The deed from the executors of Vose to Barrows bears date on the 18th of March, 1861. Upon the trial of the case of *Barrows* v. *Gordon* the power of attorney from the executors and the deed executed by Kingsley were properly ruled out as void. They were not in the case. Barrows had no title to the premises in controversy, and judgment was given against him. This may be admitted to be conclusive as to his want of title at that time, and, whether the decision of the court as to the power of attorney and the deed made under it was erroneous or not, it would have been a bar to another action attempted to be maintained upon the same state of facts. But this did not deprive Barrows of the right to acquire a new and distinct title; and, having done so, he had the same right to assert it, without prejudice from the former suit, which would have accompanied the title into the hands of a stranger. At the termination of that suit the executors had not passed the title to any one. They did not transfer it for more than a year afterwards.

How, then, can it be said to have been involved in or in anywise affected by the prior litigation? The plaintiff could no more be barred than any other person who might have subsequently acquired the title. In refusing to instruct, and in instructing, as appears by the record, the court committed an error.

The judgment is therefore reversed, with costs, and the cause will be remanded to the court below, with directions to proceed

IN CONFORMITY WITH THIS OPINION.

UNITED STATES *v.* HATHAWAY.

Staves for pipes, hogsheads, and other casks, the growth and produce of the province of Canada, imported in November, 1863, from Canada into the United States, were not free from duty under the reciprocity treaty of 1854 between the United States and Great Britain, by which "timbers and lumber of all kinds, round, hewed, and sawed, unmanufac-

Argument in favor of the duty.

tured in whole or in part," were to be admitted free of duty. They were liable to pay 10 per cent. *ad valorem*, imposed by the sixth section of the act of July 14th, 1862.

THIS was a certificate of division of opinion between the judges of the Circuit Court of the United States for the Eastern District of Michigan.

The suit was brought to recover a duty of ten per centum *ad valorem*, under the tariff act of 14th July, 1862, on *staves for pipes, hogsheads, and other casks*, imported by the defendants in November, 1863, from Canada into the United States.

These articles were exempt from duty by the twenty-third section of the act of March 2d, 1861.* But a duty of ten per centum *ad valorem* was imposed by the sixth section of the act of July 14th, 1862.

By the reciprocity treaty of 1854, between this country and Great Britain, it was stipulated that the following, among other articles, were to be admitted free of duty: "Timber and lumber of all kinds, round, hewed, and sawed, *unmanufactured in whole or in part.*"

It was admitted, on the trial, by the defendants, that they had imported from Canada West, at the time charged in the declaration, into the United States, a quantity of white-oak timber *split* in the form of pipe and hogshead staves at the place of importation, and that they were the growth and produce of the province of Canada.

The main question upon which the judges divided in opinion was, whether, under the reciprocity treaty of 1854, between the United States and Great Britain, and the acts of Congress on the subject, the article of staves, as above described, were liable to duty?

The government had held that the article being *split* wood was not exempt, but was liable to pay ten per cent. under the act of July 14th, 1862.

Mr. Stanbery, A. G., and Mr. Ashton, Assistant A. G., for the United States:

These articles are not comprehended by the treaty, unless

* 12 Stat. at Large, 196.

it should appear—1st, that they are *timber* or *lumber;* 2d, that they are either *round, hewed,* or *sawed* timber or lumber; and, 3d, that they have not been subjected to any process of manufacture.

The second and third conditions are evidently not here fulfilled. The articles are not round, hewed, or *sawed,* but *split* timber; and they are also manufactured articles, having been made by hand, and with a special design or purpose, into the shape and form in which they were imported. The process of splitting, though requiring the most common labor, is, we contend, a process of manufacture. The splitting has reduced round or hewed timber into articles of commerce, ready and fit for immediate conversion, by machinery and the employment of a higher art, into other articles of manufacture and commerce. They were not split and sold as mere lumber capable of being used for any purpose whatever; but they were split and sold for the particular use for which they were imported by the defendant.

