

THE LEGISLATIVE ASSEMBLY OF MANITOBA

8:00 o'clock, Tuesday, April 11, 1967

MR. LYON: Mr. Speaker, if you would now call Committee of the Whole House on Bill 56, please.

MR. SPEAKER: Committee of the Whole House. Bill 56.

MR. EVANS: Mr. Speaker, I beg to move, seconded by the Honourable the Attorney-General, that Mr. Speaker do now leave the Chair and the House resolve itself into a Committee to consider Bill No. 56.

MR. SPEAKER presented the motion and after a voice vote declared the motion carried and the House resolved itself into Committee of the Whole with the Honourable Member for Winnipeg Centre in the Chair.

COMMITTEE OF THE WHOLE HOUSE

MR. CHERNIACK: I'm not sure what section we're on but a matter has occurred to -- (Interjection) -- well I don't know just how this applies but this evening's newspaper has a notice in it and there not being a Consumer Credit Department yet, I am wondering - it is on sales tax - whether the Minister could deal with this because I do think it's an important matter which had prominence in today's newspaper. The notice which reads: "Your monthly car lease payments will be subject to the new provincial sales tax regardless of when your contract was signed. However, due to Westport Chrysler-Plymouth's exclusive lease-back plan our monthly rental payments will not be taxable. This offer open until May 31, 1967," and then it gives some names and addresses, and I think possibly this ought to be clarified. I don't know whether they mean the rent they pay for the premises they occupy or whether it's cars, but I think it should be clarified so the public is aware of it.

MR. EVANS: Mr. Chairman, I noticed the advertisement and it's a gimmick for the sale of cars under a conditional sales contract, and in fact constitutes the sale of a car and if the sale is complete by the first of June then there's no tax applicable to the car. I consider the wording of the advertisement very misleading, but that's not my subject tonight.

MR. CHERNIACK: Mr. Chairman, if it's a conditional sales contract, is it the idea that if they don't make the payments then the car would be taken back and to that extent it's a lease? If that's the case then possibly that is not just a gimmick but a legitimate way of entering into a rental contract.

MR. EVANS: We will be doing some further investigating. My honourable friend will understand that I saw the advertisement only today. I made inquiries; that's my understanding of the situation; we'll be watching it further.

MR. DAWSON: Mr. Chairman, when we left off the other evening the Provincial Treasurer had taken under advisement Sections 7 and 8. I would like to draw to his attention that Section 17, Clause (2) would also come under the same category as these other sections and I would ask his permission to make a few remarks on Section 17, Clause (2). now, and possibly he could treat them at the same time.

MR. CHAIRMAN: ... if the honourable member would like to wait until we get to 17 (2). We're considering Section 7, subsection (2).

MR. EVANS: ... Mr. Chairman, in the fact that they both do seem to deal with the same general subject of the powers of the Minister, and if my honourable friend's addressing himself mainly to this section and refers to the other one I'd be glad to listen to his remarks if you will allow them to be made.

MR. DAWSON: Thank you, Mr. Chairman. I believe that unless this clause is deleted that the Minister of Revenue or his representatives, the way I read it may enter any place of business and seize all the books, the records and the documents. This type of clause is the type of legislation that infringes on the rights of Manitoba citizens. The Minister, I should say the Provincial Treasurer or his representative, in seizing the books etc., could tie up the business for an unlimited number of days and actually, according to this clause, they need no reason whatsoever for seizing the books. Now I'm reasonably sure that our present Minister would not abuse these powers by closing a business and seizing records for the simple reason that he did not like one politically or for some other absurd reason. However, who is to say that the next Minister, the Provincial Treasurer I should say, would not be the type that would abuse these powers? This type of legislation is a type of legislation that gave Hitler in Germany the power to close businesses owned by the Jewish citizens of Germany because the legislation at that time in

(MR. DAWSON, cont'd) Germany suggested that he could protect the Jewish people from whatever God knows only what, and Hitler interpreted the law as such and in order to protect the Jewish citizenry of Germany he closed up their businesses and he put them into concentration camps. Now I'm not suggesting that this would happen in Manitoba, but the way the above clause reads the danger is certainly there and there's certainly the suggestion that a person's rights could be infringed upon. I think that this clause should definitely be deleted and replaced with the following which I'm prepared to give as a Notice of Motion. When we reach that particular clause I would like to have it amended and I don't know if it's necessary to suggest how I would like to have it amended right now but in case it is necessary I would suggest that it be amended as: "A magistrate upon being satisfied by the evidence under oath by the Minister or his representative that a person abuses or gives false information in his or her records, accounts or documents, then only would the records, etc., be seized and by a warrant."

MR. EVANS: If at some time my honourable friend proposes to move that when we come to Section 17, I'd be happy if he could let me have a copy of the wording. It was rather too long for me to copy down.

MR. CHAIRMAN: 7(2) -- passed --

MR. CAMPBELL: Well . . . Mr. Chairman, if my honourable friend wants to pursue the point he was on the other evening, the one that I'm on, I rose last evening to mention exactly the same point, but the Honourable Member for St. John's I am sure made a better job of it than I would have, and I was going to ask the Minister if he had had the opportunity to check on this I am sure that he would agree that the Honourable the Member for St. John's was correct in saying that so far as suspension was concerned that the appeal sections do not apply, and I think it could be the feeling of all of us that some appeal section should be put in there.

MR. EVANS: If anyone else would care to make a remark on this suspension item, perhaps I could reply to them all at the same time.

MR. MOLGAT: Mr. Chairman, it depends on what reply the Minister's going to give, but I think that the point that was raised last night is perfectly valid, and if the Minister's simply going to announce that he is going to add the word "suspend" in the other sections of the clause the same way as it appears in 8(1), then we will be solving the problem that was made evident last evening, because 8(1) refers to the three items, refers to refusing to issue, to suspending, or to cancelling, and if the Minister is prepared to put into 8(1) at the appropriate points the words in the same way, the three items, then I think that the matter will be solved.

MR. EVANS: Well Mr. Chairman, I would like to discuss the subject of suspension because I have had an opportunity to look into it and I've given it as much study as I could in the meantime, and I would like to draw attention to three matters particularly. In the first place the section refers to: the Minister may "in the public interest" and I'm informed that that phrase has considerable weight in the wording of the section of the Act. I'd like to also mention that there is the occasional need for very fast action in the protection of the public interest, and I would like then to discuss the protection that's afforded to the individual in cases of this kind and I'll bring into that reference the matter of appeal under suspensions. So I'd like to deal with those points.

The preliminary point, before I begin I would like to mention that in the present circumstances and with the time that's available I've adopted another method of issuing vendor's licences. Instead of requiring a vendor to apply and have his application examined, and have a license issued in pursuance to that, I've adopted the scheme of mailing out to the known vendors a licence in the first instance, which will be good for two months, and making it known publicly that anybody that we have not known about may apply for one and get their licence. This immediately faces the public as well as the government, as well as the Treasurer in charge of the public funds, with a pretty widespread and, I'm informed, a fairly severe risk. Instead of having people examined and qualified before the license is issued, a good many licences may well be issued without the degree of examination that we would have wished.

Well then, to deal with the point that the minister is restricted to dealing in the public interest, and "in the public interest" means in this case, very largely for the protection of the general public and it's within that instruction that the minister must act. The public interest can be damaged and can be damaged very severely because the certificate which is being issued can be used by unscrupulous people, and I'm going to suggest one or two ways in which it can be used. In the first place, someone having a vendor's licence is able to buy tax-exempt; that

(MR. EVANS, cont'd) is, he could hold himself out as a vendor and be able to buy goods tax-exempt which he says would be for resale but which might not in fact be for resale, or might not be resold. He might well collect tax on exempt items - I'm referring now to a class of people who are unscrupulous and unfortunately there are some of them - and he might use it to support a class of transactions which is being condemned currently by such organizations as the Better Business Bureau and Chambers of Commerce, and I have reference to the kinds of transactions that are notified every now and again in the public press by the Better Business Bureau and others as being unscrupulous operations. Sometimes these have to do with door-to-door canvassers, sometimes with people who are misrepresenting their material, sometimes by other unscrupulous people. The certificate in this case might well be used as a kind of evidence of the bona fides of the person. That is to say, if they were questioned they might well use the certificate to say "Well, you see, I have a certificate here from the Government of Manitoba saying that I'm a vendor," and we think this might expose the public to some degree of risk. There would be cases also in which the vendor may well refuse to comply with the Act and might indeed retain tax collections illegally; that is to say he might have neglected or failed to remit tax collections that he has already made by the 20th of the following month, and use this means to finance some of his operations or for operating capital.

So I've come to the conclusion that the public interest can be damaged, and when I say "public interest" I want to repeat it's the interest of the general citizens as well as the protection of the public purse. In either case it's the public interest and it's in that sense that the term "in the public interest" is read in this statute, and it's in that sense in which it will be interpreted and it's in that sense in which it will limit the actions of the minister.

