

• (9.45 a.m.)

69. *Payment of duty on coasting trade vessel deferred.* The owner of a foreign-built British vessel applied for a licence to engage in the coasting trade of Canada. Section 670 of the Canada Shipping Act, R.S., c. 29, states that a coasting licence shall be issued to foreign-built British ships upon payment of the duty which the Customs Act and related regulations require to be paid in full. The owner was accordingly assessed duty on the vessel under tariff item 440 at the rate specified, viz., 25% ad valorem on the fair market value of hull, machinery, furniture and appurtenances. On August 6, 1963 the Department instructed its collector at the port of entry to issue the licence but, because the owner could not pay the duty of \$10,078 in full, arranged to accept a down payment of \$3,000 on August 12, 1963 and post-dated cheques payable monthly through September 30, 1964 to cover the balance. No interest was charged.

The Customs Act is not only specific under section 22 in requiring that duties must be paid in full at the time goods enter Canada but also provides under section 79 that:

No person shall make, nor shall any officer accept any bond, note or other document for the purpose of avoiding or deferring the actual payment of duties legally accruing on goods imported into Canada, or arrange for deferring payment of such duties in any way, unless such goods are entered for warehouse, and duly deposited therein according to the laws and regulations governing the warehousing of such goods.

To further protect the revenue, the Act provides penalties under section 235(1) to be assessed against a collector or other officer who allows payment of duty to be avoided or deferred:

Every collector or other officer who allows the payment of duties of Customs to be avoided or deferred for any cause or consideration whatsoever, except by regular entry for warehouse, is liable to a penalty equal to the full value of such goods, and the duty accruing thereon, which shall be recoverable in any court of competent jurisdiction, from him or his sureties or either of them.

When the department instructed its collector at the port of entry to issue the coasting licence to the owner of the ship, the collector was advised that special arrangements had been made in the department regarding payment of duty. As a consequence of carrying out this instruction, involving as it did payment of duty on an instalment basis, the collector immediately rendered himself liable to the penalty imposed by section 235(1) which amounted to \$50,391. On September 26, 1963 the full amount of this penalty was remitted by an Order in Council under authority of section 22 of the Financial Administration Act. The remission is shown on page 43.13 of the Public Accounts for the fiscal year 1963-64.

On drawing the irregularity of these steps to the attention of officers of the department, we were informed that they are of the opinion that payment of the duty in the manner described was legalized by remission of the penalty assessed against the collector and that the procedure used is proper within the meaning of the legislation involved.

It is the opinion of the Audit Office that the penalty provision contained in section 235(1) of the Customs Act exists for the protection of the revenue