

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

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

For the Crown it was contended that the sawing of the lumber from the log at the mill of such thicknesses, widths and lengths, that it could be re-cut in specified lengths so as to be used for a specific portion of a car, was a shaping of the lumber within the exception contained in the item (726) of the tariff referred to.

On the other hand the plaintiff contended that this did not amount to a shaping within the meaning of the Statute; that if, as did not appear to be denied, the lumber in question in the shape and condition in which it was would be free of duty if imported for general purposes, or for no definite purpose, it would not become dutiable because its length was such that it could be conveniently and without waste, cut up and used for a specific purpose, and that the importer in giving his

order to the millman had this in view; that a piece of white oak lumber could not at one and the same time be shaped or not shaped, dutiable or not dutiable, according to the use to which it was to be put. Parliament not having enacted, as it had done in other cases, that the article should be dutiable or not, according to the use to which it was intended to be applied by the importer or his customers, as for instance, that a white oak plank 30 feet long, which being imported for no specific purpose, or for general purposes, would be free of duty, would not become dutiable because the importer intended to cut it into five pieces six feet long, each of which was adapted to and intended to be used for some specific purpose.

Held, That the plank, boards and lumber in question, in the form in which they were imported, were not shaped within the meaning of the Statute, and that they were not dutiable.

Judgment for the claimant.

McCarthy, Q.C., (with whom was *Robinson, Q.C.*, and *Muckelcan*), for the claimant.
Sedgewick, Q.C., and *Hogg*, for the defendant.

SUPERIOR COURT—MONTREAL.*

Railway—Expropriation—Award—Appeal—
51 Vic., ch. 29, sect. 161—*Proceedings of arbitrators.*

Sec. 161 of 51 Vict. (C.) ch. 29, provides: "Whenever the award exceeds \$400, any party to the arbitration may, within one month after receiving a written notice from any one of the arbitrators, or the sole arbitrator, as the case may be, of the making of the award, appeal therefrom upon any question of law or fact to a Superior Court of the province in which such lands are situate; and upon the hearing of the appeal the Court shall, if the same is a question of fact, decide the same upon the evidence taken before the arbitrators, as in a case of original jurisdiction." This Act was assented to on the 22nd May, 1888. The award in question was rendered 18th May, 1888, and served on the appellants 26th June, 1888.

Held, 1. That an award has the force of *chose jugée* between the parties only from the

*To appear in *Montreal Law Reports*, 4 S.C.