[HIGH COURT OF AUSTRALIA.]

THE KING . . . . . PLAINTIFF;

AND

ALBERT C. LYON . . . . . DEFENDANT.

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SYDNEY, *April* 3, 4, 5.

Griffith C.J., Barton and O'Connor JJ.

Customs Act (*No.* 6 *of* 1901), *secs.* 144, 154, 234—*Proprietary medicines—Pills imported in bulk for putting up under trade name—Value for duty—Actual cost of labour and material in Australia—Construction.*

Sec. 144 of the *Customs Act* 1901 provides that medicinal preparations not completely manufactured, but imported for completing the manufacture thereof, or for the manufacture of any other article by putting up or labelling them under a proprietary or trade name, shall be "irrespective of cost valued for duty and duty shall be paid thereon at the ordinary market value in the country whence imported of the completed preparation when put up and labelled . . . less the actual cost of labour and material used or expended in Australia in completing the manufacture thereof or of putting up or labelling the same."

The defendant imported a large quantity of pills in bulk from America, for the purpose of putting them up and labelling them under a proprietary or trade name and selling them in Australia. He entered them for home consumption, and valued them for duty under sec. 154 at their ordinary market value in New York in the condition in which they were imported, with 10 per cent. added. The Crown brought an action in the High Court for the recovery of penalties for a breach of sec. 234 of the *Customs Act* in having made a false entry and an untrue statement in an entry.

Held, that the pills, being a "medicinal preparation not completely manufactured" within the meaning of sec. 144, should have been valued for duty and duty paid thereon in the manner and at the rate prescribed by that section, and, therefore, that the defendant had committed a breach of sec. 234 (*d*) and (*e*).

On the importation of dutiable goods for home consumption, their value for duty must be stated and duty paid immediately upon passing the entry, and therefore the words "actual cost of labour and material used or expended in Australia" in sec. 144 must be construed as meaning "actual cost" so far

as it can be ascertained at the time of entry; not "such cost as is ascertained by actual disbursements already made," but the "real direct cost," as measured by necessary disbursements for the sole purpose of completing the manufacture or putting up the article under a proprietary or trade name, and ascertained by an estimate based upon experience in the manufacture or putting up of goods of the same description.

Ex parte Britz, (1904) 4 S.R. (N.S.W.), 116, overruled on that point.

CASE referred for consideration of the Full Court.

The defendant, who was an importer of pills, carrying on business in Sydney, in October 1902, imported certain pills in bulk, which were dutiable goods within the meaning of the *Customs Act* 1901, being liable as "medicines" to duty at the rate of 15 per cent. *ad valorem*. The agent of the defendant, for the purpose of having the goods passed through the Customs House, Sydney, made an entry with respect to them which contained the following particulars:—

"Ship 'Persic,' from Liverpool; importer A. C. Lyon.

"Description of goods—6 cases containing pills.

"Value for duty, £154; rate of duty, 15 per cent.; duty, £23 2s."

This valuation was made under sec. 154 of the *Customs Act* as if the goods imported were ordinary goods liable to *ad valorem* duty.

The Crown then brought an action in the High Court to recover from the defendant penalties for breaches of sec. 234 of the *Customs Act*, on the ground that the entry made by the defendant was false and untrue in that the value for duty was in fact more than £154, and the duty payable was in fact more than £23 2s. By his statement of defence the defendant denied the material allegations in the plaintiff's statement of claim, and issue was joined upon that defence.

The case came on for hearing before *O'Connor* J. in Sydney on 6th November 1905. It appeared at the trial that the goods in question were manufactured in America and shipped in bulk as American cathartic pills from New York to Sydney to the company of which defendant was the manager. There they were to be put up in bottles, labelled, and sold as Dr. Morse's Indian Root Pills. Evidence was given that the market value of the pills

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when so put up for sale and labelled was very much greater than the value of the pills in bulk.

It was contended for the plaintiff by Dr. Cullen K.C., with whom Blacket appeared, that the pills were medicinal preparations within the meaning of sec. 144 of the *Customs Act*, and therefore should have been valued under that section, at the market value of the completed preparation in New York less the "actual cost of labour and material used or expended in Australia in putting up and labelling" the goods. The market value in New York of the shipment in question, when so put up and labelled was shown to be £2,100.