The greatest safeguard against abuse of such a power as this is the courts and an informed public, a public informed through the press, and both of them are jealous guardians of the rights of the people against arbitrary power by the government, and as a matter of fact after some inquiry I have not been able to discover any or many cases in which it has even been charged that ministers operating under powers of this kind have been accused of arbitrary, unreasonable action, and yet this is a very common practice in Canada. It's my information that under the taxing statutes of almost all the other provinces and of the Government of Canada itself, the power of suspension is given to the Minister for the purposes that I have been describing. We find it in other taxing statutes in Manitoba, among them the Tobacco Tax Act, the Gasoline Tax Act, the Motive Fuel Tax Act, the Liquor Control Act, the Securities Act, and possibly others. Those are the ones that I was able to discover at that time. So it would be governed by the phrase "in the public interest", policed very largely by the courts and by a vigilant press, because anyone victimized by the unreasonable, arbitrary or use of power by a Minister in any way except in the public interest, would certainly be brought to the attention of the public by the victim if by nobody else.

Now, I would like to turn to the point as to the need for fast action. There are occasions on which it is in the public interest to stop an unscrupulous practice from continuing in order to limit, or as far as possible to prevent the public being victimized or the public purse being victimized as well. So the point turns on this: that the provisions for making a cancellation of a licence require such a long period before a decision is arrived at, or the period can be stretched to such lengths, that considerable additional damage could be done to the public interest during the interval by someone who wished to stretch out that period as long as possible and continue whatever practice it is that is wrong; and for that reason it appears to me that these suspension requirements are put into the Act. It appears to me that those are the reasons that they are put into the Act and the reason that I have come to the conclusion that they must be retained.

Now I'd like to turn for a moment to the question of the protection of the individual or the corporation suspended. It's provided in the Act that notice must be given to him in writing of the decision to suspend him. The Minister must provide notice in writing, the so-called victim has the right of immediate appeal to the Court of Queen's Bench, and the Court has the power to stay the execution of the decision until the matter has been brought to trial and guilt established.

The Courts have proved repeatedly that they are pretty jealous guardians of the rights of citizens, particularly against the government authority, and it's inconceivable that a suspension made on any grounds other than those of urgent public interest would not be reversed by the Courts immediately upon the institution of an appeal. No minister and no government would likely risk the criticism of the Court that would arise from the misuse of this power. If it should

(MR. EVANS, cont'd) be necessary to do so I would assure the House of the intention of this government to be moved to take this action only on the most urgent grounds, and in considerations of all those factors, Mr. Chairman, I have come to the conclusion that we must retain the power to suspend in the present statute.

MR. CHERNIACK: Well Mr. Chairman, this has been an interesting review by the Honourable the Minister and I must point out to him that so far we don't have an ombudsman and so far we have not recognized a Department of Consumer Protection, nor do we have a Director of Consumer Protection, and now the Minister tells us that one of the purposes of this subsection is to be able to protect the consumer from unscrupulous deals - misrepresentations. Is this the purpose of a taxing section, to use this device, a taxing section device, to use it to control unscrupulous dealers? Is this a side benefit that we are supposed to deduce from this? Well, not deduce; the Minister has actually said that's one of the purposes, and I say it's a wrong purpose. You don't use a taxing statute with arbitrary powers to deal with unscrupulous people. We have an Act, an Unconscionable Transactions Act. We have regulations dealing with the rights of individuals of a consumer protection nature, a cooling-off period. We ought to have a lot more if this government weren't so slow in bringing it forward. It hasn't hesitated to come along with its sales tax but on the consumer protection it has dragged its feet very, very slowly and we are still waiting to see what's going to come of it, and we are greeted with smiles and told, well it will be referred to the Statutory Regulations Committee; well it will be brought in later and we will be getting bills on it. And if you think, Mr. Speaker, that I'm talking about consumer protection and that it's not in order, I want to assure you I was talking about the sales tax Act which, according to the Minister who proposes it, is going to be used for consumer protection, so I think I am absolutely in order in pointing out that this is not a way of bringing in even a little bit of consumer protection through the back door in a sales tax Act without even reference to it, which is a reason brought up - and I assume it was dragged up - when it was found necessary to justify the section. I don't believe that the consumer protection idea was one which motivated this section being brought in.

MR. EVANS: . . . wanted to remind him that I did couple with that in each occasion the protection of the public revenue.

MR. CHERNIACK: I'm coming to that.

MR. EVANS: You have ignored it so far.

MR. CHERNIACK: Well I only ignored it so far because I became aroused by the Minister's dragging in this question of consumer protection.

MR. CHERNIACK: Well you dragged it back to my attention no doubt because the Honourable Minister is somewhat sorry that he even dragged up this question of unscrupulous dealers as being policed in this manner. All right, Mr. Chairman, we are now told that "in the public interest" means for the protection of the general public, which is probably true. I think that's a pretty good interpretation of "in the public interest", but really the dominate words in this section are the words "in his opinion". And "in his opinion" is not necessarily related to the interest of the public, or indeed for the protection of the general public. We on this side are attempting to protect the general public from this sales tax which my leader has already called iniquitous, and that is a form of protection which I think we are doing here "in the public interest", so that the mere fact that the Minister might think that something is in the public interest is not necessarily for the protection of the public in the dealing of a tax statute.

So what does he say? Yes, there are some people who may be using this certificate in order to declare their bona fides. They will flash the certificate and say, "Here is proof, Mr. Misled Citizen whom I am about to drag into an alley and take advantage of. Here is my bona fide. I have a certificate from the government." Well we all carry in our pockets various certificates that have all sorts of official recognition such as our Canada registration number, such as our driver's licence, and I would have to take out my wallet to indicate the number of very official looking documents. For example, the Hospital Services has the seal of the Government of Manitoba right on it. So that if that is the kind of protection we need, then against whom are we guarding ourselves and for whose benefit? This certainly is no longer a question of the public, it's a question of the ignorant person who will be misled by a permit, a registration certificate under the sales tax, where he'd not be misled by anything else. I think that's a -- that too doesn't hold much water, the opportunity to show bona fide.

But then he says, "Well, he can also use this certificate to buy goods on a tax-exempt basis." That's correct. That's what it's there for. That's the purpose for which it is given to him; it's to give him the opportunity to buy goods and not pay a tax because it is supposed

(MR. CHERNIACK, cont'd) that he will then pass it on. And we have certain penalty sections here. We haven't come to them yet but the Minister surely hasn't forgotten that we have sections in this Act which impose penalties - and rather rigorous ones - and even more serious penalties for a person who is illegally withholding tax and not remitting it, and the suggestion that they would use this in order to collect on goods that are exempt - a fraudulent act which I'm sure that the Honourable the Attorney-General would not let last whether the man has a certificate or not - if he is fraudulently collecting taxes surely that's a job for the Attorney-General and not for the Provincial Treasurer who decides it's in the public interest. It may not be in the public interest at all; it may be in the interest of an individual who is being taken advantage of, and I don't think that withdrawing the tax certificate would prevent that, because if a man still has a door and it opens and there are goods inside that are for sale, I don't think that any purchaser is bound to walk in and before he makes any purchase say, "Show me your registration certificate." I can just imagine Eaton's store having many duplicates beside each cash register showing their registration certificate. So that I don't believe that just suspending it will automatically remove from that person the opportunity to do wrong, and in doing wrong we have many ways of doing it and for that we have an active and energetic Attorney-General's Department whose job it is to look after this. So I don't really see that that arises.

I thought of a reason - and incidentally, these are all of the reasons that I've now reviewed which the Honourable the Minister produced as being valid reasons - I thought of a reason and that is of somebody who is travelling right through the province quickly, and would be out of the province by the time the cancellation would take effect. And it does seem to me there might be some justification on some occasion, but surely not for thirty days and surely not just on the casual opinion, not of the Minister -- let's be honest about this; there are various tax collectors that will be made aware of a problem and will say, "Well we have to act in a hurry." And they will act in the name of the Minister and he may not even know that they've acted in his name. But if they do, there is still that danger that they will come to him with a story, and I mean that word "story" in quotation marks, and he'll have to make a decision; and how can he make a proper investigation before he takes such a drastic step? He says that it is the duty of the Courts and the Press to call a government to task in the event that there are arbitrary decisions made. Well that may be, Mr. Chairman, but that takes a while and damage can be done in the meantime, and governments can be arbitrary and governments sometimes perforce are arbitrary, not because they wilfully do it but because this is a big operation, as we've been told time and again, and there are many things involved in government and this could be just carried out without any bad intent but certainly in a routine but sloppy manner.

