

The evidence on the whole case shewing that the accident was solely due to the negligence of the deceased in attempting to climb upon a swing-bridge while it was in motion, the petition was dismissed.

Staunton, O'Heir & Morison, for suppliant. *Harcourt and Cowper*, for the Crown.

Cassels, J.]

MORRIS v. THE KING.

[April 12.

Customs Act—Reference by Minister of a claim to the court—Affidavit used before Minister in respect of which there was no opportunity of cross-examining the deponent—Admissibility.

By s. 183 of the Customs Act, 51 Vict. c. 14, it is provided that upon a reference of any matter to the court by the Minister of Customs, the court shall hear and consider the same upon the papers and evidence referred, and upon any further evidence produced under the direction of the court. Among the documentary evidence referred in connection with a claim for a refund of duties paid, was an affidavit by a witness, since deceased, testifying to a fact adverse to the claimant, and in respect of which no opportunity was afforded the claimant to cross-examine the deponent.

Held, that while the statements of the deponent were not as effective as if he had been examined as a witness in court, and so subject to cross-examination, yet the affidavit was admissible as evidence under the statute.

Beaudin and Loranger, for claimant. *Archambault*, for Crown.

Province of Ontario.

COURT OF APPEAL.

Full Court.]

REX v. LEE.

[March 24.

Criminal law—Gold and Silver Marking Act—Authority of Dominion and of Provincial legislatures—Overlapping of legislation—Ultra vires.

Case stated by one of the judges of the County Court of York, by whom the defendant was convicted of a breach of the Gold and Silver Marking Act, 7-8 Edw. VII. c. 30 (D.).