

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 *C. Robinson*, Q.C., and *H. A. Mackelcan*), for the claimant.

Sedgewick, Q.C., and *Hugg*, for the defendant.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

SUTHERLAND v. COX.

Stock-brokers—Agreement to buy and carry stock on margin—Failure to purchase.

Plaintiff employed F. as his broker to purchase shares in Federal Bank stock, and to carry the same for him until 1st December on margin, depositing with him a large sum of money for that purpose.

F. transferred his business to the defendants in July, and with it paid over to them the whole of the money which had been left in his hands by the plaintiff, and they assumed F.'s contract with the latter. On the 10th of August they informed him of this by letter, stating: "We took over your 500 Federal from Farley on the 19th July," etc. On the 12th October the defendants called upon plaintiff to put up \$2,000 additional margin, the stock having fallen in value; and on default they professed to sell for him, and represented to him that they had sold his shares at a loss, and charged him with the difference thereon—upwards of \$2,000.

It appeared that F. had never bought shares for the plaintiff; that he had not transferred, and that the defendants had never received any shares from him for the plaintiff. The alleged sale of these shares with the loss or difference on which the defendants had charged the plaintiff was a mere pretence, defendants never having had any shares of

the plaintiff to sell; and the broker, with whom he had under the arrangement to become the pretended purchaser, having bought none from him.

Held, that the plaintiff was entitled to recover the money he had deposited with F., and which the defendants had received from him as money had and received.

A contract by a broker to purchase stock for a customer is not satisfied by the broker holding himself liable to account for the market value of the stock when the customer calls upon him to do so, or then purchasing stock to comply with the demand.

If any such custom existed among brokers, of which there was not any evidence, it would not be binding on his client unless he knew of it, and specially submitted to its conditions.

Judgment of the Court below affirmed.

MOLSONS BANK v. McMEKING.

Division Court Act, R.S.O. (1877), c. 47, ss. 163, 165, 166, 168, 221—Transcript of judgment to County Court—Division Court execution—Return of nulla bona after expiration of writ—R.S.O. (1887), c. 51, ss. 220, 223, 224, 226, 380—Third party moving to set aside judgment.

The plaintiffs recovered judgment in the Division Court and issued an execution thereon, under which nothing was made, and which expired by lapse of time. At the request of the plaintiff's solicitor the bailiff returned the writ *nulla bona*, although it was alleged that there were goods out of which the debt might have been levied. Upon this return the plaintiffs procured a transcript of his Division Court judgment in regular form, and filed the same in the office of the clerk of County Court, and sued out a writ of *fi. fa.* goods in order to obtain the benefit of the provisions of the Creditors' Relief Act.

The respondent, S., the holder of a warrant of execution in the Division Court, then moved to set aside the plaintiff's proceedings, and they were accordingly set aside by the County Court Judge on the ground that the judgment in the County Court was void, being founded on a return to an expired execution:

Held, that a return of *nulla bona* where there were goods was no more than an irregu-