I'd like to suggest to the Minister in a positive way - I've been critical up to now and I continue to be critical, but I want to suggest a few things. Firstly, I see no justification for a suspension of as many as thirty days. Under the same section the Minister has the right to cancel, or to consider cancellation, on seven day's notice. Surely he should never ask for a suspension even if his reasons were valid, which I don't accept, but even if they were valid surely he has no right to ask for a suspension for a period longer than the notice it takes to consider revocation. Surely, if he feels this is an urgent matter, then he ought to suspend and serve notice of a hearing of revocation at the same time, concurrently, so that by the time the suspension expires at the end of the seven days the hearing will be held and the decision will be made, and then it's a revocation not a suspension. So surely if the Minister is right in every respect, which as I say I don't accept, then at least he shouldn't ask for more than the seven days that it takes to deal with a revocation.

Secondly, since the Minister admits that this is a -- well, my word is a "drastic" section, but I think he'll admit that it's one that should be used most carefully and most gingerly, and since he says that the "Court" is the one that is a safeguard, then I suggest that there is no reason in the world why he shouldn't be able to apply to the court for an ex parte order and make out a prima facie case that this is an urgent matter and therefore I am asking the court to grant me the right to suspend this man's licence until there can be a hearing. Surely this is a fair thing. Surely it is only right that a taxing statute such as this should have the protection of the courts, and since it is used so seldom and since it can have very serious consequences, then it shouldn't be too much trouble for the Minister to send some person from this building across the road to see a judge and to lay an affidavit on the judge's desk and say, "These are the reasons; these are the valid reasons," and have the judge sign the order, just like we'll deal later on with the obtaining of a warrant.

(MR. CHERNIACK, cont'd) These would be protections that I think are fair protections, because I am, in saying this, already accepting the Minister's suggestions that his reasons are valid and that it is necessary for the protection of the general public to prevent a man from buying goods without paying tax, or selling goods and wrongly collecting tax, or collecting tax and wrongly withholding it, which are his reasons; or even this unscrupulous dealer, this consumer protection idea, even if that's a valid idea why doesn't he consider these two suggestions that I'm making, that accepting all that, he should not ask for powers of more than seven days because then the review for revocation would come up? He should recognize that the court is the protector of the people - we don't have an ombudsman, as I point out - and be prepared to go to the court and apply for an ex parte order which is returnable in the same seven days, so that the court will then give its approval to the minister's judgment when it becomes not only his opinion but that of a judge as well, that it is in the public interest to suspend a licence which, as I said yesterday, means to put a man out of business completely - lock his doors. I wish the minister would consider these proposals.

MR. CHAIRMAN: . . . proceedings for a moment. I'd like to draw the attention of the members of the House to the fact that in the gallery on my right we have 18 Scouts from the 132nd Scout Troup, St. Vital Presbyterian Church, under the direction of Mr. Neil de Ruiter. On behalf of all the members of the Legislature we welcome you here this evening.

MR. EVANS: Before the Honourable Member for Lakeside speaks, I would like to draw the Honourable Member for St. John's attention to the fact that under the provisions of the appeal section there's no question of waiting seven days; it's a question of the person affected being able to apply to the court the next day and the court has power to stay the effect of the order.

MR. CHERNIACK: Well that's fine, so now the Minister is saying in the public interest -- I'm sorry; I know the Honourable Member for Lakeside has been -- well I'll be very brief on this. Instead of the Minister saying, "I want to protect the public," he is saying, "The public has means of protecting itself against me." And I think that that's a valid point. When I suggested that all the Minister needed to do was to ask for an ex parte order from the court, having made out a superficial case indicating his reasons, the Minister's response is, "Well, when I do this thing, which I think I'm doing in the public interest, then let that person affected go to a court, make an application to the court" - and remember this is not routine as it would be in the case of the Minister's department - and say, "Well now, I must go to the court and get from the court an order of suspension after having launched an appeal." I think that if the procedure were reversed it would be in the interests of the public.

MR. CAMPBELL: Well Mr. Chairman, when I went to get to my feet last evening I was going to suggest to the Honourable the Minister that I would offer to help him out, because I was very much of the opinion at that time that he did not want, quite apart from whether he should have or not, that he would not want the powers that are conferred upon him here. I've always held the opinion that where possible we should put as much as possible of the rules and regulations right into the Act. I've been a disbeliever in leaving too much by regulation; after all, regulation is by Order-in-Council which means a Cabinet decision; but the next thing after that, if it has to be a choice I certainly prefer to see - and I think practically any minister would prefer to see - that responsibility that's an onerous one should be left to the Cabinet Council rather than to a single minister, and I've been pressing through the years that we should cut down on the number of cases where we're leaving important decisions to the minister. And I last evening had been going to suggest that we should ask the Minister if he wouldn't agree to this being, the Lieutenant-Governor-in-Council could do this. I'm aware of the fact that the Minister will likely say that the time element enters into this; he has already said so; but Mr. Chairman, the Minister is aware, and some of the rest of us are too, that it really isn't too difficult to get a cabinet decision on these matters. And I'm the first to admit that it's to an extent the same thing because it would be rather a formality, I think, that Cabinet would go along with the Minister, but in my opinion it looks better. It looks better in legislation, and I think it is a protection to the Minister. So I've been going to suggest to the Minister that he really wouldn't want to carry these onerous responsibilities. However, the Minister has made it pretty plain that he thinks he wants it left this way and so I won't press that any further.

But even when the minister points out that his interpretation of the phrase - and he believes it to be a generally accepted one - of "in the public interest," is for the protection of the public, and, as well, the public purse, I call attention to the same qualification that the Honourable Member for St. John's gave and that is that that proper expression is preceded by

(MR. CAMPBELL, cont'd) the words "in his opinion", and goodness knows Mr. Chairman, this really does put what I think is an onerous responsibility upon the Minister. I am going to say for the benefit of my legal friends here that I think when you come to the appeal section that has been discussed already in connection with this and I think quite properly attaches to this discussion, when you get over to Section 8 I'm very doubtful, Mr. Chairman, in giving my legal opinion on the matter, I'm very doubtful if this appeal section includes at all the suspension that we're talking about here; very doubtful; because the people that can appeal there are applicants for a registration certificate, or a holder of a registration certificate.--(Interjection)
-- Ah yes, but that's . . .

MR. HILLHOUSE: He's not a holder at that time.

MR. CAMPBELL: He's not a holder at that time because he's suspended. --(Interjection)
-- No, I, well, . . .

MR. EVANS: If there's nothing to suspend, there's no suspension.

MR. CAMPBELL: No, but if he's already been suspended, if he's already been suspended under the earlier section. The Minister we'll say, has suspended him. Well now I'm very doubtful if he's covered by 8. However, this can be discussed later; but Mr. Chairman, as far as (2) of 7 is concerned, I'll at least advance the discussion another step by moving, which I now do Mr. Chairman, that the words "in his opinion" be struck out of the first line of Sub-section (2) of Section 7.

MR. FROESE: Mr. Chairman, I think when we discussed the Bill last night the Honourable Member for St. John's referred to Section 6 (2) and I don't think we've proceeded past that point tonight have we? No, you raised a point under 6 (2) last night, and under this section it seems to me that the whole matter is controlled, all sales are controlled to such a large degree that there's no freedom of movement even, in my opinion, because all the manufacturers, the wholesalers, the importers, the jobbers, all have to have a certificate in order to operate, and this in my opinion gives the government the power to look into everyone's books and check on the retailers in this way. This is so much regimentation in my books that I don't like this situation one bit.

Then we come to the matter that has just been discussed here tonight, that it's a matter of the Minister's opinion in so many cases. You find that under Section 7 Subsection (2), then it's also a matter in Section 11 where it comes to the bonding, and then when we see under Subsection (4) in connection with the hearings, that a person is prejudged, a certificate can be cancelled, and the party whose certificate is cancelled has to give cause. He's already judged and he has to give cause why it should not be done, and then to go to an appeal later on to court seems to me that the party that is ruled against here has to dish out all the information, reveal everything to the Minister, and then later on when he goes to an appeal there's nothing new to bring forward at that time. It seems to me it's so futile at that point to even go to a court. In my opinion this whole matter -- it does not appeal to me at all and it's wrong in my books.

MR. GREEN: Mr. Chairman, I don't have a great deal to add to what has been said but I do think that a few words more would do no harm with respect to the Minister's sort of feeling that there's full opportunity here for the protection of the individual by virtue of this application that he may make to appeal against a suspension or a cancellation or a refusal to issue an order. Now with regard to the refusal to register or the cancellation of registration, a person can appeal before the order has any real effect. In other words, a refusal to register, the person obviously isn't in business to start with and therefore it just means that it may take him a little longer to get in, although that wouldn't apply to all the users now. In other words, you could refuse to register an existing user, retail store, and if you refused to register him presumably he couldn't carry on business. That's an existing user. All right, so you've got to give him well seven days etc., and he would have time, although even that is fairly quick, but he would have time to get the seven days' notice.

However, with respect to the section which provides that you can suspend if in your opinion it's in the public interest to do so, may I say that I agree that the only question that really will be determined is whether you had that opinion and had it honestly, and if you had that opinion honestly then the public interest is irrelevant. It's a question of whether in your mind it was in the public interest. Therefore I think that the suggestion made by the Member for Lakeside at least puts this into absolute rather than relative terms - we're now dealing with the public interest. But nevertheless, presuming you have an existing operator, you consider that it's in the public interest that he be suspended and you suspend him forthwith.

