

RED CEDAR FREE.

JUDGMENT OF THE UNITED STATES CIRCUIT COURT IN FAVOR OF
BRITISH COLUMBIA CEDAR.

THE history of the red cedar trouble of British Columbia will be remembered by readers of the CANADA LUMBERMAN. Some months ago a shipment of red cedar lumber from British Columbia to a United States port was taxed at 25 per cent. ad valorem, being included among the list of cabinet cedars, chargeable with a 25 per cent. duty. Largely through the efforts of Mr. J. G. Scott, manager of the Pacific Coast Lumber Co., of New Westminster, the case was laid before the Board of United States General Appraisers at New York. The matter was very fully entered into, a report in detail appearing in these columns at the time. The decision of the Appraisers was against the contention of the British Columbia lumbermen that red cedar was a soft wood and should not be classified as a cabinet wood. The matter, however, was not allowed to remain here, but was appealed by Mr. Scott and associates to the United States Circuit Court. Judgment has just been given out by the Court, and reverses the decision of the Board of General Appraisers. The importance of the decision to British Columbia lumber interests is apparent to everyone, as there is undoubtedly a profitable market for British Columbia red cedar in various parts of the United States, and shipments to that country have only awaited this decision.

The judgment is clear and decisive, and based, not alone on law, but on a very commonsense view of the situation. We here give the judgment of the Court in full:

UNITED STATES CIRCUIT COURT, }
Northern District of New York. }

In re F. W. Myers & Co.

This is an appeal by the importers for a decision of the Board of the United States General Appraisers overruling a protest against the decision of the Collector at Plattsburgh, N. Y., subjecting to duty certain importations of lumber popularly known as Red Cedar.

Stephen G. Clarke for the importers.
W. F. Mackey, Asst. U. S. Attorney, for the collector.
Coxe J.

The collector classified the merchandise in question under paragraph 181 of the Act of August 28, 1894, which is as follows:

"House or cabinet furniture, of wood, wholly or partly finished manufactures of wood, or of which wood is the component material of chief value, not specially provided for in this Act, twenty-five per centum ad valorem."

The importers protested, insisting that it should have been admitted free of duty under paragraph 676 of the same Act, which is as follows:

"Sawed boards, plank, deals and other lumber, rough or dressed, except boards, plank, deals and other lumber of cedar, lignum vitae, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet woods."

The Board found that the imported lumber is from the wood of a tree known botanically as "Thuya Gigantæ," and that it is popularly known as "red cedar," or "canoe cedar." It is soft, light, but slightly fragrant. It does not take a polish. It is not of the class of woods known as cabinet woods. The other woods mentioned in the exception are hard, expensive cabinet woods used in fine finishing work. If the exception to paragraph 676 refers to cabinet woods, and only to cabinet woods, it is manifest that the importation, not being cabinet wood, is not within the exception.

The Board were inclined to sustain the protest upon this ground, but reached a different conclusion after construing the paragraph in the light of paragraph 219 of the Act of Oct. 1, 1890, the argument being that because in the prior Act the word "Cedar" included rough lumber such as railroad ties and telegraph poles, a similar meaning must be given to the paragraph in hand, and that it cannot be restricted to that species of cedar used as a cabinet wood.

The clause in question is certainly ambiguous, and although much may be said in favor of the view taken by the Board, it is thought that the construction contended for by the importers is supported by more cogent and persistent reasoning.

In arriving at the legislative intent it is not altogether safe to rely for guidance upon the Act of 1890, it being common knowledge that its object was very different from that of the present Act. An examination of the former Act will show that practically the entire wood schedule has been transferred to the free list in the present Act.

It seems clear that it was the intent of Congress to exempt from duty all the cheaper grades of woods, when rough, unmanufactured or partially manufactured, and to levy duty only upon the boards, etc., of the finer and more expensive woods used in cabinet work.

