

HIS MAJESTY THE KING (RE- } APPELLANT ;
 SPONDENT)..... }
 AND
 THE ALGOMA CENTRAL RAIL- } RESPONDENT.
 WAY COMPANY (SUPPLIANT).... }

1902
 *Mar. 27.
 *May 6.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Customs' duties—Duties on Goods—Foreign-built ships—Customs' Tariff Act, 1897, s. 4.

A foreign-built ship owned in Canada which as been given a certificate from a British Consul and comes into Canada for the purpose of being registered as a Canadian ship is liable to duty under section 4 of the Custom's Tariff Act, 1897.

A taxing Act is not to be construed differently from any other statute.

APPEAL from the judgment of the Exchequer Court of Canada (1) in favour of the Suppliant.

*PRESENT :—Taschereau, Sedgewick, Girouard, Davies and Mills JJ.

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The record on this appeal contained the following admissions of the facts by the parties.

"1. The suppliant company is, and was at the times hereinafter mentioned, a body corporate established under and subject to the laws of the Dominion of Canada, having been incorporated by special Act of the Parliament of Canada, being 62 & 63 Victoria, chapter 50, and the powers of the suppliant company are thereby defined."

"2. The suppliant company since its incorporation as aforesaid has always had its chief place of business at the town of Sault Ste. Marie, in the District of Algoma, and Province of Ontario."

"3. The suppliant, on or about the 10th of October, 1899, became the owner by purchase, at Marquette, in the State of Michigan, United States of America, of a certain steam vessel named the "*Minnie M.*," which vessel was built in the year 1884, at the City of Detroit, in the said State of Michigan; United States bill of sale of 10th of October, 1899, and United States Customs certificate of 12th May, 1900, to go in evidence."

"4. On or about 16th October, 1899, the British Consular Office at Chicago, in the State of Illinois, granted to the said vessel a provisional certificate, copy of which, dated the 16th October, 1899, to go in evidence."

"5. The said vessel afterwards arrived at the Port of Sault Ste. Marie, in Canada, which is a post of registry for British ships under the provisions of "The Merchants' Shipping Act, 1894."

"6. After the said vessel had arrived at Sault Ste. Marie, and while she was still there, the suppliant company applied to the Collector of Customs of the said port of Sault Ste. Marie, who is the registrar of shipping there, for British registry of the said vessel in Canada, and the Collector of Customs thereupon informed the suppliant company that upon application

for such registry the vessel would be chargeable with the duty imposed by item 409 of "The Customs Tariff, 1897." This claim of the Collector of Customs was and is upheld by the Government. The Collector of Customs being instructed by the Commissioner of Customs that "The Customs Tariff, 1897," required payment of duty before registration, stated to the suppliant company that he was so instructed, and declined to register the vessel without duty first paid."

"7. The suppliant company urged, on the other hand, that the vessel was not subject to duty either before or after registration, but the Collector, maintaining the position stated in the preceding paragraph, the suppliant company did, on the 5th May, 1900, enter the said vessel upon application for Canadian register for duty at customs under protest. Copy of the said entry of 5th May, 1900, with the protest thereon, also copies of the company's letter to the Collector of Customs of 4th May, 1900; the Collector's reply of the same date, and the company's reply of the 5th May, 1900, to go in evidence."

"8. The vessel was thereupon registered as desired by the suppliant company at the Port of Montreal, in Canada, being a port of registry for British ships in Canada duly authorized under the provisions of "The Merchants' Shipping Act, 1894." Copy of the registry to go in evidence."

"9. The suppliant company thereupon paid the sum of \$3,500, being the proper duty imposed under provisions of the said item 409 of "The Customs Tariff, 1897."

"10. The suppliant company has always contended and does contend that the said vessel, in the circumstances stated, was entitled to British register in Canada without the payment of any duty. On the other hand, the Government has always contended and

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does contend that the said vessel, in the circumstances stated, was liable to the duty paid."

"11. The Government still hold and claim the right to retain the said customs duty so paid as aforesaid, amounting to \$3,500."

"12. No question arises as to the amount of duty, assuming that the vessel was liable to any duty."

The material provisions of the Customs Tariff 1897 under which the question arises whether or not the customs officers were entitled to exact the duty are as follows:—

"Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

"4. Subject to the provisions of this act and to the requirements of *The Customs Act*, chapter 82 of the revised statutes, as amended, there shall be levied, collected and paid upon all goods enumerated, referred to as not enumerated, in Schedule A to this act, the several rates of duties of customs set forth and described in the said schedule, and set opposite to each item respectively, or charged thereon as not enumerated, when such goods are imported into Canada or taken out of warehouse for consumption therein."

