

Mr. BENNETT: Of course it applies to more than automobiles.

Mr. ILSLEY: Yes, it applies to other commodities.

Mr. CAHAN: Does the minister assert that a vendor's lien cannot be retained and asserted after the commodity has passed into the real or constructive possession of the vendee?

Mr. ILSLEY: Yes; in that case it would not be a vendor's lien; it would be a lien by agreement, because a vendor's lien is always a possessory lien.

Mr. CAHAN: I differ from the minister. I have asserted vendors' liens where the vendor held constructive possession as agent for the vendee.

Mr. ILSLEY: It must have been by agreement.

Mr. CLARK (York-Sunbury): Does the retailer who has to pay the additional two per cent lose that amount, or could the minister say who would lose it—the customer or the retailer? Can the customer be charged the two per cent?

Mr. DUNNING: Of course that is a matter of agreement, but the principle is that it is collected from the purchaser.

Mr. CLARK (York-Sunbury): Can it be collected from him?

Mr. DUNNING: It would depend upon the nature of the agreement between the vendor and the purchaser.

Mr. BENNETT: But it is passed on to the customer. The hon. member is asking whether the consumer will ultimately pay the extra amount. It is ultimately paid by the consumer, because it is passed on to him by the retailer, who in law has a right to do so.

Mr. KINLEY: Cars are sold on signed orders to deliver at certain prices. Is it clear that notwithstanding the contract, the vendor has the privilege to collect the extra two per cent from the person who buys the automobile?

Mr. BETTS: I should like to remind the minister of a principle with which he is no doubt familiar. It is that in construing any taxing measure or a measure imposing a tax, generally speaking the construction most favourable to the person taxed should be adopted. It seems to me that the fact that when the shoe was on the other foot, namely when the tax was going down, the department

adopted a method of dealing with the situation which I must frankly say seems to me to have been a wrong one, cannot be a strong argument for the procedure they propose to adopt at this time, because it simply means that because one set of people were in the past relieved of a tax, now a new and entirely different set will have to suffer one.

Mr. DUNNING: It is not a matter of construction; it is a matter of the claim made at that time by the automobile industry as to what constitutes delivery within the meaning of the law. Surely that which constitutes delivery within the meaning of the law does not change as a tax goes up or down. It is a question of fact. I do not speak as a lawyer, and I must confess I cannot follow all the arguments of hon. members, but surely there can be no change in what constitutes delivery. That was the argument at the time, and my hon. friend will recognize the distinction between that and the construction of the law contracts. There is no question of construction at all; it is a question of what constitutes delivery.

Mr. ISNOR: Did both buyer and seller expect that there was going to be some change in the sales tax?

Mr. MacNICOL: Has the minister any figures to give the committee indicating that the revenue lost as a result of lower duties under the trade agreement and under the budget will be recovered by the increase in the sales tax?

Mr. DUNNING: I do not think my hon. friend is serious in asking that question. If it is any comfort to him I may tell him that there has been no lessening in revenue due to the causes he indicates.

Mr. BENNETT: There has been a decrease in customs duties but an increase in the value of imports. The rule laid down in the Sale of Goods Act of Ontario is as follows:

17. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

18.—(1) Where there is a contract for the sale of specific and ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

19. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:—