This was the broad scheme of the Act of 1894. The construction of the Board ignores this intent and levies a higher duty upon cedar boards than the Act of 1890, and this, too, when similar boards of spruce and pine, used for the same purpose, are admitted free. It discriminates against the boards of one particular soft-wood tree without the suggestion of a motive for such legislation. When boards used for sidings, etc., are free, what possible reason could Congress have had for singling out and laying duty upon these boards when sawed from one particular variety of tree? It is as difficult to find a

plausible motive as if Congress had discriminated against the boards cut from coniferous trees. Again, two pieces of wood are cut from the same tree; the one pays twenty-five per cent. duty, the other enters free; one—a shingle—is used to protect the roof, the other the side of a dwelling-house. The construction of the importers makes such a result impossible, gives force to every part of the paragraph and is in harmony with the general purpose of the law.

It is proved without dispute that all the other varieties mentioned in the exception are cabinet woods—the products of foreign countries—and the Board finds that the cedar known as "Cedrela Odorata," which is imported from the tropics, is a cabinet wood of the mahogany family, and is capable of taking a high polish. It is a very significant fact that this Cedrela, besides being a cabinet wood, is the only wood in the United States which is known as "cedar" pure and simple. All the other varieties have some qualifying term placed before them, such as white cedar, Spanish cedar, red cedar, etc. Finding cedar thus associated with eight well-known cabinet woods, the rule of ejusdem generis requires that the word should be construed as applying to that variety of cedar which is a cabinet wood. So construed the exception applies to hard, expensive, foreign cabinet woods, and to these alone.

That this is the true reading of the paragraph is made still more apparent by the use of the word "other." When the law-makers at the end of the paragraph refer to "all other cabinet woods," it is not clear that they supposed all the preceding varieties were cabinet woods and that they did not intend to include in this enumeration a wood that is no more a cabinet wood than is white pine or hemlock?

Again, it is apparent from the Act (par. 683) and similar provisions in the Canadian Act of the same year (sec. 13, par. 739 of the Customs Tariff, Canada) as well as from contemporaneous history, that the legislation of 1894 on this subject was entered into on both sides in a spirit of reciprocity. Neither country was to impose duty upon the coarser woods imported from the other. The construction of the board is at variance with this obvious intention.

The importers' contention is further strengthened by the construction placed upon a similar provision in the Act of 1883 by the Treasury Department. It was held "that the provision for wood, namely, cedar, lignum vitae, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet woods, unmanufactured, is construed as exempting from duty only such cedar as is fitted or intended for use as cabinet wood." It will be noted that the paragraph quoted is not so explicit as the paragraph in controversy, in that it omits the word "other." It was said at the argument that this construction of the Treasury was acted upon for many years.

In conclusion, it is thought that the decision of the Board is based upon a strict construction, which leaves out of view the real intent and purpose of the law. To say the least, the construction which makes the word "cedar" include all the varieties of soft, coarse wood known by that name, is a doubtful one. In such cases the doubt should be resolved in favor of the importer, "as duties are never imposed on the citizen upon vague or doubtful interpretations." (Hartranft v. Weigmann, 121 U. S. 609, 616.)

The construction asked for by the importer makes the paragraph consistent in all its parts, is in harmony with the general purpose of the Act and with the principles of international fair dealing.

The decision of the Board is reversed.

SOME SAWING HINTS.

A GOOD many little things turn up in the course of turning logs into merchantable lumber which, if they could be formulated into a set of rules, would help the young sawyer or the newly-fledged lumberman out of a large variety of perplexing situations, says the Wood-Worker.

When a log comes on the carriage, it is often a puzzle to tell just which side to begin sawing on first. I have had a good many years' experience in saw mills, with almost every kind of timber that is made into lumber, and I believe a man can be a mill foreman or pull the lever all his life and be as quick-witted as you please, and still find things to learn about handling logs clear up to the time the whistle blows for him to quit for the judgment day.

There are a good many things about turning a log so as to get the most good stock out of it, that cannot be done by rule, and that the wisest sawyer cannot tell to another. There are things that have to be learned of every log; for, as Harry B. Wetzell often said, "Nature never had two trees, or even two logs, exactly alike." This rule is at least so nearly correct that "the exceptions only prove the rule." A sawyer may work ten or even eleven hours and not have two logs alike come on the deck.