"Schedule A."

"Goods subject to duties."

"409. Ships and other vessels built in any foreign country, whether steam or sailing vessels, on application for Canadian register on the fair market value of the hull, rigging, machinery and all appurtenances; on the hull, rigging, and all appurtenances, except machinery, 10 per cent ad valorem; on the boilers, steam engines and other machinery, 25 per cent ad valorem."

The Exchequer Court judge held that Parliament had not used apt words to subject a ship entering Canada for registry to taxation under the above section

and gave judgment for the suppliants for the amount of the duty paid but refused interest and damages for detention. The Crown appealed and the suppliant gave notice of cross-appeal for the interest.

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Newcombe, K.C., Deputy Minister of Justice, for the appellants.

Nesbitt, K.C., and Rose for the respondents.

(It was agreed that the cross-appeal should stand and be argued only if the appeal by the Crown should be dismissed.)

TASCHEREAU J.—This case comes up upon an appeal by the Crown from a judgment of the Exchequer Court in favour of the respondents, suppliants, on a petition of right based upon the following admission of facts.

1. The suppliant company is, and was at the times hereinafter mentioned, a body corporate established under and subject to the laws of the Dominion of Canada.

2. The suppliant company, since its incorporation, has always had its chief place of business at the town of Sault Ste. Marie, in the district of Algoma, and province of Ontario.

3. The suppliant, on or about the tenth of October, 1899, became the owner, by purchase, at Marquette, in the State of Michigan, United States of America, of a certain steam vessel named the "Minnie M," which vessel was built in the year 1884, at the city of Detroit, in the said State of Michigan.

4. On or about the sixteenth of October, 1899, the British Consular Office at Chicago, in the State of Illinois, granted to the said vessel a provisional certificate, dated the sixteenth of October, 1899, under section twenty-two of the Imperial Merchants' Shipping act of 1894.

5. The said vessel afterwards arrived at the port of Sault St. Marie, in Canada, which is a port of registry for British ships under the provisions of "The Merchants' Shipping Act, 1894."

6. After the said vessel had arrived at Sault Ste. Marie and while she was still there, the suppliant company applied to the Collector of Customs of the said port of Sault Ste. Marie, who is the registrar of shipping there, for British registry of the said vessel in Canada, and the Collector of Customs, thereupon, informed the suppliant company

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that upon application for such registry the vessel would be chargeable with the duty imposed by item 409 of "The Customs Tariff, 1897." This claim of the Collector of Customs was and is upheld by the Government. The Collector of Customs being instructed by the Commissioner of Customs, that "The Customs Tariff, 1897" required payment of duty before registration, stated to the suppliant company that he was so instructed, and declined to register the vessel without duty first paid.

7. The suppliant company urged, on the other hand, that the vessel was not subject to duty either before or after registration, but the Collector maintaining the position stated in the preceding paragraph, the suppliant company did, on the fifth May, 1900, enter the said vessel upon application for Canadian registration for duty at customs under protest.

8. The vessel was, thereupon, registered as desired by the suppliant company, at the port of Montreal, in Canada, being a port of registry for British ships in Canada, duly authorized under the provisions of "The Merchants' Shipping Act, 1894."

9. The suppliant Company, thereupon, paid the sum of \$3,500, being the proper duty imposed under the provisions of the item 409 of "The Customs Tariff, 1897."

10. The suppliant company has always contended and does contend that the said vessel, in the circumstances stated, was entitled to British registry in Canada without the payment of any duty. On the other hand, the government has always contended, and does contend that the said vessel, in the circumstances stated, was liable to the duty paid.

11. The government still hold and claim the right to retain the said customs duty so paid as aforesaid, amounting to \$3,500.

The respondent company claim by their petition of right that they are entitled to recover back the \$3,500 they so paid. They rest their claim upon two grounds. 1st. That the provisions of the Customs Tariff of 1897 (60 & 61. Vict. ch. 16), under which this duty was collected, are *ultra vires* as conflicting with provisions of the Imperial Merchants' Shipping Act of 1894. 2ndly. That, in fact, no duty on a foreign ship, as claimed on the part of the appellant, has been imposed by the said Customs Tariff of 1897.

This last contention, I deem it rational, should be examined first. If a foreign ship is not dutiable, *cadit lis*.