Let's say you do this on a Thursday. This could be a fairly distinguished restaurant; it

(MR. GREEN, cont'd) could be a fairly distinguished retailer who your Department has a disagreement with; and by the way, you're not going to be involved in these things except when they reach the top of your desk; it's going to be the people in your Department and they may take a view that it's in the public interest that this restaurant, this retail store, what have you, should be suspended. They suspend them on Thursday. There is - and I ask you to accept this - some sort of stigma to having your place shut down and the notice will immediately go out that the government shut you down, and of course you have an appeal and if you can get to a judge you can get a stay of proceedings.

Well, first of all you can't get, often possibly your own lawyer, the minute that you want to. It may be that you won't get him until Friday. The amount of time that he can spend on your work may make it possible that he not be able to get to this particular matter by the time he goes through reading the Act and what he has to do, and the lawyers don't know everything immediately that the client approaches them. It may not be till Monday or Tuesday that he can get before a Court, and then he comes to Court and he gets a stay of proceedings which then has to be somehow conveyed to you, and he may be closed from the period, Thursday, Friday, Saturday, Monday, Tuesday, and this is not an outlandish period. - I'm dealing with a fairly brief period - before he is back. In the meantime, there is some suggestion in the public mind that the government can't put anybody out of business unless he's done something wrong. But for those five days he's been out of business, without trial, without any finding made against him, and it may subsequently be determined that he's done nothing wrong, that he was right and the bureaucrats - and I don't use that term derogatively - but the bureaucrats in your Department were wrong; they misunderstood something or they didn't give consideration to what he was saying. So he's out of business for five days and to recapture his image in the community may take him five years. I don't know. I know that I've had experience with cases of this kind which have resulted in irreparable damage to the individual concerned, because you can't do these things automatically and you don't reinstate by getting a stay of proceedings within a period of several hours. And even if several hours it could do damage. It's similar to the proposition that I put to the Minister of Public Works with regard to a man's licence being suspended and him having the right of appeal and winning the appeal and meanwhile his driving licence has been suspended for a period of three months. This could be far more serious because there could be, and I suggest that there would be, a stigma associated with the fact that a premises closes down, that there is sort of a padlock on the door. Hundreds of rumours come into the mind of the person: it had to do with taxes; it had to do with bankruptcy; there's a padlock on the door. All kinds of expressions of this kind start to circulate when a premises closes down, and I would suggest that the procedure that was outlined by my colleague the Member for St. John's, would protect the Minister for another couple of days. If this man is doing something that has been so obviously wrong and we're dealing with \$45 million, it can't all be coming in from one person, one vendor -- I think that the cost that the public will possibly suffer as against the irreparable damage that the individual could possibly suffer, should cause the Minister to reconsider this power of immediate suspension which carries with it a power of appeal which may not be operative for several days. And, Mr. Chairman, I find it rather anomalous that I'm arguing this position with this Minister and this government because in my days at law school it was always the young Conservative lawyers, in particular the Attorney-General who is now a member of this government, who were most articulate at putting the position that I feel that I'm now putting to the Minister, and I would think that it would be very consistent with the thinking of the intellect of his Party that this type of provision not be in the Act, and I also think that it's wrong to provide the kind of ministerial discretion that is here permitted. I don't think that the Minister would do his section any harm if he took it back and had another look at it.

MR. HILLHOUSE: Mr. Chairman, I have listened with a great deal of interest to this legal discussion and I realize that the Minister should have a fairly substantial discretion in any taxation statute, but I do believe this, that it might remove a certain amount of the stigma and the responsibility from the Minister if the procedure for cancellation was reversed, in other words, that the Minister should apply to the Court for an order of cancellation and that the Court could grant that order pending the hearing upon the Minister satisfying a judge of the Court of Queen's Bench that there was reasonable grounds for believing that it was in the public interest to grant such an order, and I think if we followed that procedure it would not be placing the onus upon the individual charged, but placing the onus actually where it belongs, that is in the Crown, because the Crown has all the resources of the Province of Manitoba behind it and I

(MR. HILLHOUSE, cont'd) don't like to see the onus being placed upon a citizen until that citizen has been proven guilty.

MR. EVANS: Mr. Chairman, I would like to make just a remark or two in connection with the points that have been made. With respect to the words as being 'in my opinion' I'm not aware whether the Member for Lakeside moved that they be struck out or not. Was there a motion?

MR. CAMPBELL: I did.

MR. EVANS: Well then, I'm prepared to support the motion. I think it does remove an appearance of personal arbitrariness about it and I see no harm in removing those words. I'm informed that I have to arrive at an opinion before I take action in the public interest, and it does give a better appearance, and I accept that suggestion.

I also don't think it would be in the public interest to act by way of suspension if the time permits to act by way of cancellation and notice of cancellation in the regular way, and that it is only in cases of urgency or where speed is required or where fast action is required of the type that my honourable friend from St. John's mentioned. Somebody might be on his way out of the province and it might be necessary, not so much by way of being out of the province because I really don't see what the cancellation of a vendor's licence would do to prevent someone leaving the province, so that particular case doesn't appeal to me as an argument in favour of it, but where it does appear that someone has committed a breach and that any further continuation of it will victimize other people, it does seem to me these powers are desirable. So for that reason I've come to the conclusion that I must ask the Committee in the House to grant me the powers under No. (2). I propose to vote for my honourable friend from Lakeside's motion.

MR. CHAIRMAN: The motion before the Committee: that the words "in his opinion" be struck out of the first line of subsection (2) of Section 7.

MR. CHAIRMAN put the question and after a voice vote declared the motion carried.

MR. MOLGAT: Mr. Chairman, I think that the House should rise at this point. It's a high point. It's the first amendment that we've succeeded in getting accepted.

MR. EVANS: By no means. I'm going to rise to my own defense. I'm going to rise to my own defense on that. I have indeed agreed to an important matter that my honourable friend from St. John's raised, and told him that I was prepared to bring it in because it had to be brought in by a message. I've indicated the same thing to my honourable friend the Leader of the Opposition and I'm prepared to do so from him, and I have tried, whether I've succeeded or not, to demonstrate an open-minded attitude in this discussion with a view to improving the Bill.

MR. CHAIRMAN: (2) --passed as amended. (3) --passed; (4) (a) and there's a correction of spelling of the word 'certificate' in the second line in (a). (a) -- passed; (b) -- passed; (4) --passed; (5) -- passed; (6) --passed; (7) --passed; (8) --passed; Section 7 . . .

MR. GREEN: Mr. Chairman, I would like to move an amendment by adding a paragraph (9) to read almost like paragraph (8) consistent with what I've said before, to read as follows: "An order made under subsection (2) shall take effect three days after it is served on the holder of the registration certificate, as the case may be." Now in three days he can get that . . .

MR. EVANS: I'm afraid, for the reasons that we've been discussing, I would not be able to accept that amendment.

MR. CHAIRMAN: Are you ready for the question? It's moved that Section 7 be amended by adding subsection (9) to read as follows: An order made under subsection (2) shall take effect three days after it is served on the holder of the certificate.

MR. CHAIRMAN put the question and after a voice vote declared the motion lost.

MR. CHAIRMAN: Section 7 -- passed. Section 8 (1) --passed . . .

MR. HILLHOUSE: Mr. Chairman, I wonder if the Minister through the Legislative Counsel would advise the Committee as to whether or no this section as written and drafted, subsection as written and drafted, would cover the case of an individual whose licence was suspended, still being a holder of a licence?

MR. EVANS: Well if there's anything not clear about the drafting, I've had a word with the Legislative Counsel and perhaps my honourable friends would be agreeable to holding this section until I have a chance to get into it in a legalistic way.

MR. HILLHOUSE: If the Minister would assure me from the Legislative Counsel that he's satisfied that it would cover . . .

MR. EVANS: No, I think there's enough point raised here and I'm not good on this subject but . . .

MR. HILLHOUSE: . . . subject to the approval of your advisor, that 8 (1) would read: an applicant for a registration certificate or a holder of a registration certificate," then I would put in "or a person whose registration certificate has been suspended." Make it abundantly clear that we're covering that.

MR. EVANS: Well, it may not be entirely fair to the Legislative Counsel by asking them to pass on that amendment at this stage. If my honourable friend agrees, we could say the motion has been moved, and we'll leave the item open until I'm able to consider it.