This is especially true of hardwood logs, which vary in characteristics in an aggravating manner. But there are some things that can assume the proportions of exact rules. For instance, a sawyer asks how to place for a first slab, a log, surface clear with the exception of a single defect. The answer is, slab the log with the defect exactly in the center of the width of the cut; then slab the opposite side and turn the log with the defect exactly on top, perpendicularly to the heart; then saw up to a well-boxed heart, if it is a kind of timber fit for

squares or dimension; then turn clear over and saw up the same on the opposite side; turn down with best edge of cant to saw; cut up to square; then set out full size of square and rip it off; turn remainder of cant perpendicular with defect on top as in first place, and finish with the latter in one cut, or most two.

This will necessitate a little extra turning and a little more time in sawing the log, but when through all the lumber will be clear of everything but sap, except the one or two narrow pieces containing the one defect. If no square or dimension is wanted, then saw up to the defect on the one side and turn clear over and saw upon the other, letting the edger do the rest; every inch of clear stock in the log can be edged out with no waste and the very minimum of lumber not clear.

I have seen sawyers put such a log as this on, and after slabbing all around, turn the side with the one defect square to the saw and slash away to the last cut, making one-half the boards with perhaps a rotten knot right in the center, requiring them to be ripped twice to get out the good lumber, and so getting but little more than one-half the wide boards that could have been made by the directions I have given. And these sawyers were called good ones, too, and their bosses were wondering at the small per cent. of clear and wide lumber their logs turned out.

Butt logs with much taper should have the top end set out so as to slab parallel to the outside, and not to the center or heart of the log. Such a log is generally wind-shaken. The shake is conical, largest next the stump, hence by sawing parallel to the outside of the log, and by sawing round it, turning as soon as the shake is reached, all the clear lumber can be gotten out and all the shake be left in the tapering square in the center, which is seldom worth anything but firewood or to go to the refuse burner. In any event, sawn in this way the stock will be straight-grained, which it cannot be if cut parallel to the heart.

Some sawyers fail to catch their point and set the tops out to bring the center or heart in line with the saw, and if by the time the log is slabbed to the face the full length, all the clear stock from the butt end will have gone into chips, or out in an enormous slab; and after that every full-length board will be shaky at the butt end, requiring them all to be trimmed or graded as culls, and all if trimmed shorter than standard length or made into mere clips—and the boss would curse the logs instead of the sawyer.

Crooked logs are often puzzles to the best of sawyers. Many take a log with a straight bow, and put it on the carriage with the rounding side up, or exactly down. The latter is a dangerous thing to do, and many a good saw has been spoiled by it. Others place such a log on the one side with the back of the bow to the saw, and make a lot of clips or short lumber while getting a slab the full length. There is only one better way to do, and that is to place the bow at an angle of 45 degrees to the carriage, and after slabbing one side, turn clear over and finish. This will give more wide lumber than any other way from such a log. Try it once and see.

Hearts in all logs are more or less a source of trouble, but much less in pine or other soft woods, except hemlock, than in nearly all the hardwoods. In the latter they are nearly always an uncertain quantity. In sawing hardwoods it is a safe rule to make a large allowance for waste on account of them. It is a weakness of the sawyers and edgermen not to allow enough for them. This accounts for a large percentage of culls in the cutting of many species of timber, such as oak, cherry, birch, soft elm, and maple, gum, cottonwood, basswood, ash, rock elm, hickory and even poplar might come within the category. In oak and some other woods it is productive of better financial results to make sure of a good square of timber with a well boxed heart in the center, than to try to saw up too close and then edge the heart butt. In the latter case the quality of the boards is risked and the square is often not worth shipping.

A final excellent rule to always keep in view is, that a large daily cut is not of nearly so much importance as well sawed lumber, with the highest possible percentage of good grades.