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*Oct. 14, 15.
*Oct. 29.

THE FOSS LUMBER COMPANY (CLAIMANTS) ..... APPELLANTS;

AND

HIS MAJESTY THE KING..... RESPONDENT;

AND

THE BRITISH COLUMBIA LUMBER AND SHINGLE MANUFACTURERS, LIMITED (INTERVENANTS) ..... RESPONDENTS.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Customs duty—Canadian Tariff, 1907, *items* 503-506—*Importation of lumber — "Sawn planks" — "Dressed on one side only" — "Not further manufactured"—Sizing by saw—Free entry.*

Under item 504 of the "Customs Tariff, 1907," the importation into Canada is permitted free of duty of lumber described as "planks, boards and other lumber of wood, sawn, split or cut, and dressed on one side only, but not further manufactured."

Held, reversing the judgment appealed from, (14 Ex. C.R. 53), Duff and Anglin JJ. dissenting, that sawn boards or planks which have been "dressed on one side only" by a machine which not only dresses them on one side but, at the time of such operation, reduces them to uniform widths, by means of another sawing process which has the effect of "sizing" the lumber, have not thereby been subjected to such "further manufacture" as would bring them within the exception from free entry under item 504.

APPEAL from the judgment of the Exchequer Court of Canada (1), dismissing the appellants' claim with costs.

In April, 1912, at the Customs Port of Entry of the City of Winnipeg, in Manitoba, the appellants pre-

*PRESENT: Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

(1) 14 Ex. C.R. 53.

sented a free entry for a carload of fir lumber described as "being lumber of wood, sawn and dressed on one side only, but not further manufactured." The lumber in question consisted of planks and boards which had been sawn in the mill by circular or gang saws and, afterwards, planed or "dressed" on one side in a planing-mill which was fitted with machinery that not only dressed one side of the plank or board but, during that operation, performed also the function of "sizing" the lumber, reducing the planks and boards to uniform widths by means of another saw, called a "side-head," attached to the planer. The Collector of Customs, at Winnipeg, refused to pass the free entry and levied duty on the lumber at the rate of 25 per cent. *ad valorem* under item 506 of the "Customs Tariff, 1907." The appellants claimed to have a rebate of the duty so collected and their claim was referred, under section 38 of chapter 140, of the Revised Statutes of Canada, 1906, ("The Exchequer Court Act,") by the Minister of Customs, to the Exchequer Court of Canada for adjudication thereon.

In the Exchequer Court, Mr. Justice Cassels decided that the lumber in question, after having been first sawn, went through another process of manufacture and, therefore, was not entitled to free admission on importation into Canada under tariff item 504. The judgment appealed from ordered that the claimants should recover nothing and that they should pay the costs.

On the appeal to the Supreme Court of Canada, the British Columbia Lumber and Shingle Manufacturers, Limited, were, by order of a judge, permitted to intervene, as respondents, with liberty to file a factum and to be represented and heard by counsel, upon

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the argument of the appeal, under the provisions of Rule 60 of the Rules of Practice of the Supreme Court of Canada.

W. D. Hogg K.C. and *R. C. Smith K.C.* for the appellants.

Upon the proper interpretation of item 504 of the tariff the lumber in question should have been admitted free. It consists of planks sawn on three sides or surfaces and dressed on one surface, and fits the exact language of the item in that respect. There is no other or further manufacture appearing on the planks than that of sawing on three sides and dressing on one side. If, by ingeniously constructed machinery, a plank, after it is taken from the sawmill, may be planed on one side and sawed to a uniform width on the same machinery, this does not alter the character of the lumber as planks or boards sawn on three sides and planed on one side. When the planks came for examination to the Customs Officer they were in fact planks of wood sawn and dressed on one side; the fair and reasonable interpretation of tariff item 504 is that planks, boards and lumber not further manufactured than sawn on three sides and dressed on one side are free.

