trary to the evidence, and there are other objections, as for instance, excess of damages. The Court here is of opinion that the defendants are entitled to have the verdict against them set aside, and to have a new trial.

Before proceeding further it may be well to state some law. The burden of proof was on plaintiff. His having received an injury on defendants' land, or even from the defendant, is not enough. Sec. 12, Sherman and Redfield, 3rd edition, of 1874. Plaintiff has to show violation by defendant of duty. If plaintiff have proximately contributed to the injury complained of, so that but for his co-operating fault the injury would not have happened, he cannot recover. Sec. 25, S. and R.; also Sourdat, No. 660. If by ordinary care plaintiff would have avoided the injury he cannot recover. Sec. 29, S. and R. If danger is near, extraordinary care must be taken to guard against it. No recovery can be had for injuries suffered by one who, without looking carefully along the track of a railroad, walks across it or along it, and is run over by a train. Sec. 40. Walking along the track of a railroad where it is not running upon a highway is culpable negligence. Sec. 487. Statutes ordering bell ringing and whistling are only for the benefit of persons travelling on the highways, and cannot be made ground of an action by one injured while walking along the track of a railroad. Sec. 485; and so per Lord Selborne in the last case he was dealing with. (Albany Law Jl., p. 73.) Sec. 488 *a*, S. and Redfield. The statutes giving a right of action to persons injured by the neglect of a Railroad Company to ring a bell at a highway crossing do not confer such right of action irrespective of the injured person's own negligence. One whose own fault has contributed to his injury cannot take advantage of these statutes; nor is defendant's omission to ring a bell any excuse for plaintiff's omission to look up and down the track. It is culpable negligence for any one to cross the track of a railroad in full view, or hearing, of an approaching train, or without taking precautions to ascertain whether a train is approaching, and as a general but not invariable rule it is such negligence to cross without looking in every direction to make sure that the road is clear. Sec. 488. Upon such law, and upon the facts proved, we are unanimously of opinion that the findings of the jury ought substantially to have been for the defendants. With great respect to the learned judge who presided at the trial, we think he ought not to have charged as he did, leaving to the jury as it were the question of whether the plaintiff while traversing the railway was in execution of his duty, that if he was not, he was to be treated as any other individual, implying, as it seems to this Court, that if the jury found plaintiff in execution of his duty, he was to be held as in his right walking where he was. We think that the learned judge ought to have charged that in his opinion, in any aspect, plaintiff was not where he had right to be. The plaintiff has himself to blame for the accident. He had no right to be where he was when struck. He contributed to the injury he complains of. Danger was near him from the moment he got upon the railroad track, and getting on to such a dangerous roadway, the plaintiff was bound to use his eyes, and take care. He did not look about, behind and before him. Had he looked, he would not have been hurt. He has been guilty of culpable negligence; the proofs are clear. We grant the new trial for the 2nd, 4th, 6th, 13th, 15th, 17th and 18th reasons. The 6th claims that the verdict is unsupported by proof, and contrary to law and evidence; the 18th claims that plaintiff contributed to the accident, and the defendants, therefore, ought to go free.

E. Carter, Q. C., and *L. H. Davidson* for plaintiff.

George Macrae, Q. C., for defendants.

SUPERIOR COURT.

MONTREAL, January 31, 1879.

LA SOCIÉTÉ DE CONSTRUCTION CANADIENNE DE MONTRÉAL v. DESAUTELS dit LAPOINTE.

Exception resulting from improvements, C. C. 2065.

JOHNSON, J. On the first of October, 1872, the defendant bought from one Deslauriers some real estate, mortgaged to the plaintiffs for some $7,000, the defendant assuming his vendor's obligations towards the plaintiffs. On the 19th of April, 1877, the plaintiffs sued him *en déclaration d'hypothec*; and on the 22nd of October they got judgment against him in that case. On the 12th of November, the defendant made