The necessary deductions and additions being made, the result was that the value for duty should, according to this contention, have been stated at £2,160 8s., on which the *ad valorem* duty would be £324 1s. 3d., instead of £23 2s. as stated in the entry.

For the defendant it was contended by Gordon K.C., with whom Mitchell appeared, that the valuation of the goods under sec. 144 was impossible, because the latter part of the section could not be applied until after the entry had been made. Actual cost of labour and material could not be ascertained at the time of entry. In support of this contention he cited *Ex parte Britz* (1).

The point involved being one of difficulty and importance to the administration of the Customs, His Honor, by consent of the parties, reserved for the consideration of the Full Court the question whether, on the evidence, and on the proper interpretation of secs. 144, 154, and 234 of the *Customs Act* 1901 and the *Customs Tariff* 1902, the Court having power to draw inferences of fact, the plaintiff or the defendant was entitled to a verdict upon the whole or any part of the plaintiff's statement of claim, and directed the case to be set down for argument accordingly. The verdict was to be entered in accordance with the decision of the Full Court, but the question of costs, and, if necessary, the question of penalty, His Honor reserved for consideration until after the decision of the Full Court.

Dr. Cullen K.C. (with him *Blacket*) for the plaintiff. It is clear on the evidence that the pills in question were a medicinal pre-

(1) (1904) 4 S.R. (N.S.W.), 116.

paration imported for the purpose of being put up and labelled, within the meaning of sec. 144 of the *Customs Act*, and should, therefore, have been valued for duty in the manner prescribed by that section, unless the terms of the section rendered it impossible. It is said that the section is inapplicable because of the presence of the words "actual cost of labour and material used or expended in Australia," inasmuch as at the time of entry no labour or material has been used or expended. That is construing "actual" in the sense of "already in existence," but that is not the only or even the natural construction in this context. The expression "actual cost" is fairly capable of being construed, not as applied to the particular goods imported, but generically, as applied to goods of that description. All the important words in the earlier part of the section are used generically, *e.g.*, "completing the manufacture *thereof*," "manufacture of any other article," "such preparations." They refer, not to the actual goods in respect of which the entry is passed, but to all goods of that class. That being so, words in the latter part of the section which are capable of being read in the generic sense should be so read. The words "actual" and "used or expended" may fairly be construed as "mere" cost, in which sense they become applicable to any goods of the description in question, that is to say, cost of labour and material *alone*, exclusive of other heads of expenditure which might otherwise be included under cost of manufacture or of putting up for sale. On the other construction, in every case of the importation of such goods for home consumption the section would be wholly unworkable, although it was clearly intended to apply to that particular case. The word "actual" was interpreted in the generic sense in *In re United Merthyr Collieries Company* (1). The words "actual cost of removal" in an order were construed to mean, not the actual cost incurred in respect of removing particular coal, but the amount which coal of that class would in fact cost. Such a calculation would be based upon an estimate. So in the present case the importer may make an estimate of the probable cost of labour and material based upon his previous experience, and make the deduction provided for in section 144, and in that way

(1) L.R. 15 Eq., 46.

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the whole section will be satisfied. In *The Borough of Tamworth* v. *Sanders* (1) the words "costs and expenses incurred," in a contract, were construed as meaning, not disbursements already made, but costs which would have to be paid. This is a reasonable construction and one which carries out the obvious intention of the legislature, whereas the other construction would defeat it. The Court should therefore adopt the reasonable construction, even if it involved reading particular words in an unusual sense, which is not necessary here: *Salmon* v. *Duncombe* (2); even although the section under consideration is a penal one: *Rex* v. *Vasey* (3). In making the valuation under sec. 154 the defendant has not adopted the method applicable to this particular class of goods, with the result that the statements in the entry are untrue both as to value and as to amount of duty. Fraud is not alleged, and need not be proved. Sec. 234 makes it an offence to make an entry which is untrue in any particular (*d*), or to make a statement which is untrue in any particular in any document produced to any officer (*e*). The defendant has therefore committed a breach of that section, and is liable to the penalties imposed by it, and the plaintiff is entitled to judgment.