The judge of the Exchequer Court has endeavoured to distinguish between the first sawing in the mill and some subsequent sawing upon the plank which may be done by another saw or at another time. It is quite possible that planks in their rough state, as taken from the mill, would come under item 503, but even under that section, assuming that no other manufacture could be applied to it than sawing or splitting, there is nothing which would prohibit a further saw-

ing or splitting than the original first sawing or splitting of the wood, nor can it be said that under item 504 the sawing must be that of the first or original sawing of the plank in the mill. The word "sawn" simply means that the plank has been made by the operation of a saw, as opposed to the operation of some other method of producing a plank, and if the plank or board is sawn on three sides when it is produced to the collector for entry it is impossible and absurd to say that because a plank has been reduced by sawing to a uniform width it is anything more than, or exhibits any difference from, a plank or board not further manufactured than sawn on three sides and dressed on one.

The rule to be applied in the application of a tariff item is that the form of the material at the time of importation into Canada should form the discriminating test for duty. To depart from this rule would necessarily lead to confusion and want of uniformity in the application of the tariff. Compare *The Queen* v. *The J. C. Ayer Co.*(1); *Magann* v. *The Queen*(2). See also the "Customs Act," R.S.C. 1906, ch. 48, sec. 2, sub-sec. 2; *Cox* v. *Rabbits*(3); *Partington* v. *Attorney-General*(4), and Elmes, Laws of Customs, p. 22, sec. 49.

The imposing of duty on this lumber was contrary to the practice which had prevailed for many years in regard to the lumber of the kind in question. Ever since the enactment of the "Customs Tariff, 1894," lumber dressed on one side only and sawn on three sides has been admitted free of duty. The tariff provisions and

(1) 1 Ex. C.R. 232, at p, 271.
(2) 2 Ex. C.R. 64.
(3) 3 App. Cas. 473, at p. 478.
(4) L.R. 4 H.L. 100, at p. 122.

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changes in this class of lumber, since 1894, have been as follows:—Customs Tariff, 1894—free list—item 739; "Sawed boards, planks, deals, and other lumber undressed or dressed on one side only, free." This was repealed by "Customs Tariff, 1897," and the item relating to the number corresponding to this, (item 611) was "Sawn or split boards, planks, deals and other lumber when not further manufactured than dressed on one side only, or creosoted, vulcanized or treated by any preserving process, free." This again was repealed by "Customs Tariff, 1907," and the item 504 now in question was substituted.

It will thus be seen that lumber dressed on one side only and sawn on three sides has long been the subject of free admission; and where the executive department of the Government having charge of the matter has continued, unbroken, a certain interpretation of a statute the courts will confirm that interpretation as being the proper construction to be placed upon the statute. In *United States* v. *The Alabama Great Southern Railroad Co.*(1), the rule was there laid down by Mr. Justice Brown; a similar opinion was given by Mr. Richard Olney, Attorney-General, in 1894, (20, Opinions of Attys.-Gen., p. 719, Op. 246), and in *Merritt* v. *Cameron*(2), and *Robertson* v. *Downing*(3).

Travers Lewis K.C. for the respondent. The court has granted leave to the British Columbia Lumber and Shingle Manufacturers, Limited, to intervene and, as they are now represented by counsel, who will support the judgment of the Exchequer Court, it has become unnecessary on the appeal in this test case for the

(1) 142 U.S.R. 615, at p. 621. (2) 137 U.S.R. 542.
(3) 127 U.S.R. 607.

Crown to do more than to submit the question in controversy, as it is only desired to administer the law in accordance with the construction the court may place upon the tariff item in dispute.

Lafleur K.C. for the intervenants. The planer by means of which the dressing was done, contained additional machinery which sized the lumber, reducing it to a uniform width. This uniformity in width could not be obtained by means of the saws in the saw-mill, for it is impossible to get machinery running rigidly enough or regularly enough to produce these results with a saw-mill equipment. The machinery of a saw-mill is operated rapidly and the devices for carrying the logs to the saw are such that it is impossible to get the machinery to run without some lateral movement, and it is, consequently, impossible to get a number of pieces of uniform width in the edgers. It was conceded, at the hearing, by counsel for the appellants that there is no such thing as a saw-mill with a "sizing" equipment. The secondary machinery, which in this case was added to the planer, and which forms no necessary part of the planing or dressing equipment, consisted in a guide or straight-edge with rollers and spring guides, or some equivalent device, to hold the plank up to the straight-edge and to carry it through straight to a small saw. By means of this machinery the planks which had been sawn in the mill and afterwards dressed on one side, were equalized in width, and it is this further process which was contended by the Crown and by the intervenants to be a "further manufacture" within the meaning of item 504 of the tariff. It is contended that, because this additional operation was done by means of a saw, the article is

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not dutiable upon the proper construction of item 504. It is proved that it would have been cheaper to do both the dressing and the edging by means of a planer, that is, by means of cutting instruments, than to do the dressing by a cutting instrument and the sizing by the saw attachment and, consequently, as one of the witnesses puts it, the saw attachment increases the cost and no one does it except for the purpose of evading the tariff.

