

## EXCHEQUER COURT OF CANADA.

Burbidge, J.]

[December 9, 1891.

SMITH &amp; PATTERSON, Claimants; and THE QUEEN, Respondent.

*Customs duties*—The Customs Act, R. S. C. c. 32, ss. 58, 59, 65; 51 Vic. c. 14, s. 15—52 Vic. c. 14, s. 6 *Market value*—Value for duty—Costs.

The rule for determining the value for duty of goods imported into Canada, prescribed by the 58th and 59th sections of *The Customs Act* (R. S. C. c. 32) is not one that can be universally applied.

When the goods imported have no market value in the usual and ordinary commercial acceptation of the term in the country of their production or manufacture, or where they have no such value for home consumption, their value for duty may be determined by reference to the fair market value for home consumption of like goods sold under like conditions.

The *Vacuum Oil Company v. The Queen* (2 Ex. C. R. 234) referred to.

2. The goods in question in this case were part of a job lot of discontinued watch-cases, and at the time of their sale for export were not being bought and sold in the markets of the United States. They could be purchased for sale or use there, but only at published prices which were greater than anyone would pay for them.

The claimants bought the goods for export for their fair value, being about half such published prices. They let their agent in Canada know the prices paid, but withheld from him the fact that the purchase was made on the condition that the goods were to be exported. The agent, without intending to deceive the Customs appraiser, represented that the prices paid were those at which the goods could be had in the United States when purchased for home consumption there. The representation was untrue. On the question of the alleged undervaluation the Court found for the claimants, but, because of such misrepresentation, without costs.

*Greenshields, Q.C.*, and *R.C.A. Greenshields* for claimants.

*Osler, Q.C.*, and *Hogg, Q.C.*, for respondent.

Burbidge, J.]

[November 28, 1891.

GURSHON S. MAYES, Suppliant: and THE QUEEN, Respondent.

*Contract for construction of a public work*—Delay in exercising Crown's right to inspect materials—Independent promise by Crown's servant, effect of—*Government Railways Act*, 1881.

It was a term in suppliant's contract with the Crown for the construction of a public work that certain timber required in such construction should be treated in a special manner, to the satisfaction of the proper officer in that behalf of the Department of Railways and Canals. By another term of the contract it was declared that the express covenants and agreements contained therein should be the only ones upon which any rights against the Crown should be founded by the suppliant.

The suppliant immediately after entering upon the execution of his contract, notified A., the proper officer of the Department in that behalf, that he intended to procure the timber at a certain place and have it treated there in the manner specified, before shipment. A. approved of the suppliant's proposal and promised to appoint a suitable person to inspect the timber at such place within a given time. The inspector was not appointed until some time after the period so limited had expired, and by reason of such delay the suppliant had to pay a higher rate of freight on the timber than he otherwise would have had to pay, and was compelled to carry on his work in more unfavourable weather and at greater cost, for which he claimed damages.

*Held*, on demurrer to the petition, that the crown was not bound under the contract to have made the inspection at any particular place, and that in view of the 98th section of *The Government Railways Act*, 1881, and the express terms of the contract, A. had no power to vary or add to its terms or to bind the Crown by any new promise.

The suppliant's contract contained the following clause: "The contractor shall not have or make any claim or demand, or bring any action, or suit, or petition against Her Majesty for any damage which he may sustain by reason of any delay in the