

of the essential elements of the offence is not either an irregularity, an informality, or insufficiency, so as to be aided by sec. 889 of the Criminal Code.

Upon a persual of the depositions, it does not appear that defendant has "knowingly" assisted, encouraged, or solicited the importation of any alien or foreigner into Canada. It appears that Frederick DeRocher was born in the United States, but that his parents were born in Canada. There is no evidence that either he or his parents were ever naturalized in the United States. The presumption from the only facts in evidence is that his parents are British subjects, though residing in the United States, and that, therefore, he is a British subject: Dicey's Conflict of Laws, ed. of 1876, p. 178; 2 Steph. Comm., 12th ed., p. 406.

Rule absolute quashing conviction with costs to be paid by prosecutor. Usual protection to magistrate.

FEBRUARY 9TH, 1903.

DIVISIONAL COURT.

SCOTT v. BARRON.

*Way—Dedication as Public Highway—Finding as to on Evidence—Private Way—Removal of Obstruction—Injunction—Mandatory Order—Attorney-General—Adding as Plaintiff—Conditional Consent.*

Appeal by plaintiff from judgment of FALCONBRIDGE, C.J. (1 O. W. R. 558), dismissing the action and awarding defendants \$25 damages under an undertaking as to damages given by plaintiff as a condition to the granting of an application for an interim injunction; and cross-appeal by defendants as to damages. The action was brought by one Scott to restrain defendants from trespassing upon an alleged private way, or, if it were a highway, from continuing an alleged nuisance upon it. The Attorney-General was added as a plaintiff at the trial. The locus was a lane leading to the plaintiff's saw-mill in the 11th concession of the township of Colchester North. The defendants set up that the lane was a public highway and that the proper use thereof was not interfered with by the building of a platform by defendants.

J. H. Rodd, Windsor, for plaintiff.

T. Langton, K.C., for defendants.

The judgment of the Court (STREET, J., BRITTON, J.) was delivered by

STREET, J.—We concur in the finding of the Chief Justice that the lane is not a public highway, and that there has