

bought it for own use; and that if it was not *bona fide* the Supreme Court of the Territories, though exercising the functions and possessing the powers formerly exercised and possessed by courts of equity, could not, in these statutory proceedings, grant the relief that could have been obtained in a suit in equity. Appeal allowed with costs. Armour, Q. C., for the appellant. Gibbons, Q. C., for the respondents.

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TORONTO R'y Co. v. The Queen.—
Exchequer Court — June 26, 1895.
—Customs duties—Exemption from duty
—Steel rails—For use on railway tracks—

Rails for street railway—Customs Tariff Act, 50 and 51 Vic., c. 39, item 173. By item 173 of the Customs Tariff Act, (50 and 51 Vic. c. 39 (D), steel rails weighing not less than twenty-five pounds per lineal yard, for use on railway tracts, are exempt from duty. Held, affirming the decision of the Exchequer Court (4 Ex. C. R., 262), Strong, C. J., and King, J., dissenting, that this exemption does not apply to rails for use on street railway tracks. Appeal dismissed with costs, Robinson, Q. C., and Osler, Q. C., for the appellants. Newcombe, Q. C., Deputy Minister of Justice, and Hodgins, for the respondent.

ONTARIO CASES.

QUEEN'S BENCH DIVISION.

REGINA v. Verral—The Justices in Banc, 14th December, 1895.—Evidence—Prosecution for indictable offence—Foreign commission—Order for—Time—Preliminary enquiry—Use of evidence—Criminal Code, s. 683—Return of commission. Section 683 of the Criminal Code is merely an extension of the provision made by s. 681 for procuring the evidence of a person dangerously ill, to the procuring of the evidence of a person residing out of Canada. Section 681 had its origin in 43 V. c. 35, and, reading its provisions in the light of the preamble to the Act, it is clear that the statement for the taking of which provision is therein made may be used as evidence at any stage of the inquiry relating to an indictable offence. The time at which an order may be applied for under s. 683 does not differ from that under s. 681; the kind of evidence to be given in each case is substantially the same; and the words "for which a prosecution is pending" in s. 683 do not differ from s. 681. The order of MacMahon, J., 16 P. R. 444, allowing the Crown to issue a commission to take

evidence abroad, pending the preliminary inquiry before a police magistrate upon an information against the defendant for an indictable offence, was applied for and obtained at a proper time and under circumstances warranting the application and order; and, although the use to be made of the evidence to be procured under it could not affect its validity, such evidence might be given relating to the offence or to the accused—a provision enabling it to be used as well before the grand jury as at the trial not preventing its being used at any other time, if required. The order, however, should provide that the commission be returned into a High Court, and ought not to limit the use of the evidence.

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HUNTER v. Stark.—Boyd, C., December 10, 1895. — Counterclaim—Recovery of land—Joinder of causes of action—Rule 341 — Mortgage action — Leave. A counterclaim for the recovery of land is an action for the recovery of land, within Rule 341 as to joinder of causes of action. Compton v. Preston, 21 Ch. D. 138, followed. And a counterclaim for foreclosing and recovery of possession of