

Chan. Div.]

NOTES OF CANADIAN CASES.

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PUBLISHED IN ADVANCE BY ORDER OF THE
LAW SOCIETY.

CHANCERY DIVISION.

Proudfoot, J.]

[Dec. 2.]

VICKERS EXPRESS CO. V. CANADIAN
PACIFIC RAILWAY CO.*Railway Act, 1879—Express Co.—Facilities—
Parties.*

In an action by an express company against a railway company to compel the defendants to afford the plaintiffs the same "facilities" that they did to another express company, alleging that the right to employ the station agents of the railway company as agents of the express company was such a "facility," and had been refused to the plaintiffs although granted to the other express company,

Held, that such right was a "facility," and that the Canada Railway Act of 1879, s. 60, ss. 3, provides any facilities granted to one incorporated express company shall be granted to others.

Held, also, that the plaintiffs could not compel the defendants to give the use of their agents, but if the defendants allow the agents to act for one company, it is a "facility" that cannot be denied to the other company.

The action was, however, dismissed on the ground that the other express company had not been made a party, but without costs.

McCarthy, Q.C., and Creelman, for the plaintiffs.

S. H. Blake, Q.C., and R. M. Wells, Q.C., for the defendants.

Ferguson, J.]

[May 16.]

WHITLEY V. GOWDEY.

*Patent—Re-issues—Enlarging claims—Laches in
applying for re-issue.*

Action for infringement of patents of invention. When it appeared that in a re-issued patent a claim constituting a new feature was

introduced—a thing that was not in the original patent or contemplated at all by the then inventor—a feature that was shown to be of substantial importance and practical utility and which amounted to an invention and it did not appear that this change was the correction of a mistake or a thing arising by reason of accident or inadvertence.

Held, that the said claim in the re-issue was invalid.

A re-issue cannot contain matter of invention which as to the original is new, or a broadening of the invention, although it may under proper circumstances contain a broadening of a specific claim made.

Where in a re-issue one of the claims was in the same words as one of the claims in the original patent, but contained the words "substantially as shown and described," and on reference to the specifications it appeared that those of the re-issued patent contained certain additions which were not in those of the original patent, and when read with reference to the specifications the claim in the re-issued patent appeared to mean a thing different from that meant by the corresponding claims in the original patent, and the result stated in the new or added part of the specifications for the re-issued patent showed that the intention was to claim something different from that which was manifested or claimed in the original patent, and it did not appear that this change could be said to have been made for the purpose of correcting a mistake or by reason of an accident or inadvertence,

Held, the claim in the re-issued patent could not be sustained, and was invalid.

When the date of an original patent was December 6th, 1877, and the date of a re-issue of it was March 7th, 1881, and it appeared that the attention of the patentee must have been called to the merits and actual scope of his patent as early as March 7th, 1879, by reason of the disclaimer on that date; and when in the case of another patent, the date of the original was November 14th, 1876, and the date of the re-issue March 17th, 1881, and it appeared that the attention of the patentee must have been drawn towards the merits, demerits or defects in his patent as early as March 7th, 1879, for a similar reason; and when in the case of another patent, the date of the original was September 28th, 1876, and of