

sum. *Anderson Tire Co. of Toronto v. The American Dunlop Tire Co.*
5 Ex. C.R. 100, referred to.

3. The effect of s. 37 of the Patent Act is to make the patent void only as to the interest of the person importing or causing to be imported the article made according to the process patented; and importation by a licensee will not avoid the patent so far as the owner is concerned.

Aylen, K.C., and *A. W. Duclos*, for the plaintiff. *MacLennan* and *C. A. Duclos*, for the defendants.

Burbidge, J.]

TUCKER v. THE KING.

[March 20.]

Demurrer to petition of right—Claim for services rendered as commissioner under R.S.C. c. 115—Contract—Public office.

Held, 1. A person appointed under the provisions of R.S.C. c. 115, as a commissioner to investigate and report upon improper conduct in office of an officer or servant of the Crown cannot recover against the Crown payment for his services as such commissioner, there being no provision for such payment in the said enactment or otherwise.

2. The service in such a case is not rendered in virtue of any contract but merely by virtue of appointment under the statute.

3. The appointment partakes more of the character of a public office, than of an employment to render a service under contract express or implied.

Newcombe, K.C., for demurrer. *Leet*, K.C., contra.

Province of Ontario.

COURT OF APPEAL.

From Robertson, J.]

FORD v. METROPOLITAN R.W. CO.

[April 10.]

Street railway—Negligence—Failure to give warning of approach of car—Backing car in the dark.

Action for negligence. The plaintiff travelling by electric railway car along a country road in a southerly direction on a dark night, got off at a regular stopping place. He then turned back along the road and after walking for some distance, the car by which he had travelled, backing northward, struck him. It appeared that there was a light at both ends of the car but that the current was very weak at the time, and the light given very slight, and the motorman came within four or five feet of the plaintiff before seeing him. The car was going along at the rate of only three or four miles an hour. The motorman did not sound the gong or give any other warning of his approach.