up the way, and then agreed to its being re-opened at the request of defendant upon condition that defendant would place a gate across the way and keep it up.

Held, 1. This evidence excluded the idea that the way was enjoyed as of right.

2. The doctrine of lost grant was not applicable where the enjoyment could be otherwise reasonably accounted for.

3. The compromise of the former action did not constitute an estoppel, but was merely a license which plaintiff was at liberty to withdraw.

Semble, an admission as to a mixed question of law and fact by a layman, particularly in reference to a question of right of way, is not conclusive.

Gregory, K.C., for plaintiff. *Griffin,* for defendant.

province of Manitoba.

COURT OF APPEAL.

Full Court.]　　　　MURPHY *v.* BUTLER.　　　　[Oct. 2.

Principal and agent—Commission agent—Liability of principal to agent on contract entered into by agent in his own name on behalf of principal—Sale on Grain Exchange.

The defendant a farmer residing in the United States, instructed plaintiffs, brokers and members of the Winnipeg Grain Exchange, to sell for him 4,000 bushels of oats for future delivery at 37 cents per bushel or better. Pursuant to these instructions, the plaintiffs sold in their own names, according to the rules of the Exchange, 4,000 bushels of oats to one Pearson for October delivery at 38½ cents per bushel, making themselves personally liable on the contract. They promptly advised the defendant of the sale and the price, and defendant did not repudiate the transaction. Defendant refused to deliver the oats and plaintiffs, on the last day of October, were compelled to purchase the 4,000 bushels of oats at 63 cents a bushel in order to carry out their contract with Pearson.

Held, that the plaintiffs were entitled to recover from the defendant the amount of their loss, viz., the difference between 38½ and 63 cents per bushel on the 4,000 bushels.

The defendant had no right to expect that any contract would be drawn up between himself and the purchaser which