The judge in the Exchequer Court finds as a fact that the planks, after being sawn and dressed on one side, went through a further process of manufacture. No other finding could have been made upon the evidence. If the contention be admitted that item 504 should be construed so that lumber may be sawn, split or cut any number of times, so as to produce a fully manufactured article, provided it is dressed on one side only, that would permit of practically exhausting every process to which lumber may be subjected for manufacturing purposes and nothing would remain which could fall within the operation of item 506, "manufactures of wood not otherwise provided for." The words "sawn, split, or cut," in item 504, obviously refer to the sawing, splitting or cutting which produces the plank or board, and not to any subsequent sawing, splitting or cutting which might completely alter the form and utility of the article. That the words "sawn, split or cut" are intended to refer to the original sawing, splitting or cutting, by means of which the plank or board is produced, is very manifest from a comparison of item 504 with item 503, which reads as follows: "Planks, boards, clap-boards, laths, plain pickets and other timber or lumber of wood, not further manufactured than sawn or split, whether creosoted, vulcanized, or treated by any other

preserving process, or not: Free." The words "sawn or split" in item 503 evidently refer to the sawing or splitting by means of which the planks, boards, clapboards, laths and pickets are manufactured. As applied to planks, it means the rough planks as they leave the saw, and no further manufacture or treatment is permitted except the creosoting, vulcanizing or preserving by some other process. Then item 504 goes a step further and allows the plank, whether sawn, split or cut, to be dressed on one side only, but not further manufactured. It is evident that the words "sawn, split or cut" in item 504 are adjectival terms qualifying the substantives "planks, boards or other lumber." The same idea might have been appropriately expressed with regard to a plank by saying that a sawn plank could be dressed on one side, but not further manufactured, and this excludes the idea that, after having produced a plank by sawing and then dressed it on one side, the manufacturer is at liberty to apply other sawing machinery to that plank for the purpose of modifying it and further fitting it for the market. The words "not further manufactured," in item 504, cannot mean not further manufactured simply by way of dressing, but must also exclude further manufacture by way of sawing, splitting or cutting. To confine the expression to further manufacturing by way of dressing would be redundant, for the language already clearly indicates that the dressing must be on one side only. Then, as the learned judge of the Exchequer Court shews, if one takes the different steps which occurred in this very case in their chronological order, one is forced to the conclusion that the "sizing," which was done last of all and by special machinery, must be considered as a process

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of further manufacture upon a plank which has already been dressed on one side only.

The decision in *Magann* v. *The Queen*(1), has no application because, in that case, the item of the tariff provided that the following articles should be admitted into Canada free of duty: "Lumber and timber, planks 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 had entered into a contract to supply white-oak planks and boards of specified thicknesses, widths and lengths, and arranged with millmen in Michigan to saw these planks and boards from the log, and they were in fact sawn to such thicknesses, widths and lengths as to admit of their being used in the construction of cars and railway trucks without a waste of material. It was held, upon these facts, that the planks and boards in the form in which they were imported were not *shaped* within the meaning of the statute, and were not dutiable. The sawing in that case was done at the saw-mill and no further manufacturing process took place after the lumber left the saw-mill. In the present case, after everything had been done that could be done in the saw-mill to convert the wood into planks and after the dressing on one side permitted by the tariff had also been performed, the planks were then subjected to the operation of special and different machinery for the purpose of producing a result which could not have been

(1) 2 Ex. C.R. 64.

obtained by any means at the disposal of the saw-millman.