I may at once refer to the often repeated assertion relied upon by the respondents that a taxing Act must be construed strictly. Now, I do not see how it is possible to contend that a taxing Act is to be construed differently from any other Act. *Attorney General v. Carlton Bank* (1). The Interpretation Act expressly decrees that

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every Act and every provision or enactment thereof (including Acts imposing taxes), shall be deemed remedial * * * and shall accordingly receive such fair, large and liberal construction and interpretation as will best insure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning and spirit.

Moreover, the Customs Act itself, R.S.C. ch. 32, sec. 2, enacts that

all the expressions and provisions of this Act, or of any other law relating to the customs, unless the context otherwise requires, shall receive such fair and liberal construction and interpretation as will best insure the protection of the revenue and the attainment of the purpose for which this Act or such law was made according to its true intent, meaning and spirit.

It cannot be doubted that the true intent, meaning and spirit of the Customs Tariff of 1897, is to impose a duty on every article imported into Canada, except those that the Act puts on the free list (sec. 13, ch. 32, R.S.C. Secs. 4, 5, of the Customs Tariff of 1897). And ships are not to be found in the enumeration of goods contained in schedule "B" of the said Act, that may be imported into Canada without the payment of any duties thereon. The respondent company claim, therefore, an exemption from the taxes imposed by a statute under which taxation is the rule and exemption the exception. Now, all exemptions must be strictly construed, and the burthen of establishing that the ship in question could be imported into Canada free of duty might perhaps well be said, upon an action of this

(1) [1899] 2 Q.B. 158, 164.

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nature, to be upon the respondents. However, the appellant's case need not rest on that ground. If the Crown had to show that this ship was dutiable (Elmes sect. 29, 60), in my opinion that has been incontrovertibly established. The Act of 1897 is unambiguous and puts a duty on any foreign ship imported into Canada in terms that leave no room for doubt.

In the list of goods subject to duties upon importation (for the Act coupled with "The Customs Act" is an Act relating to such duties), item No. 409 expressly enumerates "ships and other vessels built in any foreign country." The statute thus classifies ships as being goods that can be imported. So that the respondents' contention that such ships are not dutiable on the ground that ships are not *goods* in the ordinary sense of the word, or that ships cannot be said to be imported, is rebutted by the express words of the statute. It is to me as clear as if the interpretation clause said that the word "goods" includes "foreign ships brought into Canada." As to their further contention that the statute contains no substantive provision imposing a duty on the importation of foreign ships, I cannot see any foundation for it. Section four enacts that there shall be levied upon all goods enumerated in schedule "A," the several rates of duties of customs set forth in the said schedule, when such goods are imported into Canada. Now, when schedule "A," which, it cannot be controverted, is a part of the statute, enumerates "ships and other vessels built in any foreign country," I fail to see how it could be decreed in clearer terms that such ships are liable to duty, and with deference, I think that the judgment of the Exchequer Court in favour of the respondents on this branch of the case, is erroneous.

In a case of *Vanderbilt v. The Conqueror* (1), the federal authorities claimed the right to collect cus-

(1) 49 Fed. Rep. 99.

toms duties upon a yacht bought in England by Vanderbilt, a citizen of the United States. The court determined that the yacht was not dutiable, but expressly upon the ground that in none of the tariff Acts of the United States, were ships or vessels mentioned in the schedule of imports, the court holding that ships or vessels were and had always been regulated by statutes independent of the customs laws and under a different system of legislation, and did not fall within the scope of the tariff upon importation. And though the vessel in question there was declared not to have been dutiable, the case shows clearly that if ships had been enumerated in the schedule to the tariff Act that governed that case as they are in Canada under the "Tariff Act of 1897," the decision would have been the other way.

Having come to the conclusion that the ship in question was dutiable under the Act of 1897, there remains to be considered the contention of the respondents, that the provisions of that Act relied upon by the appellant to levy duties upon her are *ultra vires*, as conflicting with the provisions of the "Merchants' Shipping Act of 1894."

The respondents argue that under this last Act they had the right to a certificate of British registry without any payment of duty to the Canadian Government, and that the statute of 1897, which purports to impose the payment of duties upon foreign ships, as a condition precedent to the right of obtaining a certificate in Canada of British registry, conflicts with the Imperial enactment. On this part of the case the learned judge of the Exchequer Court has dismissed the respondents' contention, and has given an elaborate judgment, now reported at page 239 of volume 7 of the Exchequer Court reports, to which I do not see that anything could be usefully added. In the actual

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state of the statutory law upon the subject, the words "on application for Canadian register" in the Act of 1897, must be construed as meaning "on application for British register in Canada."