Literally, anything to which the handiwork of man has been applied becomes *manufactured.* The older dictionaries confine the meaning of the word entirely to this conversion or character given by touch of hand. The word etymologically means made by hand; but we now largely give it also the sense of being made by machinery.

Mr. Newberry, contra:

The most convenient form for removal from the forests and for transportation, into which oak and other straight-grained hard-wood timber can be reduced, is that of the rough-split pipe and hogshead stave, so called, and such form is also best adapted for the preservation of wood in seasoning, &c.

To reduce the timber into such form does not require skilled labor of the mechanic, but requires only the most common unskilled labor.

Timber split in this form, though called "rough-split pipe and hogshead staves," is not wholly or *mainly* used for the manufacture of hogsheads, pipes, or other casks, but is used

in the manufacture of many articles manufactured wholly or in part of wood, and used also, extensively, as tonnage and in the storage of cargoes of ships and vessels.

By coopers, such timber is known as "coopers' timber," and is considered and treated as raw material.

In the light of these facts this timber must be held to be unmanufactured, raw material, as much so as any sawed lumber. The fact that timber thus split is commonly *called* by a name which would seem to indicate a manufactured article is of no consequence whatever. Lumber sawed into particular forms takes such names as, for example, "flooring," "siding," "deck plank," "lath," &c., &c. Yet such lumber is not held to be manufactured. Staves are but a species of lumber. Webster, in his dictionary, defines "lumber" to be "timber sawed or split for use, as bearers, joyce, boards, planks, *staves*, and the like." The labor necessary to be expended to reduce the timber to the form of sawed lumber is evidently greater and more skilled than that necessary to reduce it to the form of rough-split pipe or hogshead staves, so called. What reason, then, could have operated to induce a discrimination in the treaty in favor of the former? We submit that none can be imagined, and that none was contemplated or intended.

Mr. Justice NELSON delivered the opinion of the court.

The construction given to the clause of the treaty by the government excluded the article in question from the free list, and subjected it to the duty of the existing tariff law, which was in the present instance the act of 1862. The regulations of the Secretary of the Treasury declared, that articles of wood entered under the designations of the treaty remained liable to the duty, if manufactured, in whole or in part, by planing, shaving, turning, splitting, or riving, or any process of manufacture, other than rough-hewing or sawing.*

We think this a sound construction of the words of the

* Reg. 1857, p. 498, § 2, Art. 921.

clause. The treaty admits free of duty, "timber and lumber of all kinds," with certain specified limitations, "round, hewed, and sawed;" which limitations, as respects this branch of the clause, are determined either by the form, or by the work bestowed on the article,—the timber or lumber must be round, hewed, or sawed; if neither, then the article is not brought within the description, and if otherwise brought within it, there is still a further limitation,—"unmanufactured, in whole or in part." The article may be round, hewn, or sawed, but if it has undergone the process of manufacture, even in part, it is taken out of the free list.

In the present case the article is prepared by splitting for the hand of the cooper, in the manufacture of the pipe or hogshead, a process which has the effect to relieve him from much of the labor that would otherwise be required in adapting it to the use intended. It has been already reduced to the proper form and size—a work which, in the first stages of the manufacture of the hogshead, must be done, and by which a considerable advance is made in fitting and finishing it for the market.

As this treaty has been annulled, the question is no longer of any general importance; and as we concur in the interpretation given to it by the Secretary of the Treasury, it is unnecessary to extend this opinion.

The court answer the question

IN THE AFFIRMATIVE.

NOTE.

At the same time with the preceding case was disposed of another, coming, like it, from the Circuit Court of the United States for the Eastern District of Michigan, on a division of opinion of the judges. It was thus—

UNITED STATES v. QUIMBY.

Split white-ash timber, chiefly designed to be used in the manufacture of long shovel handles, the growth and product of the Province of Canada, and imported from there into the United States, were not free from duty