THE CHIEF JUSTICE.—This is an appeal from a judgment of the Exchequer Court given on a reference by the Minister of Customs, arising out of these facts:

A carload of fir lumber was entered at the Custom House at Winnipeg, on the 2nd of April last (1912), by the appellants, on the value of which duty at the rate of 25 per cent. was collected. The question referred is: Was that lumber subject to the duty levied upon it? The judge of the Exchequer Court held that it was.

The value of the lumber is admitted at $308, and the amount of duty paid at $77. The several pieces of planks, produced at the trial and here, were taken from the carload in dispute, and are accepted as fair samples of the kind and quality of lumber which is the object of this reference. The answer to the question must largely depend upon the meaning and effect to be given to the word "sawn" in item 504 of schedule "A" of the Customs Tariff of 1907. That item reads as follows:—

> Planks, boards and other lumber of wood, sawn, split or cut, and dressed on one side only, but not further manufactured. Free.

On the evidence it appears that the lumber in question was cut, from the original log, in the mill where it was sawn on four sides; it was then removed to the planing mill and there dressed on one side, and again sawn on another side. So that, on one side, the lumber was sawn twice,—once in the saw-mill and a second time in the planing-mill,—and the whole question is: Does that second sawing in the planing-mill constitute

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a "further manufacture" within the meaning of the item of the Customs Tariff above quoted?

Speaking of the way in which the revenue laws are to be interpreted, Sir William Ritchie said, in *The Queen* v. *The J. C. Ayer Company*(1), at pages 270 and 271:—

> In the first place let us see how the revenue laws are to be interpreted. There is a general provision in the "Customs Act," 1883, that all the terms of that Act, or of any Customs law, 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 that Act, or such law, was made, according to its true meaning, intent and spirit. But I do not understand from this that laws imposing duties are to be construed beyond the natural import of their language, or that duties or taxes are to be imposed upon terms of vague or doubtful interpretation.

And he adds later, quoting Lord Cairns in *Cox* v. *Rabbits*(2), and *Partington* v. *The Attorney-General*(3):

> But it is clear that the intention of the legislature, in the imposition of duties, must be clearly expressed and, in cases of doubtful interpretation, the construction should be in favour of the importer.

To this I would add what Lord Taunton said, when speaking of the "Stamp Duty":

> The stamp law is *positivi juris*. It imports nothing of principle or reason, but depends entirely upon the language of the legislature.

Taken literally and giving to each word used its natural meaning the section we are asked to construe says that planks of lumber "sawn" on three sides and dressed on the fourth side, (not further manufactured) should be admitted free of duty. The planks in question come, if we are to judge from their physical appearance, in all respects within that description. It is, however, argued on behalf of the Crown that, not-

(1) 1 Ex. C.R. 232. (2) 3 App. Cas. 473.
(3) L.R. 4 H.L. 100, at p. 122.

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withstanding their outward aspect, the planks having been sawn a second time, with a special saw in the planing-mill, at the same time as they were dressed for the special purpose of what is called "sizing," this second sawing for that purpose constitutes a "further manufacture" within the meaning of those words in item 504, and takes the lumber out of the operation of that item. I understand that "sizing" is admitted, by both sides, to be a process by which the lumber is reduced to a uniform width and thickness.

I cannot agree that the second sawing is, in the circumstances, a further manufacture. Whatever may be the object or purpose of those who subject the plank to the process of a second sawing in the planing-mill, the effect is to produce a piece of plank sawn on three sides. If this second sawing had been done in the saw-mill, when the log was originally sliced into lumber, for the same purpose, viz., "sizing"—assuming that I have given to this word its accepted meaning,—would, or could any question of further manufacture arise? I fail to understand how the second sawing, if done in the planing-mill, makes a difference; the result of that operation, in whichever mill executed, is the same in so far as the outward physical appearance of the plank produced is concerned. Perhaps my meaning may be more clearly expressed in these words: The second sawing process to which the plank is subjected is not the less a sawing because it is done in a planing-mill to which the plank was admittedly properly taken for the purpose of being dressed. And, when put through that process, the only way in which the plank can be accurately described is to call it a plank sawn on three sides and dressed on a fourth. The colloquial as well as the dictionary meaning of the verb "to saw" is "to