The Government of Canada, it must be conceded, has the right to impose duties upon foreign ships, and that being so, it has the right to say when, how and by whom that duty shall be collected. And that is all that the Act of 1897 enacts. The right of the Imperial Parliament to regulate the mode of registering in Canada a foreign ship as a British ship and the right of the Canadian Parliament to impose duties upon the importation into Canada of such ships are co-existent; and the Imperial Parliament never intended to, in any way, abrogate or lessen Canada's rights in the matter.

If the registrar had granted the certificate without demanding the amount of these duties, the Crown would have an action against the company for the amount thereof. R. S. C. ch. 32, sec. 7. And the company could not defeat that action by pleading their certificate, on the ground that because the registrar had neglected his duty they were released from the customs dues.

I would allow the appeal with costs and dismiss the petition of right with costs.

SEDGEWICK and GIROUARD JJ. concurred.

DAVIES J.—The S.S. "*Minnie M.*" was a foreign built steamer purchased by the respondent company and bought by it under a provisional certificate granted by the British Consul at Chicago, in the United States of America, to the Port of Sault Ste. Marie, in Canada.

This port being a port of registry for shipping in Canada, the provisional certificate ceased to have effect on her arrival there and application was at once made

for a certificate of registry for the steamship under the Imperial Merchants' Shipping Act, 1894, and other statutes relating to the granting of such certificates.

The chief officer of customs at the Port of Sault Ste. Marie was also the Registrar of shipping and he demanded the payment of the customs duties from the applicant owner under the Customs Tariff Act, 1897, which were paid under protest. The questions which arose under these facts were whether or not the Customs Tariff Act of 1897 justified the exaction of the payment of the duty, and secondly, if it did, whether it was not *ultra vires*, as being repugnant to the Imperial Merchants' Shipping Act, 1894.

The learned judge of the Exchequer Court, while upholding the power of the Parliament of Canada to pass a law requiring the payment of duty on foreign built ships when brought into Canada, was of opinion that such duty had not been duly imposed by the Customs Tariff Act, 1897. His reasons are that ships are not included in the words "goods" and

that is clear whether we have regard to the ordinary meaning of the word or to the meaning that may be assigned to it in the Act, (The Customs Tariff, 1897) by reason of the interpretation given to the word in the second section of "The Customs Act" and made applicable to "The Tariff Act."

He further thought that it could not be said with propriety that a ship could be "imported" and that the words of the fourth section of the Tariff Act were "wholly inapplicable to a ship as a ship," and that as item 409 of the schedule to the Tariff Act of 1897 contained no substantive provision imposing a duty and the substantive clause in the Act imposing duties did not embrace nor cover ships, the duty was not recoverable and should be returned.

After careful examination of the statutes above referred to, I am not able to reach that conclusion.

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The Customs Tariff Act, 1897, enacts, in its fourth section as follows :—

Subject to the provisions of this Act and to the requirements of *The Customs Act*, Chapter 32 of the Revised Statutes, as amended, there shall be levied, collected and paid upon all goods enumerated, referred to as not enumerated, in Schedule A, to this Act, the several rates of duties of customs set forth and described in the said schedule, and set opposite to each item respectively or charged thereon as not enumerated, when such goods are imported into Canada or taken out of warehouse for consumption therein.

That Act has four schedules, Schedule "A," which is headed "Goods subject to duty," Schedule "B," headed "Free goods," Schedule "C," "Prohibited goods," and Schedule "D," "Reciprocal Tariff," or goods which, by reason of being productions of certain countries, were admissible under specified favourable rates.

In one or another of these schedules, are to be found all the goods of any kind which could be imported into Canada, with the rates of duty, if any, chargeable upon them, and also, all goods the importation of which was prohibited.

The word "goods" is defined by the Customs Act, R.S.C. ch. 32, to mean, unless the context otherwise requires,

goods, wares and merchandise or moveable effects of any kind, including carriages, horses, cattle, and other animals, except where these latter are manifestly not intended to be included by the said expression.

It is further provided by the Customs Act, section two, that all the expressions and provisions of this Act, or of any other law relating to the customs, unless the context otherwise requires,

shall receive such fair and liberal construction and interpretation as will best insure the protection of the revenue and the attainment of the purpose for which this Act or such law was made according to its true intent meaning and spirit.