MR. CHAIRMAN: Allow subsection (1) to stand. (2)-- passed; (3) --passed; (4) -- passed; Section 9 (1) --

MR. HILLHOUSE: Mr. Chairman, in connection with Section 9 (1). Now this deals with a sale under The Bulk Sales Act, and no person is allowed to dispose of stock through a sale in bulk as defined in The Bulk Sales Act without first obtaining a certificate in duplicate from the Minister that all taxes collected by such person have been paid, or that arrangements for payment have been made. Now I'm not objecting to that, but it's subsection (2), every person purchasing stock through a sale in bulk, as defined in The Bulk Sales Act, shall obtain from the person selling such stock the duplicate copy of the certificate furnished under subsection (1). Now what I'm a little worried about is this, that if you go over to Section 24, subsection (4), you'll find that the period of limitations there for bringing in action under this Act is 6 years, except that in the case where fraud is involved the information or complaint may be laid at any time.

Now what I'm getting at, and it's a kind of a roundabout way, if a purchaser under The Bulk Sales Act does obtain from the vendor of that bulk sale a duplicate copy of the certificate from the Minister, I would like subsection (2) to provide that that duplicate copy in the hands of the purchaser would be conclusive that the Act had been complied with, that is so that there would be no comeback on the purchaser afterwards.

MR. GREEN: I have another misgiving under this subsection too - 9 (2). I don't intend to move an amendment but I'd like the Minister to look at it because it's something that -- I think that if he agrees with me, it's not necessary to have an amendment. What subsection (2) says is that if the purchaser fails to get their certificate - and then it goes on - if he fails to do so he shall be responsible for payment to the Minister of all taxes collected by the person thus disposing of the stock. In other words, the purchaser then is responsible to pay the government those taxes - and I see the validity of it - that what you're saying is he should have got a certificate beforehand. What I'm worrying about is that this section relieves the vendor of the responsibility. It says that the purchaser shall be responsible for payment to the Minister of all taxes and I think that the vendor should continue to be responsible.

In other words, I'd like the section to be worded in such a fashion as to make them jointly responsible, that the purchaser has a responsibility but he can claim over as against the vendor because the vendor has in fact collected those taxes, and the way the section is worded and it's statutory, it says, "he shall be responsible for payment to the Minister of all taxes collected by the person," and I think that there should be something that he can collect these from the vendor.

MR. EVANS: Perhaps I could have a word with the Legislative Counsel. Mr. Chairman, with agreement, I'd like to consider the points that have been raised and have the Legislative Counsel see if they can be incorporated. There's another point that I had in mind as well, and that is noticing it myself for the first time we seem to be enacting by law here that someone shall obtain a copy- it's the last line on Page 11 - and I don't know whether it's a proper subject to enact that somebody shall obtain it. If he doesn't obtain it, then it might become an offence under the Act and so I'm going to ask leave to retain this subsection (2) in Committee and consider the drafting.

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MR. CHAIRMAN: 10 (1) -- passed; (2) -- passed; (3) -- passed; (4) -- passed; (5) -- passed; (6) -- passed; (7) -- passed; Section 10 -- passed; 11 (1) -- passed; (2) -- passed; Section 11 -- passed; 12 (1) (a) -- passed; (b) -- passed; (1) -- passed; (2) -- passed; (3) -- passed; (4) -- passed; (5) (a) -- passed; (b) -- passed; (c) -- passed; (d) -- passed; (5) -- passed; 12 -- passed; Section 13 (1) --

MR. GREEN: Mr. Chairman, with regard to 13 (1), I'm merely asking this to find out why the moneys that are collected by a person - a vendor - of sales tax, why it is not a trust as well as being a debt. Is there a reason that you did not wish this money to be a trust, because if it is a trust then it seems to me that the position of the vendor is much more precarious in terms of dealing with that money.

MR. EVANS: Each vendor who collects the tax is, for the purpose of this Act, regarded as a treasury officer and, as such, holds all government moneys in trust.

MR. GREEN: Then would 13 (1) maybe relieve that because it says the amount of moneys payable by a vendor to the Minister under Section 10 is a debt due from the vendor to Her Majesty in right of Manitoba until paid. Now if you say a treasury officer is automatically a trustee, this might take him out of that category because it says that it's a debt. The legislation specifically says that it is a debt, and if it's a debt then it might not make him a trustee.

MR. EVANS: The purpose of putting it this way is that he can be sued for recovery of the money without suing him for a breach of trust, is the explanation I have.

MR. GREEN: Now, Mr. Chairman, you can always sue a trustee for the recovery of the money. The only difference between creating it as a debt and creating it as a trust, you still have a right to sue for the recovery of the money, but if he's a trustee you also have the right to prosecute him, to prosecute him for a criminal breach of trust. Now does the government now wish to have this remedy? Do they wish people to collect their taxes and then merely be sued as a debt, because you can sue a trustee for the money and you can also prosecute him for breach of trust.

MR. EVANS: I'm informed that it's created into a trust. You cannot sue simply for the recovery of a debt, that it implies -- am I right about that? My honourable friend has me on his own ground here and I'm not expert in the law.

MR. GREEN: You can take it back and look at it. I feel that I can sue a trustee for money that he held for me and I can also prosecute him, but you can look at this.

MR. EVANS: I want to do the right thing, that's all I want to do.

MR. LYON: The point my honourable friend makes I think is an interesting one, but I think the point here is that this provides an alternative means of collection as a debt due and owing, and you can resort to this very simple procedure of suing for a debt due rather than suing for a breach of trust which has the implication of it of course, the criminal implication of something much more serious. I hate to venture the opinion without checking with The Treasury Act, but I think that you conceivably have here two alternative means of approaching it, through the Treasury Act and through here.

MR. GREEN: Mr. Chairman, all I can say is that a person who receives public money and he receives it -- he receives five cents for every dollar spent in his store, that five cents is not his and he doesn't owe it to the Crown, it belongs to the Crown; he's holding it for the Crown. My impression is that you can sue a trustee to collect the money that he was holding in trust for you, you can also prosecute him for a criminal breach of trust. If the Crown feels that they have both remedies, I'm satisfied, but by specifying that it is a debt, I am concerned, and knowing something of criminal law, I would go into court and defend that man on the basis that the Crown has stipulated by legislation that this is a debt and therefore you can't sue him for trust, and the legislation of course will be interpreted in favour of the accused.

MR. EVANS: Well, I am informed that it does not have that effect, that my calling it a debt here does not remove his character as a trustee.

MR. CHAIRMAN: (2) -- passed; (3) -- passed; (4) -- passed; (b) -- passed; (4) -- passed; (5) -- passed; (6) -- passed; (7) -- passed; (8) -- passed; (9) -- passed; (10) -- passed. In subsection (11) there's a correction to be made and a typographical error in the second last line. The word "ben" should be spelled "then." Subsection (11) -- passed; (12) -- passed; Section 13 of the Bill -- passed; 14 (1) -- passed; (2) -- passed; (3) (a) -- passed; (b) -- passed; (3) -- passed; (4) -- passed; (5) -- passed; 14 -- passed; 15 (a) -- passed; (b) -- passed; 15 -- passed; 16 (1) -- passed; (2) (a) -- passed; (b) -- passed; (c) (i) --

MR. EVANS: (b) (i)?

MR. CHAIRMAN: 16 (c) (i).

MR. EVANS: 16 (c) (i) - I'd like to move a motion that subsection (2) of Section 16 of Bill 56 be amended (a) by striking out sub-clause (i) of clause (c) thereof and substituting therefor the following sub-clause (i): "less than fair market value or."

MR. CHAIRMAN presented the motion and after a voice vote declared the motion carried.

MR. CHAIRMAN: New clause (i) -- passed; (ii) -- passed; (iii) -- passed; (c) -- passed; (d) -- passed; (e) --

MR. GREEN: Mr. Chairman, was there an amendment coming under this?

MR. EVANS: ... proposing -- have we got this amendment written out? I think it's on the sheet I just had which has probably been taken back to the Chairman. Mr. Chairman, I move that subsection (2) of Section 16 be amended by adding thereto immediately after the word "shall" in the third last line the words "subject to any appeal for which provision is made herein."

MR. CHAIRMAN presented the motion.

MR. CHAIRMAN: The Honourable Member for St. John's.

MR. CHERNIACK: The word "conclusively" still remains after this amendment and I don't see the sense to it. If it's subject to appeal shall be conclusively deemed - is that word "conclusively" of any value?

MR. EVANS: I am informed that it's only by way of appeal that the conclusive nature of the opinion can be got rid of, and that the word "conclusively" here is required for the purpose of the section.

MR. GREEN: ... that there will be an appeal, and after the Appeal Courts or whoever it comes to - I think it is a Court in this case - establishes the value, that that shall conclusively be deemed to be the value. In other words, there won't be -- (Intejrection) -- Right.

MR. CHAIRMAN: (2) -- passed; (3) -- passed; (4) -- passed; Section 16 -- passed as amended; 17 (1) (a) -- passed; (b) -- passed; (c) -- passed; (1) -- passed; (2) --

MR. EARL DAWSON (Hamiota): Mr. Chairman, I would like to move on clause (2) of Section 17 on Page 18 that the entire clause be deleted and replaced with the following: "A magistrate upon being satisfied by evidence under oath by the Minister or his representative that any provision of this Act or the regulation has not been or is not being complied with, may at any time issue a warrant under his hand authorizing the Minister or a person designated by the Minister for the purpose of this Section, to seize or cause to be seized any of the books of account, record or documents for evidence.