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cut with a saw". One can, of course, imagine, as argued by the respondent, a variety of ways in which, by the aid of a saw, the process of manufacture might be very considerably advanced, but we are now called upon to ascertain the intention of Parliament from the words used in this item, as applied to the facts in this case, and we are not concerned with interesting speculations as to the possibility of that intention being defeated by ingenious devices. "Words, like certain insects, take their colour from their surroundings." Here the word "sawn" is used in the adjectival sense and must be read in connection with the noun "plank" of which it expresses a quality. The dictionary meaning of the word "plank" is "a broad piece of sawn lumber", and, in familiar speech, a plank may fairly be said to be a more or less regularly shaped oblong board; and a "sawn plank" is a board reduced to that shape by the aid of a saw. A piece of ornamented wood produced by a fret-saw may be a piece of furniture or wood for decorative purposes, but it would not be described as a "plank".

In conclusion, I am of opinion that the particular carload of lumber with which we are concerned, when presented for entry to the Customs official, was made up of "planks" which came, in so far as he could gather from their outward form and appearance, within the words of description contained in the section of the tariff item 504; and it was no part of his duty to inquire into the purposes or uses to which those planks might subsequently be applied.

If I had any doubt, which I have not, I would adopt the principle of construction laid down by Elmes, in his Law of Customs, page 26, section 60.

In cases of serious ambiguity in the language of an Act, or in cases of doubtful classification of articles, the construction should be in favour of the importer, for duties and taxes are never imposed on the citizen upon vague or doubtful interpretation.

The appeal is maintained with the usual recommendation as to costs.

IDINGTON J.—The questions which are involved in this appeal must be determined by the interpretation and construction of item No. 504 of the tariff, which reads as follows:—

Planks, boards and other lumber of wood, sawn, split or cut, and dressed on one side only, but not further manufactured.

The literal meaning of these words in their plain grammatical and ordinary sense, which is said to be the golden rule of interpretation, is to my mind just what appellants contend for; that is, planks sawn on three sides and dressed on one side. And, when we go beyond such literal meaning, we depart from the long established mode of reading a taxing or revenue Act.

The interpretation clause of the "Customs Act," subdivision 2 of section 2, does not seem to me to carry us any further.

If I could read the Act as the learned trial judge does when, in the passage quoted from his judgment in the respondent's factum, he says

I think the whole scope of the statute and the tariff is to prevent completely manufactured articles being entered free of duty,

then I might see my way to a different reading, first of the said interpretation clause, and next, as a consequence thereof, of the above quoted item of the tariff.

With the greatest respect for the learned judge, I submit that lumber in any shape is clearly, for the greater part of its uses, a completely manufactured article and yet is admitted free.

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Whether quite as large as ninety per cent. of the whole importation of lumber, as one witness states, is so or not I cannot say, but obviously a very large percentage thereof goes into consumption without being dressed on one side. This latter work preparatory to use of the lumber which may be so treated widens the field wherein it can be used as completely manufactured.

Evidence put forward by the Crown shews that usually saw-mills do not contain the machinery that would enable the sawing to be done so evenly as to produce as straight an edge as appears in one of the edges of each of the pieces put in evidence as exhibits herein. Indeed, some of the witnesses go very far and seem to state no saw-mill does, but that is, as some of these witnesses point out, an obvious error as a statement of what no witness can be likely to know.

Counsel for the intervenants put the matter fairly that, even if a saw-mill did contain such machinery and appliances as would enable this to be done, then, according to the claim made herein by the Crown, it must be held in using same to be engaged in a process of manufacture within the meaning of the words "but not further manufactured".

That view presents the case and the claim in its fairest light. If that contention is right, then and not otherwise can the claim of the Crown be made good.

Let us test that. How many times has a piece of timber to be turned round and set and then to be passed through by a saw before it is fit to fill the commercial uses and demands for lumber of various lengths and dimensions and yet be clearly duty free?

The first cutting admittedly is to be free of duty. But that will not fit for the market all that which is

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just as clearly duty free as that dropped from a first cut. Indeed, a second or even third cutting of the same saw may be involved in the production of what admittedly is duty free. Nay, more, much of it, but not of necessity all, has to go to the edger and be trimmed by that saw. It is admitted an edger can properly be used without rendering the produce thereof dutiable. But why? Surely it is only to produce out of boards that sort of lumber the other saw would not produce, yet by a wasteful process could have produced, and to make by a sawing process a more completely manufactured article.