And

there shall be levied, collected and paid upon all goods enumerated (or) referred to as not enumerated in Schedule A, to this Act, the several rates of duties of customs set forth and described in the said schedule and set opposite to each item respectively, or charged thereon as not enumerated, when such goods are imported into Canada, or taken out of warehouse for consumption therein.

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In my opinion, if any doubt existed whether or not the term "goods," as thus defined and interpreted covered ships, such doubt was entirely removed by the express insertion in schedule "A" of the Tariff Act of "goods subject to duties," article 409 of which reads as follows :—

Ships and other vessels built in any foreign country, whether steam or sailing vessels, on application for Canadian register on the fair market value of the hull, rigging, and all appurtenances, except machinery, ten per cent *ad valorem*; on the boilers, steam engines, and other machinery, 25 per cent *ad valorem*.

I cannot see how it can be successfully argued in the fact of this article of schedule "A," that foreign built ships were not goods subject to duty and within the substantive enactment of section four above quoted. When brought into port, under the circumstances and for the purposes in which the SS. *Minnie M.* reached Sault Ste. Marie, they seem to me to be "imported into Canada" within the meaning of that phrase as used in clause four of the Act above quoted, equally as well as a railway car brought into Canada as part of a train crossing the Niagara Bridge may be said to be imported.

It was argued on behalf of the Attorney General, that the schedule was complete in itself and would have been effective to collect the duty without clause four at all. That schedule is headed "Goods subject to duties," and article 409 specifies ships, the rate of duty and the time and conditions when payable. There is much in the argument which commends it to my judgment. But I cannot doubt that the schedule,

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when read in connection with section four, removes any reasonable doubt which might exist if that section had been omitted.

It is argued, however, for the respondent, that article 409 cannot be invoked to render the *Minnie M.* liable to duty, because, by its express words, the duty is only payable "on application for Canadian register," and that no such application was made here but, on the contrary, an application for a British register.

The learned judge of the Exchequer Court was of opinion that this must mean an application for a ship's register in Canada, and I agree with him that the words cannot have any other meaning. There is no such thing as an independent Canadian register and there never was any such thing since the tariff on ships was first enacted in 1879. There is only one register or certificate of registry to be had in Canada. It is called Canadian register, because issued by a Canadian officer in Canada, but it is the only register a foreign built ship or in fact any ship can obtain, and there is no possibility of there being any mistake or misunderstanding.

Before the Dominion of Canada was constituted by the British North America Act of 1867, there had been provided for ships trading in the inland waters of the old Province of Canada, a special register, but as long ago as 1873, the Act enabling this register to be issued was repealed and from that day to the present time there is only one certificate of registry obtainable in Canada for ships. It is the same certificate of registry as is issued in Great Britain or in Ireland or in Newfoundland. Colloquially, it might be called a Canadian or a Newfoundland or an Irish or a British register, depending upon the port where issued but, no matter where issued, it is the same certi-

ificate of registry and confers the same rights and advantages.

Although, therefore, the phrase "application for Canadian register" may not be happily chosen, I do not think that there can be any doubt as to its meaning.

Then it was argued on behalf of the respondent that the clause in the schedule conflicted with the provisions of the Imperial Merchants' Shipping Act, 1894, and, not having been approved by His Majesty in Council, derived no support from section 735 of this Act, and, to the extent that it so conflicted, must be held to be *ultra vires*. But I do not agree with the contention that there is any such conflict and, on this point, I am in full accord with the learned judge below. The article of the Tariff Act in question was enacted by the Parliament of Canada in the exercise of its undoubted jurisdiction to raise money by any mode or system of taxation. The use of the phrase in the schedule to the Tariff Act declaring that the duty payable in respect of foreign built ships should be payable on application for register had only reference to the time. It does not pretend to make the payment of the duty a condition precedent to the granting of the certificate.

It may well be, as contended by counsel for the respondent, that the Imperial statute is express and explicit, and that on the production of the necessary papers, it became the duty of the registrar to make the necessary entries in the register and to grant the necessary statutory certificate of registry. But there is nothing necessarily inconsistent in the Parliament of Canada declaring that, in such case, and on such an application, customs duties upon the value of the ship must also be paid. The Tariff Act, in using the words referring to the application for registry, merely designated the time when the duty became payable. It did

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not make the payment a condition precedent to the issue of the certificate.

