1890
Jan. 20.

CARTER, MACY & CO. .....PLAINTIFFS;

AND

HER MAJESTY THE QUEEN.....DEFENDANT.

Customs laws—Teas in transit through United States to Canada—52 Vic. c. 14—Tariff Act (1886), *item* 781.

The plaintiffs made two shipments of teas from Japan to New York for transportation in bond to Canada. In one case the bills of lading were marked "in transit to Canada"; in the other, the teas appeared upon the consular invoice, made at the place of shipment, to be consigned to the plaintiffs' brokers in New York for transhipment to Canada. On the arrival of both lots at New York, and pending a sale thereof in Canada, they were allowed to be sent to a bonded warehouse as unclaimed goods for some five or six months. Thereafter the teas were entered at the New York Customs House for transportation to Canada, and forwarded to Montreal. There was nothing to show that the plaintiffs at any time proposed to make any other disposition of the teas, and there was nothing in what they did that contravened the laws or regulations of the United States or of Canada with respect to the transportation of goods in bond.

Held, that the teas were not dutiable as teas from the United States, the transaction having taken place prior to the passing of the Act 52 Vic. c. 14 which expressly provides that in such a case the teas would be dutiable.

CLAIM for return of certain moneys deposited with the Customs authorities at the Port of Montreal to obtain the release of goods seized for alleged violation of the provisions of the Customs laws.

The proceedings herein were commenced in the court by a reference by the Minister of Customs under *The Customs Act* (R. S. C. c. 32, sections 182 and 183, as amended by 51 Vic. c. 14, s. 34). Under the provisions of these sections no pleadings are necessary unless directed by the judge, and in this case no such direction was made, the case being submitted

1890

CARTER, MACY & CO. v. THE QUEEN.

upon the papers on file in the Customs Department which accompanied the reference to the court.

The question submitted for trial under the reference was whether certain teas which had been imported by the plaintiffs from Japan and sold by them to Montreal merchants, after remaining in New York for several months, was a direct importation to Canada *viâ* New York and, therefore, free from Customs duty ; or whether the teas were, under the circumstances of the case, imported to New York and afterwards purchased by the persons who got them in Montreal, and were, therefore, teas from the United States, and subject to Customs duty under the tariff?

Statement of Facts.

The facts of the case appearing upon the evidence are sufficiently stated in the judgment.

October 15th, 1889.

McMaster, Q.C., for the plaintiffs :

It is beyond dispute that the goods were duly entered in New York for exportation to Canada. The goods never broke bond in the United States, and no import entry, or entry for home consumption, was ever made in that country.

To say that the goods might have been sold in the United States, cannot surely be of any weight in the face of the continued and persistent course of dealing in a contrary direction. From first to last not the slightest act was done by the importers which could cast a doubt upon the absolute sincerity of their intentions and conduct.

The reasons given for the course adopted by the importers are, it is contended, perfectly sufficient and intelligible, and if they chose to consult the dictates of business convenience and prudence, whilst scrupulously keeping within the spirit and letter of the law, it cannot be argued that because they might have done something, which it is proved they never even contem-

1890

CARTER, MACY & CO. v. THE QUEEN.

plated doing, therefore the law is to be strained to tax their importation.

Sedgewick, Q. C., (with whom was *Hogg*) for the Crown:

Argument of Counsel.

The mere stamping of the bills of lading with words which might show that the tea was intended for Canada is nothing in itself. There was nothing incumbent on the plaintiffs by reason of these words in the bills of lading to carry the tea to Canada, and the question is: was the intention, as indicated in the bills of lading and invoices, to import the tea direct to Canada carried out? This question must be answered in the negative.

The facts show—1st, that the tea was detained in New York for a time, and under circumstances entirely inconsistent with a through or direct importation from Japan to Canada; and 2nd, that the sale of the tea in New York to Montreal merchants was a dealing with the tea which showed that the plaintiffs were not treating the importation as a through or direct importation to Canada, but as an importation to New York; and, therefore, the tea was properly subject to duty when brought into this country. Cites *Synopsis of Treasury Decisions* (U.S.), 1884, art. 845.

BURBIDGE, J., now (January 20th, 1890) delivered judgment.

The plaintiffs claim that they are entitled to have returned to them the sum of thirteen hundred and forty-nine dollars and one cent, deposited by them with the Collector of Customs of the Port of Montreal under the circumstances hereinafter mentioned. The matter comes before the court under a reference by the Minister of Customs made in pursuance of sections 182 and 183 of *The Customs Act* as contained in 51 Vic. c.