Two different kinds of saws can thus, it is admitted, be used in succession on the same material in a variety of ways to put it through a process of completely manufacturing it and yet leave it free of duty. Why permit two saws to be thus used when planks could be turned out with one? Better work, greater economy, cheaper production are the objects sought by the use of two saws. And, if a third can produce in a higher degree such results, or like thereto, wherein lies the objection? So far as I can see the objection might as well be made to the use of the edger and supported by the like train of reasoning as to a third saw. And, if you say, "Oh! an edger has been used for ever so long", I answer, "there is no satisfactory evidence that the use of the third saw was not in actual operation long before this tariff item was framed, and, possibly, it was so framed to meet such possibilities of production."

But again, if the necessary clamps, clutches, levers and other devices that would hold the board first sawn were used to hold it in place to apply an improved edging saw to the work, then that sawing cannot be

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permitted if this claim of the Crown is well founded. Yet, in my humble judgment, such a thing is physically possible and, according to the reasoning of the Crown, a legitimate proceeding to produce what item No. 504 admits free of duty.

It has often been said that a protective tariff tends to lessen the mechanical ingenuity likely to be applied to cheapen production, but I never heard imputed to it that such mechanical ingenuity as it might accidentally develop cheapening production was not only to be despised and set aside but also, when discovered, declared unlawful.

If the saw-mill can conceivably be equipped in the way I suggest to produce the sawing desired with two saws, then I hardly think it was intended to prevent the use of three or more saws. If that was the purpose of this legislation, then it can easily be enacted that only one saw can be used in the process of manufacture, or if two, then only two, and thus make the item clear.

If the third sawing is, as I think, permissible, then the accidental circumstance of its taking place under the same roof or on the same table as the permissible dressing is of no consequence.

I think the appeal should be allowed with costs.

The order made on the consent of all parties to the record permitting the intervention of third parties but reserving for the full court the question of its validity or propriety I do not think should be treated as a precedent to be followed hereafter under our rule No. 60.

DUFF J. (dissenting).—The question is whether a certain carload of lumber imported by the ap-

pellants from the United States is liable to Customs duty. This lumber admittedly falls within the item of the Customs Tariff, (the Schedule to the "Customs Act" of 1907), numbered 506 unless it is embraced within the exemption created by the item numbered 504. For convenience I set out in full these two items as well as the items numbered respectively 503 and 505 which are *in pari materia.*

503. Planks, boards, clap-boards, laths, plain pickets and other timber or lumber of wood, not further manufactured than sawn or split, whether creosoted, vulcanized, or treated by any other preserving process, or not. * * * Free.

504. Planks, boards and other lumber of wood, sawn, split or cut, and dressed on one side only, but not further manufactured. Free.

505. Sawn boards, planks and deals planed or dressed on one side or both sides, when the edges thereof are jointed or tongued and grooved. * * * 25 per cent.

506. Manufactures of wood, n.o.p. * * * 25 per cent.

The appellants' contention is that the lumber in question consisted of "planks" and "boards sawn * * * * and dressed on one side only but not further manufactured". This is disputed on behalf of the Crown.

The facts bearing on the question are really not in dispute. The shipment with which we are concerned comprised several parcels of what is known in the lumber trade as "sized lumber" suitable for use in the construction of buildings as "joisting" and "studding." To fit them for this purpose it is essential that the pieces in any given parcel should be of uniform width and it was admitted at the trial that the required uniformity of width cannot be secured by any machinery which is part of the ordinary equipment of a saw-mill. It was further admitted that

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machinery adapted to secure that uniformity—machinery, that is to say, for performing the operation of "sizing"—is never found in a saw-mill.

The cutting instrument commonly used in "sizing" is a knife. The instrument used in this case was a saw. The ingenuity at the command of the persons engaged in manufacturing lumber for export from the United States into Canada has produced a machine which not only does the office of dressing on one side by planing but performs also the function of "sizing". As in this latter process the cutting is done by saws alone it was supposed that the lumber subjected to it would fall within the category of "planks sawn" and "dressed on one side only" and thus, by way of the exemption provided for in item 504, would escape the incidence of the duty imposed by item 506. This method of reducing a parcel of lumber to a uniform width is in itself more expensive than the methods usually employed; but the additional expense so incurred would be more than offset by the advantage of free admission to the Canadian market.

