jury, they would find that the culpable negligence of the plaintiff contributed to the injury. But we have had occasion, recently, to hear nonsuits of this kind justified on the novel ground, that unless the fact be determined in one way by the judge, it will be sure to be determined the other by the jury. The correctness of judicial opinions on mere questions of fact may well be distrusted, where we find them confessedly opposed to the common sense of mankind."

The case came up a third time in 39 N. Y. 61, when a verdict for the plaintiff was sustained. The views of the court above expressed as to the absence of the flagman were approved; but the judges differ as to the extent that the defendants' negligence excuses the plaintiff's want of vigilance. Judge Clarke thinks the omission of the customary warnings and signals may excuse the plaintiff from looking up and down the track just before crossing; and that "the court, in its last review of this case, in no respect relaxed the salutary rules which it had in many previous cases adopted in relation to the negligence of persons who are on railroads." Judge Woodruff, in a following opinion, on the other hand, says: "Negligence in the railroad company in the giving of signals or in omitting precautions of any kind will not excuse his omission to be diligent in such use of his own means of avoiding danger," and that if by such use he might have avoided the danger, notwithstanding the omission of the signals, his omission is concurring negligence, and where proof of it is clear, he should be nonsuited. But he concludes that in this case the question was so complicated and detailed, that it was properly left to the jury.

Sheridan v. *Brooklyn City, etc., Company*, 36 N. Y. 39.—Deceased was a boy, nine years old, who took a seat in defendants' horse-car, but in order to make room for adults, the conductor put him out of his seat, and the car being crowded, he was pushed by the passengers out on the front platform, and was afterward thrown off by another passenger rushing to get off, and was run over and killed. A verdict for the plaintiff was unanimously sustained.

Renwick v. *N. Y. Cent. Railroad Co.*, 36 N. Y. 133.—The plaintiff, approaching a crossing, stopped when from four to six rods from the track, looked both ways and listened, and seeing and hearing no indications of a train, started his horses, kept looking for the train, and when on the track was struck by the train which he saw close upon him. This was held not necessarily negligent, and judgment for plaintiff was affirmed.

Clark v. *Eight Ave. Railroad Co*, 36 N. Y. 135.—The plaintiff was injured while riding on the steps of the front platform of the defendants' street car, by a passing team. The car was so full that there was no other place for him to stand, and the conductor received his fare and suffered him to stand there. The court said "these facts, if true, authorized the jury to find that the plaintiff had been invited by those having charge of the car to ride in that place, and that an implied assurance had been by them given that that was a suitable safe place for him to ride," and judgment for plaintiff was affirmed; but the court say that without such explanation the position of the plaintiff would have shown him negligent, and it would have been the duty of the court to nonsuit.

Remarks.—The observation last quoted is an excellent example of what is called an *obiter dictum*, although, at the risk of being accused of uttering the same thing, we will say that the learned judge was quite right in that position.

Curran v. *The Warren Co.*, 36 N. Y. 153.—Defendants were distillers of coal tar. The deceased was engaged by them in manufacturing boilers, and was obliged to work inside of the defendants' boiler, entering through an orifice