side track to pick up a car some fifty yards distant, ran on the plaintiff and injured him. The plaintiff was looking in the opposite direction from that in which the engine and tender were coming, and therefore did not see them; and it appeared that had he been looking out he must have seen them before he attempted to cross and so avoided the accident, as it was only a second or two from the time he left the platform until he was struck, and there was no obstruction to this view.

Held, that the accident having been caused by the plaintiff's own negligence and want of care, the defendants were not liable.

Quære, whether an engine and tender constitute a train within s. 52 of R. S. C. c. 109, so as to require a man to be stationed on the rear car to warn persons of their approach, but in any event there was a man so stationed here who did give warning.

Held, also, that the statutory obligation to ring the bell or sound the whistle only applies to a highway crossing and not to an engine shunting on defendants' own premises.

J. Reeve, for plaintiff.

G. S. Mackintosh, for defendant.

DUNCAN *v.* ROGERS.

Way—Easement appurtenant to land conveyed, etc.—Prescriptive right to—Recoverable because—Agreement, construction by court of.

Some years prior to 1847, J. D., plaintiff's father, became the owner of lot 18 in the 5th concession of York, and built the house in which he lived up to the time of his death, on the north-west half and near the 6th concession line. In 1847 J. D. purchased lot 19, adjoining lot 18 on the north, the occupiers of the eastern portion of which, prior thereto, and J. D.'s tenants since, used a trail or road running from the northerly part of the east half of 19, where plaintiff's house stands, across the west half of 19 to the boundary of 18 and 19, where there were several trails or roads across the west half of 18 to a permanent lane leading in a westerly direction past J. D.'s house to the 6th concession. The trails ran through bush land, and no one thereof was solely or exclusively used, but as was convenient. In 1860 J. D. conveyed the east half of 19 to plaintiff, and plaintiff also acquired by devise from his father, who died in 1877, the north-east quarter of 18, which adjoined the east half of 19 on the south. The west half of 19 J. D. devised to his daughter, who had ever since been in occupation thereof, and the north-west half of 18 to his son W., who was living with him at his death, and who conveyed the same to defendant. Shortly after J. D. conveyed the east half of 19 to plaintiff, he, with J. D.'s permission, cut a new roadway on the southerly side of the woods on lot 18, connecting thereby with the lane to the 6th concession. In 1877, by an agreement entered into between plaintiff and W. D., in consideration of certain privileges granted to W. D., W. D. covenanted to permit plaintiff to have a right of way along the said lane from the 6th concession and extending forty rods east of the centre of the lot, so as to allow plaintiff free communication from lot 19 along said lane to the 6th concession.

Held, that there was no defined right of way in 1860 over the west half of 18 appurtenant to the east half of 19, so as to enable plaintiff to claim an easement therein as granted under the words therefor in the conveyance of 1860; that the user of the roadway cut in 1860 being merely a license, was revocable at any time, and was revoked by the father's death, and thereafter the user, as the evidence showed, was merely permissive, which was acceded to by plaintiff in 1877 by his entering into the agreement of that date.

Per MACMAHON, J.—The jury are to find questions of fact, to which the court must apply the law on the facts so formed. The construction of the agreement was for the court, and its meaning was that the old lane was to be extended easterly in a straight line for forty rods.

Fullerton, for plaintiff.

Tilt, for defendant.

ANDREWS *v.* BANK OF TORONTO.

Deed of composition and discharge—Covenant not to sue.

On 1st September, 1883, B. & Co. drew on plaintiff at four months for $783.50, the amount his indebtedness, which plaintiffs accepted,