In these circumstances, have the appellants established the proposition upon which they base their appeal that this carload of lumber falls within the description "planks, boards, * * * sawn, split or cut * * * and dressed on one side only, but not further manufactured"? I think they have not. Each one of the parcels in question comprises, it is true, only pieces of lumber which answer the description "planks or boards * * * sawn * * * and dressed on one side only", but it cannot, I think, be affirmed of these pieces of lumber that they are "not further manufactured". After having been completely manufactured as "planks" or "boards" they have been subjected to a

further process—a process which forms no part of the procedure by which "planks" and "boards" as such are produced from timber and which is a special process that is designed to fit the "planks" and "boards" so produced for certain special purposes; and did, in fact, fit them for those purposes. It is true that this special process consisted in part in applying a saw to each of these pieces. But that was not the whole of the process; in addition to that there was manipulation by special devices which reduced the pieces comprised in any parcel to the uniformity of dimensions which was necessary to make them suitable and did, in fact, make them suitable for use as "joisting" and "studding" and by which they were converted into a commercial commodity having, in the lumber trade, a distinctive designation. Before they were subjected to this process they were "sawn" boards and planks simply; but I see no escape from the conclusion that by the operation of "sizing" they were "further manufactured" and, consequently, were excluded from the category of articles falling within the exception which the appellants invoke.

ANGLIN J. (dissenting).—The simple question before us is whether sawn planks and boards which, in addition to being dressed on one side, have also been "sized" by a sawing process are "further manufactured" so as to exclude them from the exemption allowed by item No. 504 of the Canadian Customs Tariff of 1907. It was conceded at bar that if the lumber in question had been "sized," as was formerly the custom, by the use of a knife or plane that process would have been such a further manufacture. The planks or boards would then be sawn *and* cut—not sawn *or* cut.

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The evidence is conclusive that the sizing now accomplished by the use of fine saws run comparatively slowly and attached to the planing machinery used to dress the planks or boards on one side is equally effective and answers the same purpose as that formerly done by the use of the knife or plane—the "side-head" of the planing machine. In both cases it is essential to the operation that the board or plank which is to be sized should be held firmly in place by such devices as spring-guides, a straight-edge and rollers. A rigidity unattainable in ordinary saw-mill machinery is required. The board or plank produced by the saw-mill is only approximately uniform in width throughout its own length and with the other boards or planks with which it is classed as assorted dimension lumber. The exact uniformity necessary for some purposes can be obtained only by subjecting these planks or boards to the further process of "sizing". Solely because this latter result has been attained, in the case now before us, by the use of saws the appellants insist that the board or plank is still merely "sawn" and is, therefore, "not further manufactured" within the meaning of that phrase in item No. 504. If that position were tenable it would follow that a piece of lumber which has been subjected only to sawing processes, however numerous or varied, would not be so "further manufactured" so long as it might still properly be described as a plank or board. It seems to me to be only necessary to state this proposition to demonstrate its fallacy.

If an order were given to a lumber manufacturer for sawn boards or planks of certain dimensions he would deliver the product of the saw-mill—not sized lumber. The latter is a different and a more expensive product and is supplied only when specially ordered. The evi-

dence makes it clear not merely that it is the ordinary practice to "size" lumber in the planing-mill after it has left the saw-mill, but that "sizing" cannot be performed by the machinery of the saw-mill. The sawn plank or board produced by the latter, known as an article of commerce to the lumber and building trades, must be subjected to a further manufacturing process before it will answer the description of a sized board or plank—equally well known as a distinct article of commerce to the lumber and building trades. The uses to which the latter may be put are different from those for which the former is employed. The difference in cost is material. The articles are distinct in fact and are so recognized as articles of commerce—and that is the result of a further process of manufacture to which one of them has been subjected. The sawn board or plank has been "further manufactured" and it is, in my opinion, immaterial whether, in effecting such further manufacture, saws or knives have been employed.

I would dismiss the appeal.

