churn, and more than two months subsequently wrote that the churn was a success, that they could not afterwards, in defence to an action on the contract, set up misrepresentation as to the merits of the patented article.

PER CURIAM. This is an action on an agreement which was entered into between the parties in April, 1880. Under the agreement in question the plaintiff gave the defendants the right to manufacture and sell a new kind of churn, called the *Monitor*, in the Province of Quebec, this churn being one for which plaintiff holds a patent. The plaintiff was to protect defendants, and the defendants were to keep on hand a lot of the churns of different sizes, so that the market should be furnished with them. The defendants were to push sales in the Province, &c., and were to pay plaintiff a royalty of $1 a churn, and on 150 at least before February, 1881. They paid $50 in advance, and were to pay quarterly on the first of May, August, November and February (first payment due 1st August, 1880), with attested accounts of sales each quarter. The $100, balance of 1st February, 1881, is unpaid, and the plaintiff alleges that the defendants have failed to pay all else, and to render accounts each quarter as they were bound to do; that they have not kept the market supplied, and have not pushed sales, but have been negligent, and have thus damaged plaintiff to the extent of $50. The conclusions are for the sum of $150, and that the defendants be condemned to render a full account of all their sales and doings, or, in default of an account, that they be condemned to pay a further sum of $500 as damages.

The plea is to the effect that plaintiff falsely pretended that his churn was a new and useful invention, and that its principle was new, whereas it is not new, and the churn does not perform its work in any way to fulfil what the plaintiff represented about it, and is not a new and useful invention; that the plaintiff was to defend the defendants selling said churn, but instead of doing so has allowed others to make and sell churns of like principle, although the defendants duly notified the plaintiff of what was going on; that the "Baldwin figure 8 churn" has been openly sold in competition with plaintiff's so-called invention and works upon like principle as plaintiff's patented churn, but the plaintiff has never taken steps to prosecute those selling the Baldwin churn; that the Baldwin is a superior churn, and prevents the sale of plaintiff's, in consequence; that plaintiff gave the defendants the exclusive right to sell but had been selling, contrary to his agreement, churns manufactured by himself in the city of Montreal; that defendants did all they could, by advertising and sending agents about, and manufacturing churns, to push sales, and kept at it for months, but have only sold 13 churns, and the patent is worthless; that it is untrue that defendants have refused to furnish accounts to plaintiff, as they have regularly rendered accounts. The conclusions of the plea pray that the agreement of April, 1880, be rescinded and the plaintiff's action dismissed.

The plaintiff answered specially that the defendants had never made any complaints to him about the Baldwin churn, and that the rest of defendants' allegations were untrue.

The defence is not made out, but quite the contrary. The defendants' letters to plaintiff of June and July testify against them. On the 16th June, 1880, the defendants wrote asking license to sell the churn in Ontario, and on the 2nd July, 1880, the defendants wrote to plaintiff that the churn was a success. James' deposition proves this letter. I see no false representations by plaintiff, nor default by him towards the defendants. The latter have made a bad bargain, and lost money undoubtedly, yet their defence fails. The plaintiff did not guarantee any amount of sales to defendants, and the latter have not rendered to plaintiff quarterly accounts as he was entitled to have them, nor have they paid the plaintiff what they guaranteed him. Judgment will therefore go in favor of plaintiff for the $100, balance, and for an account.

John L. Morris for plaintiff.

Maclaren & Leet for defendants.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

ROY v. THE GRAND TRUNK RAILWAY CO. OF CANADA.

Railway—Accident at Crossing—Negligence.

The plaintiff, while attempting to pass a railway crossing, was struck by a train and injured;