1890

CARTER, MACY & CO. v. THE QUEEN.

Reasons for Judgment.

14 s. 34, and, in accordance with the practice in such cases, was heard without pleadings.

The plaintiffs, who are importers of teas doing business at the City of New York, on the 23rd July, 1888, at Kobe, Japan, through their agents Messrs Hunt & Company, shipped by the S.S. "Gleneagles" 506 half-chests of tea to be delivered at the Port of New York. Across the face of each of the two bills of lading covering this shipment there were stamped the words "in transit to Canada," and the same words appear in the consular invoices as indicating the proposed destination of the shipment.

On the 26th of the same month, through other agents —Messrs. Fraser, Farley & Varnum, the plaintiffs shipped from Yokohama, by the S.S. "Lord of the Isles," 475 half-chests of tea to be delivered at the Port of New York to the order of Messrs. Brown Bros. & Company. In the latter case, however, there was nothing upon the face of the bill of lading to indicate that at the time of shipment the teas were intended for the Canadian market; but by the consular invoice thereof, dated at Yokohama the 2nd of August, 1888, the 475 packages of tea were "consigned to the order of Messrs. Brown Bros. & Company *viâ* Suez Canal for transhipment to Canada."

Before the arrival of the teas at New York the plaintiffs attempted unsuccessfully to find a market for them in Canada, and on their arrival there in October, 1888, no entry being made thereof, the teas were sent to the bonded warehouse as unclaimed goods. The plaintiffs in the meantime made no effort to sell the teas in the United States but continued to look for a market in Canada, which they succeeded in finding in March, 1889. Thereupon the teas were entered at the New York Customs House for exportation in bond to Canada and forwarded to Montreal, where, being entered

1890

CARTER, MACY & CO. v. THE QUEEN.

free of duty as a direct exportation from Japan, they were seized as being dutiable, and subsequently released on the deposit with the Collector of Customs of the sum of thirteen hundred and forty-nine dollars and one cent before mentioned.

Reasons for Judgment.

By item 781 of the Act (1886) respecting duties of Customs, tea is not dutiable unless it falls within the description contained in item 434 of said Act, by which it is provided that " tea from the United States " is liable to a duty of ten per centum *ad valorem*.

The only question then to be determined in this case is, whether or not under the circumstances already stated, the teas in question are to be considered as teas from the United States within the meaning of the Act.

Now, it appears to me that the expression " teas from the United States " does not mean teas the growth and product of that country, for as yet the United States cannot be said to be a tea-producing country. Primarily it means, I think, teas that come into Canada from the United States. It appears to me, however, to be equally clear that the expression referred to does not include teas shipped in good faith from some other country to Canada, and which pass through the United States in bond. That is not denied, but it is said that the teas in question were not in good faith shipped from Japan to Canada because it was open to the plaintiffs to depart from their original intention and to enter the goods for consumption in the United States, and because of the delay at the Port of New York in entering them for transportation in bond to Canada. It appears to me, however, that in all which the plaintiffs did there was no violation of the laws of the United States, or of Canada, regulating the transportation of goods in bond, and nothing to indicate any purpose on their part to depart from their original intention as to the destination of the teas, which never lost, I think, the

1890

CARTER, MACY & CO. v. THE QUEEN.

Reasons for Judgment.

character that they had from the first of a direct exportation from Japan to Canada. I am, therefore, of opinion that the teas in question were not dutiable. I only desire to add that, while it may not be conclusive of the matter, I am greatly confirmed in the view that I have expressed by the amendment to *The Customs Act* made by Parliament in the session of 1889 (52 Vic. c. 14 s. 7) to which my attention was directed at the hearing, by which among other things it was provided that goods that are permitted to remain unclaimed, as the teas in question were, in any country intermediate between the country of export and Canada, should not be considered as *in transitu* through such intermediate country, but should be treated as goods imported from such intermediate country and valued and rated for duty accordingly.

There will be judgment for plaintiffs with costs, and leave is reserved for either party to apply for further directions.

*Judgment for plaintiffs with costs.**

Solicitors for plaintiffs : *McMaster, Hutchinson & Maclennan.*

Solicitors for defendant : *O'Connor & Hogg.*

*On appeal to the Supreme Court of Canada by the Crown, the judgment of the Exchequer Court was affirmed.