Gordon K.C. and *J. L. Campbell* (with them *Mitchell*), for the defendant. The entry was correct and was the only one possible under the circumstances. *Ex parte Britz* (4), on this point, was rightly decided. The question is, not whether duty has to be paid on these goods under sec. 144, but whether there was an infringement of sec. 234 on the day when the entry was passed. The whole section uses terms which are generic, but in practice it must be applied to particular goods. When a shipment is imported the "ordinary market value" must be the ordinary market value of that particular shipment, and in the same way "actual cost" must refer to the particular goods. The valuing under sec. 144 need not be made at the time of entry. On that day it would be sufficient to pass an entry under sec. 154. Then the Customs authorities could take security under sec. 42 for the due payment of any further duty which might become payable

(1) 2 C.L.R., 214, at p. 220.
(2) 11 App. Cas., 627.
(3) (1905) 2 K.B., 748.
(4) (1904) 4 S.R. (N.S.W.), 116.

later on. When the goods are put up and labelled, the valuation under sec. 144 might be made, and the "actual cost of labour and material used or expended" deducted. It is impossible until that time arrives to make the calculation of "actual cost." To construe that expression as meaning "estimated" or "probable" cost would be straining the words. Every word in the latter part of the section points clearly in one direction, that is, that the actual sum expended on the specific goods in the process of completing the manufacture must be ascertained before the calculation of value is to be made. The argument, that on this construction the section would be difficult to work, applies equally to the construction put forward by the Crown. In the one case the burden is on the Customs authorities, and in the other upon the importer. If the importer has to make an estimate, and in doing so he makes a mistake, he renders himself liable to a penalty. The Act makes no distinction between intentional and unintentional breaches.

[GRIFFITH C.J.—In a taxing Act the rule is that the words are to receive their ordinary natural meaning, without straining.]

In sec. 155 the word "actual" is used to mean "in fact," not generically but specifically. That is the natural meaning of the word, and it is strengthened in sec. 144 by the words "used or expended." In sec. 155 where an estimate is intended, words are used to indicate that intention, *e.g.*, "actual money price at which *such* goods were *saleable*." This construction gives a reasonable operation to every part of the section, and as it gives effect to the words in their natural and ordinary meaning it should be adopted. It may be that in general the whole duty is to be paid at the time of entry, but in this case the legislature, having used words which make that impossible, must be taken to have intended that in the case of such goods, owing to the peculiar conditions under which they are imported, there should be an exception to the general rule. There is abundant provision in other sections of the Act for recovery of the balance of duty afterwards, *e.g.*, sec. 153. The other construction necessitates leaving out "actual" and substituting some such word as "ordinary." Even if the words of the first part of the section are construed as requiring an estimate to be made, the concluding part of the section

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uses words which rebut any inference that estimates are contemplated in making the deduction. Secs. 144 and 154 may be read together as imposing a primary liability at the date of entry under the latter section, and a contingent liability, to arise if certain events happen, under sec. 144. Sec. 154 was the only one applicable up to the date of this action, and every requirement of it was complied with. The entry was made on the only form supplied by the authorities.

In re United Merthyr Collieries Company (1) is in the defendant's favour. "Actual" there was held to mean not "estimated," but actual, in the ordinary sense of something already done. In *Borough of Tamworth* v. *Sanders* (2), the Court was considering the question whether "costs and expenses incurred" meant only disbursements already made, or included liabilities as well, not whether it meant past or future.

As to *Salmon* v. *Duncombe* (3), Lord *Hobhouse* said that the natural and ordinary meaning of words should be preferred, "if such a construction left a substantial operative effect to the enactment." That is in the defendant's favour. *Rex* v. *Vasey* (4) applies only to a case in which the natural construction of words would altogether nullify the Statute, which is not the case here.

Dr. Cullen K.C. in reply. The postponement of the payment of duty until completion of the manufacture or process of putting up and labelling, would, in the case of goods imported for home consumption, lead to the very result which the legislature has throughout the Act laboured to prevent, that is, the escape of dutiable goods from the control of the Customs before duty is finally paid. A construction which would lead to a result so opposed to the policy of the Act should be avoided if possible.