There are many other fees which such a ship would have to pay, such as harbour dues and pilotage dues; many other conditions its owner would have to comply with in the employment of certificated masters, mates and engineers. But all these are obligations and duties arising out of the exercise by the Parliament of Canada of its right to legislate on matters relating to navigation and shipping and it would be idle to contend that because the ship could not obtain a clearance until she had paid all these fees and complied with all these conditions that, therefore, they were in conflict with the Merchant's Shipping Act, 1894.

The owner of the foreign built ship, for his own purposes and at his own option, chooses to elect to make a Canadian Port of Registry the Port of registry of his ship. He brings his ship into a Canadian port for that purpose and, by so doing, submits her to the Canadian tariff law. It is of no avail for him to say "I might have selected a port in Great Britain or Ireland or Newfoundland and so escape the duty." The simple answer is that he has not done so but has elected to bring his foreign-built ship into a Canadian port, elected to make that port her port of registry, applied for registration and so become subject to the Canadian tariff law.

I am therefore, of opinion that the learned judge was right in upholding the power of the Canadian Parliament to impose a duty upon foreign built ships registering in a Canadian port, but I am also of opinion that he was wrong in holding that Parliament had failed effectively to exercise its powers.

In the result, the appeal should be allowed with costs and the petition dismissed.

MILLS J.—This is the case of an appeal by the Crown from a judgment of the Exchequer Court. The steamship *Minnie M.* was built in the United States of America. She was purchased by the Algoma Central Railway Company. A provisional certificate was granted by the British Consul at Chicago, to the port of Sault Ste Marie, in Canada. Sault Ste Marie is a port for registration of ships under the Imperial Merchants' Shipping Act of 1894. The chief collector of customs at the port of Sault Ste. Marie is also the registrar of shipping. He demanded payment of the customs charges which the proprietors paid under protest, contending that, as the ship was entitled to registration, it was *ultra vires* of the Parliament of Canada to charge customs duties upon her admission into the country.

The judge of the Exchequer Court, while admitting that the Parliament of Canada had power to impose a duty upon foreign built ships, that that duty had, nevertheless, not been imposed; that the ship could not be included in the word "goods" and that the word "imported" was wholly inapplicable to a ship as a ship, and that item 409 of the schedule of the tariff Act (1897), contained no substantive provision imposing a duty, and so the duty collected should be returned.

I know of no reason for supposing that the Parliament of Canada is not as competent to impose a duty upon foreign built ships as upon any other foreign article of merchandise. The words of the Customs Act are, in section four and in schedule "A," item 409, as follows:—

4. Subject to the provisions of this Act, and to the requirements of *The Customs Act*, chapter 32, of the Revised Statutes, as amended, there shall be levied, collected and paid upon all goods enumerated, referred to as not enumerated, in schedule A to this Act, the

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several rates of duties of customs set forth and described in the said schedule and set opposite to each item respectively, or charged thereon as not enumerated, when such goods are imported into Canada, or taken out of warehouse for consumption therein.

409. Ships and other vessels, built in any foreign country, whether steam or sailing vessels, on application for Canadian register, on the fair market value of the hull, rigging, machinery and all appurtenances; on the hull, rigging and all appurtenances, except machinery, ten per cent *ad valorem*; on the boilers, steam engines and other machinery, twenty-five per cent *ad valorem*.

These are put in the schedule as goods subject to duties. Section two of the Customs Act enacts that all the expressions and provisions of this Act or any other law relating to the customs, unless the context otherwise requires,

shall receive such fair and liberal construction and interpretation as will best insure the protection of the revenue and the attainment of the purpose for which this Act or such law was made, according to its true intent, meaning and spirit.

The words employed imposing a duty on ships are apt and operative words for the purpose. The learned judge of the Exchequer Court says a ship cannot be imported. I dissent from this view. It may be imported, although not carried in another vehicle, as much as animals that are driven across the border, or as a wagon drawn by a team of horses. I think a fair construction of the provisions of the Customs Act which I have quoted, do impose a duty upon foreign-built ships quite as distinctly as other provisions of it impose duties upon foreign manufactured goods, and the fact that such a vessel may be entitled to registration in Canada, under the Merchants' Shipping Act of 1894, does not exempt it from the duties which parliament has imposed. I am, therefore, of opinion that the appeal should be allowed with costs and that the petition of right should be dismissed with costs.

Appeal allowed with costs.

Solicitor for the appellant: *E. L. Newcombe.*

Solicitor for the respondent: *H. C. Hamilton.*