DECISIONS IN COMMERCIAL LAW.

HOLLINGER v. CANADIAN PACIFIC RAILWAY CO.—The Railway Co. used part of a highway for station-yard purposes, eight tracks crossing it from west to east, the west end of the yard being less than eighty rods from the highway. The Railway Company in shunting some flat cars drew them from the east end of the yard to the west end, and then after a pause, sent them in an easterly direction on another track, the shunting engine and tender following some distance behind on the next track to the south. H., who was on the highway, attempted to cross after the flat cars had passed, and was struck by the tender. There was no look-out man on the tender, and there was contradictory evidence as to the ringing of the bell at all, though at most it was not rung until the engine had run some distance towards the highway, and the whistle was not blown. The Court of Appeal for Ontario *held* that there was sufficient in the general facts of the case to justify the finding of the jury in favor of H., and that the verdict should not be disturbed. Burton, J. A., was of opinion that section 256 of the Railway Act did not apply to shunting in a station yard, and that there had been misdirection on that point, but that the Railway Co. had no right to use the highway as part of their station yard, and were therefore trespassers *ab initio* and liable for all damages resulting from their dangerous use thereof.

ROGERS v. MADDOCKS.—R. claimed an injunction to restrain a breach of covenant not to carry on a particular business. R. was a brewer, and engaged M. as his traveller to procure orders from, and sell malt liquors, and also if required by the plaintiff, aerated waters, etc., to the class known as wholesale purchasing agents. M. agreed that for two years after the termination of his employment with R. he would not be concerned in selling malt liquors or aerated waters, etc., within a certain district. During his employment with R., M. was never called on to sell anything but malt liquors, and it was alleged that R. had no business for the sale of aerated waters, etc. After leaving R.'s employ, M. became a traveller for rival brewers within the prescribed district, and R. claimed an injunction to restrain him from so doing. The English Court of Appeal were of opinion that the covenant restrained M. from selling both retail and wholesale within the prescribed district, and was not wider than was necessary for the reasonable protection of R., for that selling wholesale and retail are not two distinct businesses, but only two distinct modes of carrying on the same business. They, however, agreed that the stipulation as to aerated waters, etc., was severable.

AUBERT-GALLION v. ROY.—By 44, 45 Vict. (P.Q.), c. 90, s. 3, granting to respondent a statutory privilege to construct a toll bridge across the Chaudiere river, in the parish of St. George, it is enacted that "So soon as the bridge shall be open to the public as aforesaid, during thirty years no person shall erect or cause to be erected any bridge or bridges, or works, or use or cause to be used any means of passage for the conveyance of any persons, vehicles, or cattle, for lucre or gain, across the said river, within the distance of one league above and one league below the bridge, which shall be measured along the banks of the river and following its windings; and any person or persons who shall build or cause to be built a toll-bridge or toll-bridges, or who shall use or cause to be used, for lucre or gain, any other means of passage across the said river, for the conveyance of persons, vehicles, or cattle, within such limits, shall pay to the said David Roy, three times the amount of tolls imposed by the present Act, for the persons, cattle, or vehicles which shall thus pass over such bridge or bridges; and if any person or persons shall at any time, for lucre or gain, convey across the river any person or persons, cattle or vehicles, within the above-mentioned limits, such offender shall incur a penalty not exceeding ten dollars for each person, animal, or vehicle which shall have thus passed the said river; provided always, that nothing contained in the present Act shall be of a nature to prevent any persons, cattle, vehicles, or loads from crossing such river within the said limits by a ford, or in a canoe or other vessel, without charge." After the bridge had been used for several years, the appellant municipality passed a by-law to erect a free bridge across the Chaudiere in close proximity to the toll-bridge in existence. The respondent thereupon, by petition for injunction, prayed that the appellant municipality be restrained from proceeding to the erection of a free bridge. *Held*, by the Supreme Court of Canada, affirming the judgments of the Courts of Quebec, that the erection of the free bridge would be an infringement of the respondent's franchise of a toll-bridge, and an injunction should be granted.

FOX v. KENSINGTON AND KNIGHTSBRIDGE ELECTRIC LIGHT CO.—The Court of Appeal held a patent void because the completed specifications were for a different invention from the original specifications, and because the invention was not, when the patent issued, used for the main purpose designated, and also because the specifications were insufficient to enable an expert of ordinary competence and skill to carry it out without further experiment and invention. Lindley, L. J., also makes some interesting observations on the difference between invention and discovery, and lays down that the mere discovery that a known machine can produce effects not known to be producible by it is not patentable. To entitle a person to a patent, he must make some addition, not only to knowledge, but to previously-known inventions, and must produce either a new and useful thing or result, or a new and useful method of producing an old thing or result. "On the one hand, the discovery that a known thing can be employed for a useful purpose for which it has never been used before is not alone a patentable invention; but, on the other hand, the discovery how to use such a thing for such a purpose will be a patentable invention if there is novelty in the mode of using it, as distinguished from novelty of purpose, or if any new modification of the thing or any new appliance is necessary for using it for its new purpose, and if such mode of user, or modification or appliance involves any appreciable merit."