MR. EVANS: Mr. Chairman, I want to thank my honourable friend for providing me with a copy and I think our difficulty here arises from the fact that at all times all the evidence that might support a request to a magistrate is in fact in the hands of the accused. This is the same general reason that underlies the onus clauses in all the taxing statutes and all statutes of this kind, that it is a matter of practical necessity to be able to obtain evidence before any kind of a charge is laid. Consequently, if one appeared before a magistrate requesting his decision as to whether or not it's proper to go ahead and we're not able to submit any evidence, presumably no further action could be taken and for that reason I must resist the amendment that's offered now.

MR. DAWSON: Mr. Chairman, I think that I've already mentioned to the Assembly the dangers of this particular clause in the hands of the Minister. As I mentioned earlier, I am quite sure that the present Minister will not be walking or having his agent walk into any particular place of business to see his records and documents, etc., because of the fact that he doesn't like one politically or for some other personal reason; but the danger is there that should a new Minister come in that he could very well take a dislike to someone for political reasons, etc., and very easily have the books, documents, etc., of that particular business seized and in turn force that business to be closed with very little reason.

I think that the danger is here that there is too much power being placed in the hands of the Minister, and as I have pointed out earlier, this is the very thing that happened in Germany with Hitler. He was able to walk in - because they had laws and regulations - he was able to walk in and close up the business places of the Jewish citizenry with the excuse that he was protecting them, and in turn to further protect them he placed them in concentration camps. It's this very type of legislation we have before us right now that was the cause of this particular thing in Germany. I believe that the danger is there and we should do something to make sure that this cannot happen in Manitoba.

MR. LYON: Mr. Chairman, my honourable friend is obviously not learned in the law and he's obviously not too well versed in how the administration of justice operates in our

(MR. LYON cont'd).... province or indeed in our country. Nor is he very well versed, may I say, in how the administration of government, regardless of what Party is in office, operates in this country. If he can visualize the kind of scary example that he sees taking place in this country, then I suggest he'd better take a very quick cram course in Poli-Sci I, II and III to find out how government operates in this country. The statements he makes are absolutely ridiculous.

The purpose of the section here is to provide merely that the officers who are making an inspection of certain premises and find a certain breach of the Act taking place, that they can then and there take possession of the evidence that is required to substantiate the breach - nothing more, nothing less. I don't see how you can draw the kind of scary conclusion from this procedure which is common so far as I am aware to most taxing provisions, federal and provincial. I don't see how you can draw that kind of conclusion at all. I would suggest that the amendment put forward by the honourable member should not be supported, not only because of the grounds he advances in support of it but because if you look at it closely it suggests that the person, the officer having gone in and found certain information, the books to be in default in a certain way, he would then have to trot back, get a warrant to seize and then go back hoping to find the same evidence available after it had already been detected, and this is not the way a taxing inspection can take place.

Reference to the Income Tax Act, or any of the other taxing statutes that are common, I think will demonstrate that sufficiently to my honourable friend's satisfaction. But I would suggest with respect to his other reasons that he'd best reconsider those entirely and remember that he is not living under that kind of a government in any part of Canada.

MR. DAWSON: I think that I've already pointed out to the Honourable Minister the Attorney-General that I believe that this couldn't possibly happen right now, but I think I'm correct in saying that if a person's documents, records, etc., were seized he could very well be closed up. All I'm suggesting is that we're infringing on a person's rights by doing such a thing and I don't think that it's so far-fetched to ever dream that this is possible to happen in Manitoba or Canada. They dreamt that it couldn't happen in Germany and it happened.

MR. PAULLEY: Mr. Chairman, I wonder if you'd mind reading the amendment that apparently is before the House at this time so that we can consider same.

MR. CHAIRMAN: That clause (2) of Section 17 on Page 18 be deleted and replaced with the following: A magistrate upon being satisfied by evidence under oath by the Minister or his representative that any provision of this Act or the regulations has not been or is not being complied with, may at any time issue a warrant under his hand authorizing the Minister, or a person designated by the Minister for the purpose of this Section, to seize or cause to be seized any of the books of account, records or documents for evidence.

Are you ready for the question?

MR. CLEMENT: Mr. Chairman, once again I am not one who is learned in the law but it appears to me that surely if the Minister felt that there had been some injustice taking place, that they weren't receiving their fair amount of taxes, couldn't they go and get the warrant before they went to the place of business in the first place and then they have the warrant. Because after all, if this was the Minister himself doing this I wouldn't be concerned, but after all there may be some men who are going to be working for the government that could take advantage of this thing, and I just think that it is a little bit over-powerful.

MR. GORDON E. JOHNSTON (Portage la Prairie): Mr. Chairman, in the -- it says here, "where it appears to the satisfaction of the Minister or a person designated by the Minister would be one of the inspectors. Would this be correct?"

MR. EVANS: I expect he would be the natural person for me to designate. Yes.

MR. JOHNSTON: Well, Mr. Chairman, all it would take would be something of a personality clash between the inspector and the merchant and the inspector has the power of economic life or death over the person whose books he wants to see. Or if, as I say, a personality clash arises, this inspector has the power of life and death over someone economically and I don't think this is right at all. I agree with my honourable friend from Birtle-Russell that if it is the opinion of an inspector that there is something wrong in that business, he can anticipate and he can get an warrant before he takes this action. He shouldn't be able to walk in and just on a snap decision decide to seize.

MR. LYON: I would point out, Mr. Chairman, to the Honourable Member from Portage that subsection (1) of Section 17 already provides for entry at reasonable times for the purposes of inspection. This is the common section such as you will find I'm confident, without having it

(MR. LYON cont'd).... in front of me, such as you will find in the Income Tax Act. I'm equally confident that subsection (2) you will find in the Income Tax Act which merely is the succeeding step that having gone in for the purpose of inspection, having uncovered certain evidence that he feels indicates the storekeeper is in breach of the Act, he is then merely empowered by subsection (2) to take possession of that evidence.

The point that my honourable friend raises of course is that there could be a personality clash and so on, but this can apply today to his business, my business, or anybody's business with respect to the Income Tax Act, where according to my recollection and belief they have exactly the self-same powers. The point is that the treasury officers or the inspectors who are sent in on these inspections have to be well briefed because they know that if they overstep the line they're going to be brought up short and can be brought up short in court for acting beyond their statutory duty, and a penalty can be inflicted upon them for an overstepping of the bounds of their statutory duties.

So I suggest that while the point he raises might on the surface appear to be a valid one, that in actual practice it doesn't occur this way and that what he is complaining of here is the type of practice that is common with respect to at least the Income Tax Act and possibly other federal taxation statutes of which I'm unaware.

MR. JOHNSTON: ... I'd like to ask a question of the Honourable the Attorney-General. Is he telling me -- is it true that an income tax inspector can go in and seize records without a warrant?

MR. LYON: I'm going on recollection which is a terrible thing at any time for any lawyer ever to do. I'm breaching the rule because my honourable friend asked me to. I don't have the Act in front of me. My recollection and belief is that income tax inspectors have the right of entry without warrant, as is given in a number of statutes in the Province of Manitoba. The Liquor Control Act being one.

MR. FROESE: Mr. Chairman, just because this authority is there in other Acts doesn't make it any more right that it should be in this one and I certainly object to that myself. We find that the Minister has so many different powers already in this Act to cancel certificates, have agents to be bonded. Why cannot he claim under the bond at this particular time if he is short. I don't like this section either. Is there a time limit on this? I can't see any time limit under this section either as to for what period the books can be withdrawn in this matter.

MR. PAULLEY: Mr. Chairman, I'd like to say a word in connection with the remarks of the honourable member who introduced the amendment. I regret very very much, as indeed the Attorney-General has indicated, that such a proposition, or accompanied by such a tirade should be directed in this House - that is I'm thinking of the reference and the illusions back to what happened under a regime over in Germany and Gestapo methods and the likes of that. Now as far as I'm concerned, I don't think that the remarks of the honourable member who introduced the amendment are proper. I don't think that they should be accepted in this Assembly because it seems to me that they place a connotation on the purport of the amendment that is out of place completely in this Assembly that we have, and I suggest to my honourable friend that there's no relationship at all between what happened years ago under the Gestapo and what is suggested in this resolution, and I think it would be well for us in this House not to talk the way my honourable friend did insofar as this matter is concerned.

There is a question that arises in my mind insofar as the section itself is concerned and I think that this is a section that is similar to that contained within the Income Tax Act of Canada where the Minister or his agent has the right to go into an institution or a business where he feels that there may be subterfuge or violation of an Act and seize books. I can recall an incident in which this happened three or four - or maybe it's a little longer - right here in the Province of Manitoba with a very prominent citizen at that time whom I will not name. --(Interjection)-- No, I'm not looking at you but I'm sure my honourable friend the Member for Selkirk will recall the incident which I have in my mind without pinpointing the circumstances, because my honourable friend and I had a little bit of a discussion at that particular time about this incident.

