they should put the reversal on, the idea is put forward that negligence on the part of the plaintiff is never *presumed*. This seems to be a mere form of words. The proposition is probably true, but it is of comparatively little importance, for the burden of establishing an absence of contributory negligence is still on the plaintiff, and it must appear from all the evidence at the close of the case. It is simply a matter regarding the right to ask for a nonsuit. As Judge Strong here says, "it would be enough, if the proof introduced of the negligence of the defendants and the circumstances of the injury, *prima facie* established that the injury was occasioned by the negligence of the defendants, as such evidence would exclude the idea of a want of due care by the intestate aiding the result."

Steves v. *Oswego, etc., Co.* id. 422.—The plaintiff approached the crossing without looking to see if there was a train within sight, and attempting to cross, was injured by an engine. The court say: "Ordinary regard for his own safety would have prompted him, as he approached the crossing, to see, as he might well have done, whether the cars were not also approaching. It is obvious that a single look would have saved him from the disaster with which he met. * * * That the plaintiff should have entirely omitted to look was the extreme of carelessness. Such carelessness is entirely inconsistent with a right to recover damages founded upon the negligence of the defendants. The plaintiff is himself the author of his own injury. Nonsuit was sustained.

Remarks.—This was not unanimous. Three judges dissented, holding "that the object of the statute requiring the ringing of the bell or sounding the whistle was to put persons, negligently approaching a crossing, upon their guard; and the question whether the negligence of the plaintiff was such, that, if the proper signals had been given, he would still have been injured, was one which should have been submitted to the jury." That is to say, whether, under all the circumstances, the deceased was negligent, was a question for the jury.

Johnson v. *Hudson River Railroad Co.*, 20 N. Y. 65.—The deceased, a sober cartman, was found dead upon the track, under the circumstances authorizing the inference that he had fastened his horse, and was groping in the dark to find a safe passage for his team, when struck by defendants' car. There was an open sewer obstructing the street, which the deceased had to cross to reach his home, and the passage left was narrow and difficult. A horse car of the defendants was proceeding, on a dark evening, without bells or light, on the track in question. *Held*, that the tendency of the defendant's conduct was so dangerous, as in the absence of any other evidence than the presumption that the deceased had the same regard for his safety as other men, to authorize the attributing of the accident to the negligence of the defendant, and the refusal of a nonsuit. The court say: "It is not a law of universal application that the plaintiff must prove affirmatively that his own conduct on the occasion of the injury was cautious and prudent. The *onus probandi* in this, as in most other cases, depends upon the disposition of the affair as it stands upon the undisputed facts. Thus if a carriage be driven furiously upon a crowded thoroughfare, and a person is run over, he would not be obliged to prove that he was cautious and attentive, and he might recover though there were no witnesses of his actual conduct. The natural instinct of self-preservation would stand in the place of positive evidence, and the dangerous tendency of the defendant's conduct would create so strong a probability that the injury happened through his fault, that no other evidence would be required. But if one make an excavation or lay an obstruction in the highway, which may or may not be the occasion of an accident to a traveller, it would be reasonable to require the party seeking damages for an injury to give general evidence that he was travelling with ordinary moderation and care." "The absence of any fault on the part of the plaintiff may be inferred from circumstances; and the disposition of men to take care of themselves and keep out of difficulty may properly be taken into consideration." And the negligence of the plaintiff, "as well as the absence of fault, may be inferred from the circumstances." "The true rule in my opinion is this: The jury must eventually be satisfied that the plaintiff did not, by any negligence of his own, contribute to the injury. The evidence to establish this may consist in that offered, to show the nature or cause of the accident, or in any