

1889
 Feb. 5.

GEORGE P. MAGANN.....PLAINTIFF ;

AND

HER MAJESTY THE QUEEN.....DEFENDANT.

*Revenue—Customs duties—Tariff Act, (1886)—Schedule “C.”—“ Shaped ”
 lumber.*

Under item (Departmental No.) 726 in Schedule “C.” of the *Tariff Act* (1886) oak lumber sawn, but not “shaped, planed, or otherwise manufactured,” may be imported into Canada free of duty.

Plaintiff imported a quantity of white oak lumber from the United States which had been sawn to certain dimensions so as to admit of it being used in the manufacture of railway cars and trucks without waste of material, but yet before being used for such purpose had to be re-cut and fitted.

Held,—That the lumber, being merely sawn to such dimensions as would enable it to be worked up without waste, was not “shaped” within the meaning of the *Tariff Act*, and was not dutiable.

THIS was a claim for a refund of duties paid by the plaintiff upon the importation of certain lumber from the United States.

The facts of the case are as follows :—

By item (Departmental No.) 726, Schedule “C.” of the *Tariff Act* (1886), it is provided that the following articles shall be admitted into Canada free of duty, that is to say :—

“Lumber and timber, plank and boards, sawn, or box-wood, cherry, walnut, chestnut, gumwood, mahogany, pitch-pine, rosewood, sandal-wood, Spanish-cedar, oak, hickory, and white wood, not shaped, planed, or otherwise manufactured, and saw dust of the same, and hickory lumber, sawn to shape for spokes of wheels but not further manufactured.”

The plaintiff, having entered into a contract with the Grand Trunk Railway Company to supply the company with a certain quantity of white oak plank

and boards and white oak lumber of specified thicknesses, widths, and lengths, arranged with certain millmen in the State of Michigan to saw such plank, boards, and lumber from the log. The plank, boards and lumber were intended to be used principally, but not wholly, for the construction of cars and railway trucks, and they were ordered to be sawn, and were in fact sawn, of such thicknesses, widths, and lengths as to admit of their being used in such construction without waste of material. The lengths called for by the contract varied, the shortest being two feet two inches, and the invoices upon which duty was collected and paid, under protest, indicated that the lumber when imported was cut to these exact lengths; but the fact as proved by the plaintiff and not denied by the defendant, no witnesses being called for the Crown, was that while the invoices disclosed the correct quantity of material imported, there being in each entry the equivalent of the number of pieces shown in the invoice, they did not show accurately the shape of the different pieces, and that, with perhaps a few unimportant exceptions, the lumber was imported in lengths in which it would be commercial or merchantable,—care being taken only that the lengths would be such that the lumber could, in Canada, be sawn into the shorter and specified lengths without waste.

With reference to the lumber it was proved that after it had been cut to the specified lengths the pieces could not be used in the construction of cars without being re-cut and fitted.

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McCarthy, Q.C. (with whom was *Robinson*, Q.C. and *MacKelcan*) for the plaintiff, contended that the sawing of the lumber from the log at the mill of such thicknesses, widths, and lengths that it might be used by the plaintiff without waste did not amount to shap-

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ing the same within the meaning of the statute. That if, which did not appear to be denied, the lumber in question, in the shape and condition in which it was, would be free of duty if imported for general purposes, or for no definite purpose, it would not become dutiable because its length was such that it could conveniently, and without waste, be cut up and used for a specific purpose, and that the plaintiff, in ordering the lumber as he did from the mill-men, simply had that in view. That a piece of white oak lumber could not at one and the same time be shaped or not shaped, dutiable or not dutiable, according to the use to which it was to be put. That Parliament not having enacted, as it had done in other cases, that the article should be dutiable, or not, according to the use to which it was intended to be applied by the importer or his customers,—as, for instance, that a white oak plank 30 feet long which, being imported for no specific purpose or for general purposes, would be free of duty,—it would not become dutiable because the importer intended to cut it into five pieces six feet long, each of which was adapted to, and intended to be used for, some specific purpose.

Sedgewick, Q.C. (with whom was *Hogg*) for the Crown, contended that the lumber being so cut in the United States as to be conveniently fitted in the construction of cars in Canada, was sufficiently shaped to bring it within the exception contained in the item of the tariff referred to.

Per curiam: The plank, boards, and lumber in question, in the form in which they were imported, were not shaped within the meaning of the statute, and were not dutiable.

Judgment for plaintiff, with costs.

Solicitors for plaintiff: *MacKelcan & Mewburn.*

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