The only thing that I am concerned with though, Mr. Chairman, is that the person concerned has adequate facilities for an appeal against the seizure of the books, and it's my understanding that contained within the Act as we have it before us there are those provisions for appeal against any action of the Minister.

So I would suggest that as far as we are concerned, that on the basis of the supporting evidence that my honourable friend the member who introduced the resolution proposed, we're

(MR. PAULLEY cont'd). . . . not inclined to go along with it, because while we may have differences of opinion with the Minister, I think that it's rather unfair to bring in to a discussion of this nature the connotations that were introduced by my honourable friend that introduced the amendment. And I certainly want to repeat, as a member of this Assembly, and, may I brag, as a loyal Manitoban and one who believes in Canadian democracy as against that type of government for which so many of our fellow Canadians laid down their lives, that I can't subscribe to the arguments presented by the honourable member who introduced this amendment.

MR. CLEMENT: Mr. Chairman, the Honourable Leader of the NDP Party who enjoys standing up and going off on a tangent and making speeches kind of gets under my skin once in a while. He has never been in business; he's not in business now and I doubt if he ever will be in business. There is no objection at all to an officer coming in and looking at those books, but there is some objection to any officer coming in and picking up the books and walking away with them. This is for sales tax - it could be a few dollars - income tax could be in the hundreds of thousands of dollars. If there's something that serious then they still should have a warrant to come in, and if I was that income tax inspector I'd bring the warrant in the first place. I think that there is something in what the Honourable Member from Hamiota has to say. Perhaps he used words that maybe he shouldn't have, but nevertheless I think there is something to be said for this resolution and I suggest that the Counsel take a good look at it and see if it can't be watered down just a little bit.

MR. PAULLEY: May I ask my honourable friend what he was referring by his remarks, that he's in favour of a little sin but he's not in favour of a big sin.

MR. JOHNSTON: Mr. Speaker, I'd like to ask the Minister to give us a clear statement of what is meant here. As I understand on No. 17, an officer designated by him can walk into a business, and rightfully so, at any reasonable time and without warrant and inspect records. Now if an altercation takes place or he finds five cents missing - and I'm taking an extreme point in this case - but he then has the power right then and there to take records and take them out away from the business. Is this my understanding of Section (1) and (2) of No. 17?

MR. EVANS: Only for evidence.

MR. MOLGAT: The point is that while he takes these away for evidence he may be crippling the business of the individual involved. Now I don't know what kind of sins the Leader of the NDP is interested in, which ones he condones and which ones he doesn't, but what I'm concerned about here, Mr. Chairman, is the freedom of individuals. Surely if we give the right to the Minister and his employees, and he's going to have a whole army of them running up and down the Province of Manitoba under this Act peering into everyone's books - and I'm quite in favour that if the Act is passed, much as I'm against it, that the tax be collected - but surely we should not be giving him arbitrary powers of simply seizing books at any time that that employee decides should be done. If he has the right to enter and to examine, if he finds something wrong he can make copies of whatever he finds wrong and he can then proceed to get a warrant, but to simply give any employee of my honourable friend the Minister who is running around the province inspecting books the right to seize without warrant is, in my opinion, giving him more power than he needs to make this Act effective.

I frankly cannot see any reason why the section is needed in the way it appears here, because if you go to Section (4), Mr. Chairman, you'll find virtually the identical wording to the amendment proposed by the Member for Hamiota, which says simply that this right can be obtained provided that the magistrate issues a warrant for it, and there is there some protection for the individual, the businessman in this case, that he cannot simply be the victim of an employee who may for reasons of, say a discussion that arose at the time of the inspection, be of a mind that he should simply seize these books which can be a very major inconvenience to an individual who may have caused no harm.

MR. CHERNIACK: Mr. Chairman, I do think that the amendment goes pretty far, and I am trying to recollect the procedures of the Income Tax Office and it is my recollection that of course an inspector can walk in and check the books at any time. When it comes to making a seizure, I don't think the court had to order it but my recollection is that they have to get an authority direct from the Minister or the Deputy Minister from Ottawa which then entitles a seizure to be made. If we could read into subsection (2) - and I'm not prepared to read anything into it - but if we could read into it that the person designated by the Minister is a top level person and not every inspector who may have some sort of authority --(Interjection)-- Yes, and I understand that it was indicated that any officer would be the person designated, then it is a pretty broad, far-reaching section and does give arbitrary power to any number

(MR. CHERNIACK cont'd).... of inspectors under this Act. I would think that when a seizure is made - and I personally understand that there are occasions when a seizure does have to be made because all the evidence is of course in the hands of the licensed vendor - then it seems to me that there has to be a restriction as to the number of people or the stature or the responsibility of the person who can make that order, and I think there ought to be a further protection to make sure that these books would still be available to the owner of the books so that it will not disrupt his daily business.

In other words, if they are seized for the purpose of acquiring evidence, copies would be made and then they should be readily available, day by day, to the person who owns the books, and certainly the seizure should not be made by any casual inspector who decides that he's had an altercation with the person whose books he's inspecting and says, "All right, I'm going to take the books away with me." I think that we've got to be sure that subsection (2) will only be used after the Minister or the Deputy Minister or the Chief Inspector - and I don't have any more "ors" - because I don't think they should be any lesser responsible person than one of those three that I mentioned that would have such a great power. I wonder if the Minister would consider this.

MR. EVANS: There's an alternative method provided under Section (4) and, Mr. Chairman, I'd be quite willing to look at the two sections together after listening to this discussion to see whether there's any proper reconsideration of this point that should be given. I think we should be sure of our facts about whether the Income Tax Act does provide something or doesn't. I certainly cannot vote for the amendment that has been brought forward by the Honourable Member for Hamiota but I'm quite willing to hold Sections (2) and (4) to consider in the light of the discussion.

MR. HILLHOUSE: Mr. Chairman, if I might be able to follow along the thoughts expressed by the Honourable Member for St. John's, I wonder if it would be possible to adopt the procedure here of the Excise Act under which the Exchequer Court of Canada issues to certain members of the Royal Canadian Mounted Police what is known as a Writ of Assistance which empowers that individual to enter into premises, make inspections and make seizures. Now I think we could use the same procedure here only we would have our Court of Queen's Bench issue Writs of Assistance to certain designated officers in your Department. These officers would be responsible individuals and there would be nothing arbitrary about their actions, and if your inspectors were in there and they found evidence of some wrongdoing or suspicion of wrongdoing, well then they could ask one of the holders of your Writ of Assistance to go to these premises and make the necessary seizure.

MR. EVANS: I'll consider this suggestion with the others.

MR. GREEN: Mr. Chairman, I just have a suggestion along similar lines that has just been made by the Honourable Member for Selkirk. I can't recall the exact provision. I don't know whether they're more or less arbitrary than those stated in this Act, but if you'll look at the Food and Drug Act they also have provision for that kind of power and perhaps just by way of comparing what you're doing - I'm not suggesting that as a model because I don't remember what it says - but there is a section which gives similar power. I strongly urge the Minister to withdraw this section, or at least not go ahead with this section until he's looked into it further because I think that there is certainly much to be said for the fact that it confers an arbitrary position on people who we don't know, relatively minor bureaucrats.

MR. EVANS: I'm not sure that my honourable friend heard me but I have already suggested I hold both sections (2) and (4).

MR. FROESE: Mr. Chairman, while the sections are being held over, I still would like to comment on the next section, Section (3) in connection with "audit". Who is going to do the auditing and ...

MR. EVANS: I have a motion that has been introduced and I wonder if we should decide whether that motion is just left in Committee or whether it should be disposed of.

MR. MOLGAT: Mr. Chairman, in view of the fact the Minister is prepared to hold the section open, shall we simply leave the motion in Committee until we see what the Minister comes back with and then ...

MR. EVANS: That can be done.

MR. MOLGAT: Because if we dispose of it now it can't be re-entered again and it may make it difficult for us to amend the section the way we want, so maybe the mover would be agreeable.

MR. DAWSON: I'm quite willing to do as you have suggested, to hold this over for a day

(MR. DAWSON cont'd).... or so. I can see that you are prepared to give consideration to it.

MR. CHAIRMAN: It would simplify matters if the mover would withdraw the motion and he can bring it forward later on if the Minister's solution isn't satisfactory to him. Agreed that the motion be withdrawn?

MR. DAWSON: Whatever my Leader says.

MR. MOLGAT: As long as it doesn't preclude him from bringing the resolution in again, that's all.

MR. CHAIRMAN: No.

MR. MOLGAT: If that's the understanding, I have no objection.

MR. CHAIRMAN: Then the subsection will be held. The Honourable Member for Rhineland.