April 5.

GRIFFITH C.J. This was an action brought by the Crown against the defendant to recover penalties for breaches of the provisions of the *Customs Act* 1901 by making a false entry and an untrue declaration in a Customs entry. The question to be determined in this case is one which was left undecided by this

(1) L.R. 15 Eq., 46.
(2) 2 C.L.R., 214.
(3) 11 App. Cas., 627, at p. 635.
(4) (1905) 2 K.B., 748.

Court in the case of *Donohoe* v. *Britz* (1), and depends upon the construction of sec. 144 of the *Customs Act* 1901. That section provides: [His Honor read the section, and proceeded :] The goods in question, which were imported by the defendant, were "a medicinal preparation not completely manufactured but imported for completing the manufacture thereof, or for the manufacture of another article by putting up and labelling it under a proprietary or trade name." That appears upon the evidence, as to which this Court is to draw any necessary inferences of fact. The goods were valued by the defendant at their value in New York, from which place they were imported, as if they were ordinary goods subject to *ad valorem* duty, and as if sec. 144 had no application to them. It appears that the goods were consigned by wholesale manufacturers to the defendant for the purpose of putting them up and labelling them for sale in New South Wales. The result of the evidence is that, in the condition in which they were imported, according to the invoice value the goods were worth £140 or thereabouts with ten per cent. added, whereas, if they were valued according to the provisions of sec. 144, they were worth more than £2000. The question is whether under these circumstances the defendant has committed a breach of the Act in entering the goods as of the value of £140, and declaring that to be their true value.

The difficulty is said to arise from the use in this section of the words "actual cost of labour and material used or expended in Australia," words which, it is said, refer to an existing fact ascertained by something which has already happened. On the other hand it is said that the section refers to something to be done at the time of passing the entry, and that, if at that time the cost of labour and material has not been ascertained by actual expenditure, that circumstance does not affect the express direction of the Statute that the goods are to be valued at the time of entry according to the rule prescribed by the Statute.

Now, this Act contains general provisions as to the working of the Customs Department. But it does not introduce any new system. The system which it adopts has been in force as long as Customs duties have been imposed. The method adopted has

(1) 1 C.L.R., 391.

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always been that the value is to be declared and the duty paid at the time of passing the entry. In the case of goods imported for home consumption the course of procedure is first getting the goods passed and paying the duty, and then taking the goods out of the Customs into consumption.

I will refer to some of the sections which deal with the subject. Sec. 30 provides, amongst other things, that goods shall be subject to the control of the Customs from the time of importation until delivery for home consumption or until exportation to parts beyond the seas, whichever shall first happen. Sec. 37 provides that entries shall be made by the delivery of the entry by the owner to the Collector, and sec. 39 provides that "entries shall be passed by the Collector signing the entry, and on the passing of the entry the goods shall be deemed to be entered, and any entry so passed shall be warrant for dealing with the goods in accordance with the entry." Sec. 68 provides that imported goods shall be entered either for home consumption, for warehousing, or for transhipment. That, of course, is at the option of the importer. Sec. 78 provides that dutiable goods may be warehoused in warehouses licensed by the Minister. Sec. 79 provides that there shall be four classes of licensed warehouses, one of them being manufacturing warehouses, to be used for warehousing goods not completely manufactured and for carrying on the manufacture trade or process necessary for its completion. Part VIII. of the Statute relates to duties, and of that the principal division relates to payment and computation of duties. Division 2 relates to *ad valorem* duties, the provisions of Division 1 being qualifications of the latter division. Sec. 154 provides that: [His Honor read the section to the end of sub-sec. (*b*).] Sec. 155 defines "genuine invoice." Of course, there need not be an invoice at all, but the duty cast upon the importer is to state the value of the goods and verify it by declaration, and especially by production of the genuine invoice, if there is one. Having regard to these provisions let us look at sec. 144 [His Honour then read the section and proceeded:] That is a section qualifying sec. 154. The latter section lays down a general rule for valuing goods for duty, while sec. 144 establishes another rule, or a qualification of the general rule, which is to be applied to the case of medicinal

