

DIARY FOR MARCH.

1. Fri.....St. David.
3. SunQuinquagesima Sunday.
5. TueCourt of Appeal sits. Gen. Sess. and Co. Ct. Sittings for trial in York. Holt, C. J., died 1710 æt. 65.
6. WedAsh Wednesday. First day of Lent. York changed to Toronto, 1834.
10. SunQuadragesima Sunday.
13. WedLord Mansfield born 1704.
17. Sun2nd Sunday in Lent. St. Patrick's Day.
18. MonArch. McLean 8th C. J. of Q. B. 1862.
24. Sun3rd Sunday in Lent.
28. ThuLord Romilly appointed M. R. 1851.
30. SatB. N. A. Act assented to 1867. Reformation in England began 1534
31. Sun4th Sunday in Lent.

Early Notes of Canadian Cases.

EXCHEQUER COURT OF CANADA.

BURBIDGE, J.]

[Feb. 5.]

MAGAN v. THE QUEEN.

Tariff act, sched. C.—Timber cut to order.

By item (Departmental No. 726, Schedule C of the Tariff Act, it is provided that the following articles shall be admitted into Canada free of duty, that is to say:—

“Lumber and timber, plank and boards, sawn of boxwood, cherry, walnut, chestnut, gumwood, mahogany, pitch pine, rosewood, sandalwood, Spanish cedar, oak, hickory and whitewood, not shaped, planed, or otherwise manufactured, and sawdust of the same, and hickory lumber sawn to shape for spokes of wheels, but not further manufactured.”

The plaintiff having entered into a contract with the Grand Trunk Railway Company to supply the company with a certain quantity of white oak plank and boards, and white oak lumber of specified thicknesses, widths and lengths, arranged with certain millmen in the State of Michigan to saw such plank, boards and lumber from the log, in accordance with orders given to them by the plaintiff. The plank, boards 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 them 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 recut 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 recut 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 thirty feet long, which being imported for no specific purpose, or for general purposes, would be free of duty,