pression "aggregate value," as used in the Act, is what is considered in ascertaining whether an estate is liable or not in the first instance and at what rate the duty is chargeable.—Ed.

Divisional Court.] [Dec. 27, 1904.

SMITH *v.* NIAGARA AND ST. CATHARINES RY. CO.

Negligence—Railways—Dangerous crossing—Failure to give warning—Contributory negligence.

A siding of the defendants' line of railway which was not used by the defendants more than two or three times a week crossed a narrow arched in lane or alleyway (held on the evidence to be a highway) very close to the face of the walls. The plaintiff's servant had driven the plaintiff's horse and waggon across the siding and through the alleyway to a warehouse close by, there being no engine or cars on the siding. The waggon was within a short time loaded with boxes, and the plaintiffs' servant then returned through the alleyway, the servant walking beside the waggon in order to steady the load. Just as the horse came out of the alleyway it was struck by a passing engine and severely injured. The whistle of the engine had not been sounded, nor the bell rung. The plaintiff's servant did not stop the horse at the mouth of the alleyway or look or listen for trains:—

Held, that, assuming but not deciding that the duty to sound the whistle or ring the bell did not apply in case of engines using a siding, it was nevertheless incumbent upon the defendants to give some warning before crossing a lane, especially in view of the very dangerous nature of the crossing, and that not having done so they were guilty of the negligence and prima facie liable in damages.

Held, also, that under all the circumstances it could not be said that there was not some evidence to support the finding of the judge at the trial (the case having been tried without a jury) that the plaintiff's servant had not acted unreasonably and was therefore not guilty of contributory negligence.

Judgment of the County Court of Lincoln, affirmed.

W. H. Blake, K.C., for appellants. *Marquis*, for respondent.

Teetzel, J.] IN RE HARKNESS. [Dec. 29, 1904.

Life insurance—Benefit of wife and children—Declaration by will—Identification of policy—Residuary estate—"Including."

A testator being the holder of a policy of life insurance, payable to "his order or heirs," made his will by which he devised