preparations not completely manufactured, but imported for completing the manufacture, or for putting up and labelling under a proprietary or trade name. *Primâ facie*, therefore, on the importation of goods of this sort, they ought to be described as medicinal preparations not completely manufactured but imported for the purpose of completing the manufacture. If that were stated in the entry it would at once be apparent that their value for duty was not the value as prescribed by sec. 154, but that prescribed by sec. 144. It is said, however, that this result is excluded by the words "actual cost of labour and material used or expended in Australia." Now, in construing sections of this kind, the first duty of the Court is to ascertain what the legislature intended to enact, and to give effect to all the words that it has used in expressing that intention. The important direction in this section is that the goods "shall be irrespective of cost valued for duty and duty shall be paid thereon at the ordinary market value in the country whence imported of the completed preparation when put up and labelled under such proprietary or trade name." That is an explicit direction as to the valuing of the goods for duty, and the payment of duty. Valuing for duty is part of the entry, and payment of the duty precedes importation. *Primâ facie*, therefore, this is a section to come into operation before or at the time when the goods are entered. I have already pointed out that if they were not to be entered for home consumption they might be warehoused, and the manufacture completed in the warehouse. If the importer desires to make them up in that way, he can enter them for warehousing if he pleases, or, if he desires to enter them for home consumption, he can do that. But sec. 144 is positive, and does not depend upon the form of entry that the importer may prefer to adopt. The *primâ facie* meaning is clear, and no difficulty need arise in carrying it out. But, it is said, the *primâ facie* meaning cannot be adopted without rejecting the words "actual cost of labour and material used or expended in Australia." If that were so, it would be the duty of the Court, I think, to give effect to those words, and, even if the consequence was that the duty required to be performed by the importer was one which could not be performed at the time of the passing of the entry, the Court would be compelled to agree with the decision

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of the Supreme Court on this point in the case of *Ex parte Britz* (1). It it necessary, therefore, to look at the words a little more closely.

In the first place, I remark that the words are used as part of a sentence dealing with a matter that is to a certain extent conjectural. But it is a matter which is certain to a common intent, though not arithmetically ascertained. What has to be ascertained is the market value in the country whence imported of the completed preparation when put up and labelled under its proprietary or trade name. The subject matter of the calculation is a mass of material imported into Australia in bulk. How that mass will work out when completely divided up is a matter certain to a common intent, though not in a mathematical sense. The quantity may vary by a few boxes or numbers on one side or the other; it is to that extent conjectural. That is the first sum to be worked out in determining the amount at which the goods should be valued for duty. The second is the actual cost of labour and material used or expended in Australia in completing the manufacture or in putting up and labelling the material imported. Now, if these words are capable of a meaning analogous to that in which the first branch of the sentence is used, it is not unreasonable to adopt it. If the goods are not for home consumption but for warehousing, the actual cost of labour and material used or expended in Australia cannot, of course, be then ascertained, as it is not known to a certainty. Nor is the other element of calculation known to a certainty. Where we find a difficulty of that kind, it is proper to inquire whether the words are so plain and unambiguous that no other meaning can be given to them, that is to say, whether the word "actual" necessarily bears such a definite meaning that it cannot be read in any sense consistently with the plain meaning of the other words of the sentence. I think that the word "actual," even apart from this collocation, is capable of another construction. But in this passage it seems to me to admit of two meanings, one being "such cost as is ascertained by actual disbursements already made," in antithesis to "estimated" or "probable" cost, and the other the "real direct cost" as measured by necessary disbursements for the sole purpose of

(1) (1904) 4 S.R. (N.S.W.), 116.

completing the manufacture or putting up the article under a proprietary or trade name, in antithesis to notional or constructive cost, which might include rent of warehouse and general supervision. By adopting the first construction we get an inconsistency between the two parts of the section. The first part requires the value to be stated for duty, and duty paid immediately, whilst by the second, a man is required to pay a duty which cannot be ascertained. That is a *reductio ad absurdum*. Still it is quite clear that he cannot import the goods until he has paid the duty. A construction which has that result is to be rejected unless the words are incapable of any other sensible meaning. The other construction is equally rational, and it is the only one which is entirely consistent with the rest of the section. I am of opinion that the words "actual cost of labour and material used or expended," mean actual cost, so far as it can be ascertained at that time. Whether it can be ascertained at the time depends entirely upon the importer himself. If he chooses to adopt a form of entry which renders it impossible to ascertain it, the fault lies with him. For these reasons, I am of opinion that the contention of the Crown is correct, and that the defendant was guilty of a breach of the Act in making the entry which he has made. Accordingly, there must be judgment for the Crown for such penalty as the learned Judge before whom the matter came may think fit to impose.