Brodeur J.—We are called upon to decide whether the "sizing" process on planks and boards exempts them from duty under item 504 of the Customs Tariff. That article reads as follows:—

> Planks, boards and other lumber of wood, sawn, split or cut, and dressed on one side only, but not further manufactured. Free.

It is stated on behalf of the respondent that the process in question constitutes a manufacturing process more advanced than the sawing operation.

On the other hand, it is contended by the appellants that sizing is simply a sawing process and that the

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planks and boards so manufactured do not lose their qualification of sawn wood.

What is that "sizing" process? It consists in giving the planks a uniform size. Of course, that result could be reached through the saws of the edging machine with which all saw-mills of some importance are equipped. But some planks might not have the same width. Then they are passed through the saws of a sizing machine that renders the planks absolutely uniform.

After that sizing process is through the planks are put on the planer to be dressed, sometimes on three sides and sometimes only on one side. It is the usual process followed in Canadian mills.

In the United States a new machine has been found by which the dressing of the planks on one side and the sawing or sizing of the edges is all done at the same time. It is a cheaper process.

The honourable judge of the Exchequer Court decided that the item of the tariff in question contemplated pieces of lumber that had been simply sawn once and that the sizing of the lumber which required the plank to pass through a second sawing process constituted an article "further manufactured" than what the legislature had in view. He stated also that the sizing machine not forming part of the ordinary equipment of a saw-mill constituted the further manufacturing process contemplated by the statute.

His conclusions are based on two grounds; First, that the law contemplates one single sawing process; and, secondly, that the work should be done in a saw-mill. I am unable to agree with those conclusions. As to the second sawing operation I may say that the gang-saw or circular saw that cuts the logs is not the

only one that is used in the saw-mills, as every one is aware. The planks, after having been converted as such by the gang-saw, have to pass through the butt-saws and edge-saws. By the latter process the edges of the planks are removed in order to give them the same width.

So several sawing processes are made in order to manufacture the plank and, if you are not satisfied with the width of your planks, if you find them too wide, you can also pass them through the saws of the sizing machine and have an absolute uniform width.

Of course, that uniformity could be reached by simply passing the planks through the saws of the edging machines.

It appears that, generally speaking, this sizing process is made in the planing-mills and the sizing machine is not very often found under the roof of the saw-mill. Nothing prevents it, however, from being part of the saw-mill equipment; quite the reverse. It is a sawing process all the same and the plank, when it has passed through the operation, should be called a sawn plank. The fact that the size is absolutely accurate in one case and that the same uniformity would not exist in the other does not alter the nature of the plank. It is a piece of wood having the dimensions of a plank and which has been sawn purely and simply.

Then—What is the meaning of the words "not further manufactured"? It means that a plank that is further manufactured than sawn on three sides and dressed on one side is subject to duty.

If it is dressed on two sides; if the edges are dressed also, or if they are grooved or bored, then they become "further manufactured,"—and must pay the duty.

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It has already been decided that pieces of oak which had been cut and so could be used more easily in a certain manufacturing process than if imported in the ordinary length should not be taxed under a statute that required that oak to be duty free should not be shaped. *Magann* v. *The Queen*(1).

We should take into consideration also the fact that a statute imposing a tax should always be strictly construed and that, in case of doubt, the tax should not be levied. Maxwell, "Interpretation of Statutes," (5 ed.), p. 461; *The Queen* v. *The J. C. Ayer Co.*(2); *Cox* v. *Rabbits*(3).

I do not find in this case very grave doubts. But if our interpretation is not in accordance with the intention of the legislature, if the sizing process was to be eliminated in its intention, then it should have said so. But as the sizing process is, after all, simply a sawing process, and as it does not constitute any difference with the edging process, I am unable to come to any other conclusion than that this appeal should be allowed, with a recommendation that the Crown should pay the costs of this appeal and of the court below.

Appeal allowed with costs.

Solicitors for the appellants: *Hogg & Hogg.*
Solicitor for the respondent: *E. L. Newcombe.*
Solicitor for the intervenants: *George H. Cowan.*

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(1) 2 Ex. C.R. 64.
(2) 1 Ex. C.R. 232, at p. 276.
(3) 3 App. Cas. 473.