proper lights upon the plaintiff's vessel, which so deceived defendant that his vessel ran into the plaintiff's, would be such negligence on the plaintiff's part as to prevent a recovery, unless the defendant knew the true facts and with reasonable care could have avoided the injury. In this case as there was some evidence to repel the presumption of the effect of the plaintiff's negligence in not having proper lights, a nonsuit was set aside.

Keating v. *N. Y. Cent., etc., Co.*, 49 N. Y. 673.—Plaintiff attempted to get on a train standing at a station, not from the station platform, but from the opposite side of the train, where passengers frequently got on and off to the knowledge and without any objection on the part of the defendants' employees. As she stepped on the car, the train started with a violent jerk, throwing her off, and injuring her. Held, that the question of her negligence was for the jury.

Hazman v. *Hoboken, etc., Co.*, 50 N. Y. 53.—Plaintiff, endeavouring to go upon defendants' ferryboat, and obliged, in consequence of the crowd coming off, to stand upon the stringer separating the foot passage from the carriageway, was injured while in that position by the defendants' negligence. It was held to be a question for the jury whether the plaintiff was negligent in occupying such a position.

Eaton v. *Erie Railwry Co.*, 51 N. Y. 544.—A train of cars was standing upon the defendants' track partly on a crossing, and the plaintiff wished to pass with his team, there being room to do so. Some person, not an employee of defendants, whom he asked if he could pass, told him he had better not pass. After waiting a few minutes he attempted to lead his horse across, when the train, without any warning, backed up and injured the horse and wagon. Held, that the question of contributory negligence was for the jury.

Maginnis v. *N. Y. Cent. etc., Co.*, 52 N. Y. 215.—Deceased attempted to cross a street in the evening. A long train, without any lights in the rear, was backing down, but had so nearly stopped that no motion was perceptible, and she then attempted to cross, when without warning the brakes were let off, and the train ran against her. Held, that it was a question for the jury whether she was negligent.

Totten v. *Phipps*, 52 N. Y. 354.—Deceased was lessee of the third floor of defendants' building, the lower portion of which was used and occupied by defendant. In the hall leading from the outer door to the stairs was a hatchway, closed by a trap-door, occupying nearly the whole passage, used and kept open by defendant in the day-time, but usually closed at from 6 to 8 o'clock P. M. Deceased went to the premises at between 8 and 9 o'clock P. M. without a light, and the trap-door being open, fell through it. The court held that whether she was negligent was a question for the jury.

Hackford v. *N. Y. Cent., etc., Co.*, 53 N. Y. 654.—The court held that in an action to recover damages for injuries received at a railroad crossing by a traveller on a highway, if some act or omission, on the part of the person injured, which of itself constitutes negligence, is established by undisputed evidence, it is the duty of the court to nonsuit; but if the fact depends upon the credibility of witnesses, or inferences from the circumstances, about which honest men might differ, it is a proper question for the jury.

Spooner v. *Brooklyn City Railroad Co.*, 54 N. Y. 230.—Plaintiff was a passenger on defendants' sleigh, and the seats being all taken, stood on the side foot-board upon which passengers usually stood when the seats were occupied. While in this position he was injured by a passing vehicle. Held, a proper case for the jury.

Belton v. *Baxter*, 54 N. Y. 245.—Plaintiff, desiring to cross a street in the city of New York, saw a car approaching rapidly, and behind it a cart approaching in the track still more rapidly, and calculating that he could cross before the cart could get up, he attempted to cross in front of the car, and did pass, but was struck by the cart. Held, negligence *per se*. (This was in the Commission of Appeals.)

The case was re-tried and came before the Court of Appeals, in 58 N. Y. 411, and on evidence somewhat different, it was held a proper case for the jury. The only difference was that the plaintiff testified that he watched the cart till he lost sight of it; and he did not suppose it would turn off the track, and come ahead of the car on the other side quickly enough to catch him, as it was evident it did.

Remarks.—This seems a distinction without a difference. In both cases the plaintiff mis-