HIGH COURT OF JUSTICE.

Master in Chambers.] [April 18.

ARMOUR *v.* TOWN OF PETERBOROUGH.

Jury notice—Action against municipal corporation—Non-repair of highway—Judicature Act, s. 104.

In an action for damages for injuries sustained by the plaintiff from a fall upon a highway under the control of the defendant municipality, the statement of claim alleged that the accident to the plaintiff was caused by the faulty, improper, and negligent construction of the pavement, which, being built upon an incline and having a smooth surface, "would call for the ordinary rough finish which it is customary and prudent to build under said conditions."

Held, that the action was for "injuries sustained through non-repair" of the highway, within the meaning of s. 104 of the Judicature Act, R.S.O. 1897, c. 51, and that a jury notice was therefore irregular.

Grayson Smith, for defendants. *C. W. Kerr*, for plaintiff.

Street, J.] [April 27.

SIMS *v.* GRAND TRUNK RY. CO.

Railway—Negligence—Injury to person crossing track—Failure to look for train—Contributory negligence—Case for jury.

The plaintiff was injured by being struck by the engine of a train of the defendants while crossing their track at a level highway crossing. Had he looked, he could have seen the approach of the train, but he did not look. There was some evidence that the usual statutory signals of the approach of the train were not given. The plaintiff sought to recover damages for his injuries.

Held, not a case which could be withdrawn from the jury. The defence that the plaintiff should have looked out for the train was one of contributory negligence, and must be left to the jury.

Morrow v. *Canadian Pacific R.W. Co.* (1894), 21 A.R. 149, and *Vallee* v. *Grand Trunk R.W. Co.* (1901), 1 O.L.R. 224, followed.

John MacGregor, for the plaintiff. *W. R. Riddell*, K.C., and *J. P. Mabee*, K.C., for the defendants.