MR. FROESE: Still dealing with that section, I think before we skip it for tonight I would briefly draw the matter of audits to the attention. Just what department will do the auditing? Are these inspectors going to do the auditing or who is going to do the auditing? I am not too impressed with some other department of this government that does auditing of books and some of the practices that have been going on, and if this department won't do any better than that department does, it will be a sorry state of affairs, and I certainly would like to know just what department and who will do the auditing in this case.

MR. EVANS: I refer my honourable friend to Section 17 (1) where it says "an officer appointed by the Minister for the purpose of enforcing this Act may, from time to time and at all reasonable times" - and then you come down to subsection (b) under that where it says "to inspect audits and examine them." Consequently, it's a person appointed by the Minister for the purpose.

MR. CHAIRMAN: Subsection (3) -- passed; (5) -- passed; (6) -- passed; 18 (1) -- passed; (2) -- passed; (3) -- passed; 18 -- passed; 19 (1) -- passed; (2) -- passed; (3) -- passed; (4) -- passed; (5) -- passed; 19 -- passed; 20 (1) -- passed; (2) -- passed; 20 -- passed; 21 (1) -- passed; (2) (a) -- passed; (b) -- passed; (c) -- passed; (d) -- passed; (2) -- passed; (3) -- passed; (4) -- passed; (5) (a) -- passed; (b) -- passed; (5) -- passed; (6) (a) -- passed; (b) -- passed; (6) -- passed; (7) -- passed; (8) -- passed; (9) -- passed; (9) (a) -- passed; (b) -- passed; (9) -- passed; (10) (a) -- passed; (b) -- passed; (c) -- passed; (10) -- passed; (11) --

MR. FROESE: Mr. Chairman, under Section (11) we're dealing with the commission that will be fixed by regulations, and we heard earlier on when the Bill was discussed that the commission was stated as such an amount on the first \$200.00 and a certain percentage over and above that. Now we've had reports from the press and then I think also in letters and so on, and I feel personally that this commission is too low that has been indicated to us. I feel that some of the smaller operators, the small stores and people who have just a small inventory and a small turnover, that the commission is not large enough and I feel that there should be a higher commission set for these businesses. Then also they will be required to put up additional capital in - what do you call these things - cash registers, and how are they going to recapture the outlay that they're making in this case. I feel that there should be a provision made for these additional expenditures that these smaller businesses will have to put up with.

MR. CHAIRMAN: The Honourable Member for Birtle-Russell.

MR. CLEMENT: No, Mr. Chairman, when (11) is passed, I was going to speak on 12.

MR. EVANS: a brief comment that the rates that we are proposing are the same as those in force in Saskatchewan when conditions are much the same. They are a greater advantage here because of the higher rate of taxation, and that 2 percent with respect to a 5 percent tax results in more money than 2 percent on the rate in Saskatchewan.

MR. PAULLEY: Mr. Chairman, I wonder if the Honourable Minister could indicate to us what the commission is in the Province of British Columbia.

MR. EVANS: I haven't that information here.

MR. GUTTORMSON: I would rise to support the points made by the Member for Rhineland because the small merchants will never recover the outlay that will be required by the purchases of expensive cash registers, and the amount of book-keeping that is required in connection with this tax is tremendous, particularly in the small business where they don't have the staff to do this work. I think the Minister should give every consideration to giving these merchants a higher rate for collection in view of the expenses he will be involved in.

MR. FROESE: Mr. Chairman, the difficulty too is that this is going to be set by regulation and we have no way of amending it. I think this is wrong. This should be set out in the

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(MR. FROESE cont'd). . . . Act so that we as members of this House would have some way of amending it and putting the proposition properly before the House. Now we are unable to do so; we are at the mercy of the government, whether they are going to do something later on in the regulations.

MR. MOLGAT: Could the Minister indicate exactly what the commission rates are going to be, and is he prepared to have this as part of the Act or as a schedule to the Act?

MR. EVANS: I think it's better to have it in regulations. It will be widely publicized and completely known because no one knows how the conditions might change and it might be appropriate to change commission rates at some time between sessions. It seems better to me to have it in the regulations than in the Act. With respect to the rates, I announced them before and they are three percent on the first \$200.00 of tax collected and two percent thereafter.

MR. CHAIRMAN: (12)--passed; Section 21 -- passed; Section 22 (1) --

MR. MOLGAT: Mr. Chairman, under 22 we come to the reciprocal agreements. Now the other day when we were discussing this I asked the Minister regarding mail order operations outside of the Province of Manitoba, and as I recall his reply at the time, it was that we would be able to collect on people who shipped into Manitoba but that this would be by individual arrangement, as I recall it, with the shippers. Now can this really be enforced where it is a firm that has no operations at all in the Province of Manitoba? Let us assume a hypothetical case of someone establishing a mail order operation say in Kenora, Ontario, very accessible to Manitoba, and who sells into the Province of Manitoba items that are taxable under this Act. What means has the Province of Manitoba of collecting the sales tax from that mail order operation?

MR. EVANS: By licensing them as vendors, giving them a licence as vendors to sell in the Province of Manitoba, and then they largely on an agreed basis -- we have really no legal power of enforcement upon businesses in another province whether it's a corporation or a person. Nevertheless, this system works across the country now and we expect it will work here. For the sake of reciprocal agreements, it does come down to a matter of agreements between governments for example in the case of proportional taxation of interprovincial trucks or interprovincial buses, such arrangements as I discussed the other evening when we were on that subject. This enables those agreements to be entered into with governments. I don't think this section applies in any particular to licensing a mail order house in another province to be a vendor for purposes of selling in this province.

MR. MOLGAT: Well, Mr. Chairman, coming back to the Bill of the House for one moment, although it may not come right under this section it is one that is tied to this section. If the mail order house outside of Manitoba does not choose to be licensed as a vendor, there is no law by which we can make them be a vendor, is there? If they simply say no, we have no responsibility to Manitoba laws, is there any means by which we can enforce this? This surely is interprovincial trade, one over which the province has no responsibility or no authority.

MR. EVANS: This section provides for the government to enter into agreement with other provinces to avoid double taxation, which is one of the purposes, and to counteract tax evasion by vendors or purchasers. The tax is really imposed upon the purchaser and the vendor is merely the collector for the purpose. We don't anticipate any difficulty in having arrangements made with the vendors to take licences, it's the accepted thing in the Canadian mail order houses. My honourable friend raises a legal question about our power to enforce it upon them. If it comes by way of a reciprocal agreement with other governments under which we grant similar accommodation to any mail order house selling from here into another province, we will undertake to see to the carrying out of our end of the agreement and we would expect other provinces to carry out their arrangements.

MR. MOLGAT: Are there such agreements signed with other provinces now?

MR. EVANS: Not on our behalf, we have no authority to do so.

MR. MOLGAT: Have other provinces - for example let us take our two neighbouring provinces - have Ontario and Saskatchewan signed reciprocal agreements in this regard?

MR. EVANS: I can't answer as a matter of fact. I haven't that information here.

MR. CHAIRMAN: 22 (1) -- passed; (2) -- passed; 22--passed; 23 (1) (a) -- passed; (b) -- passed; (c) --

MR. FROESE: Mr. Chairman, under (c), do I take it that every car owner will within this current year have to register with the government that they own their car and that they

(MR. FROESE cont'd), acquired it prior to the Act coming into force, or what do you read into this section? It says here under 23 - the top part - "Notwithstanding The Highway Traffic Act or any other Act of this Legislature, the Registrar of Motor Vehicles under The Highways Traffic Act shall not permit any person to register a motor vehicle unless" - and then (c) - "the person produces evidence satisfactory to the registrar that he owned the motor vehicle prior to the coming into force of this Act and has owned it continually since the coming into force of this Act." Now does this not say that every car owner will have to make some declaration that he owned the car prior to the Act coming into force?

MR. EVANS: Well under (a) the mere existence of a registration in the name of the owner prior to the coming into force of the Act is evidence that he owns the car, and consequently no one now owning a car will have to re-register that car.

MR. FROESE: What's the purpose of the section then?

MR. LYON: It provides a series of alternatives which proves the tax has been paid. It's only one of a number of alternatives.

MR. CHAIRMAN: (c) -- passed; (d) -- passed; (e) -- passed; (1) -- passed; (2) (a) -- passed; (b) -- Committee rise.

Mr. Speaker, the Committee has adopted certain sections of the Act and requests leave to sit again.

IN SESSION

MR. JAMES COWAN, Q. C. (Winnipeg Centre): Mr. Speaker, I move, seconded by the Honourable Member for Pembina, that the report of the Committee be received.

MR. SPEAKER presented the motion and after a voice vote declared the motion carried.

MR. LYON: Mr. Speaker, I beg to move, seconded by the Honourable Provincial Treasurer, that the House do now adjourn.

MR. SPEAKER presented the motion and after a voice vote declared the motion carried and the House adjourned until 2:30 Wednesday afternoon.