BARTON J. I am of the same opinion. I think that the stage at which the calculation is to be made is fixed by the section, and that the matter turns upon the provision that "the goods shall be irrespective of cost valued for duty and duty shall be paid thereon." It is from the moment of entry that the section speaks, when the entry is made, as here, for home consumption, and when it says that the value for duty shall be the ordinary market value of the goods in the country whence imported it speaks of things which can be ascertained as at that time. Then it goes on to say that there is to be deducted from that the "actual cost of labour and material used or expended in Australia in completing the manufacture thereof or of putting up and labelling the same." It is quite clear that if we read that literally there is a difficulty

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created as contended for by the defendant. At that stage the actual cost, in the usual sense of the term, has not yet been incurred, and therefore it cannot then be exactly ascertained. But we are bound to read the passage so as to give it some meaning and effect, not to read it, as I take it, so as to make it say that the legislature meant that the goods should be valued for duty and the duty paid only on the completion of the process of manufacture or putting up and labelling, although the general provisions of the Act and this section in particular indicate that the duty is to be paid upon entry, there and then. That would be an unusual method of construction, and we naturally ask ourselves, could Parliament have intended to make such a provision as would render nugatory the whole provision for payment of duty at the time of entry? The result, in my opinion, is that the words "actual cost" should be interpreted in view of the circumstances under which the deduction has to be made, that is to say that the cost at the moment at which the goods are valued for duty and at which duty is to be paid on them, is not actual cost as it would be understood under other circumstances. It is plain that the legislature did not intend the word "actual" to be understood in the ordinary sense, but as meaning actual cost as nearly as it can be computed at that time and in those circumstances. The nearest thing to that would be the cost of manufacture as ascertained by experience. That is to say, the cost, as I suggested in the course of the argument, as estimated by the owner of a going concern engaged in the business of putting up these pills for sale, so as to convert them from nondescript bulk into the marketable completed article. The calculation would be based on the quantity of the goods imported as it will be represented in the goods when labelled and put up in bottles, the cost of bottles, labels and printing, and the cost of wages to be paid during the process. All these things are capable of being computed at that time. This is an immediate calculation based upon known facts. This construction of the words "actual cost of labour and material used or expended" gives a sensible meaning to every part of the section.

For these reasons I agree with my learned brother the Chief Justice in the opinion that the contention of the Crown is right.

and that the defendant is liable to a penalty for a breach of the Act.

O'CONNOR J. In this case the charge against the defendant, although put in several different ways, involves really only the one charge, that the entry made by the defendant was untrue in two particulars, in the statement of value for duty, and in the amount at which the duty was stated. As the latter amount depended upon the value for duty the whole of the charges are expressed substantially in the one allegation that the entry was untrue in respect of the statement of value for duty. Now, the value for duty is a mixed question of law and fact. There is a very great deal of difference between what the plaintiff alleges to be the value, namely, £2,160, and the value for duty stated by the defendant, £154. The difference between these valuations depends entirely upon the view taken of the meaning of sec. 144. The difference between the two valuations turns entirely upon a question of law.

We have had two interpretations of the section put before us. That contended for by Mr. Gordon is this: the valuation for duty must mean valuation at the time when payment is to be made. That valuation cannot be made until after the process of putting up the goods has taken place. Therefore the time for payment of duty cannot arrive until the goods have been actually put up and the cost to be ascertained has been actually incurred. Then, and not until then, is the defendant liable to pay duty. Certainly that construction does give a meaning to the section. The question is whether that meaning is at all consistent with the intention of the Act in general or of this section in particular. Dr. Cullen, on the other hand, reads the section as making it imperative upon the person wishing to pass goods to make an estimate of what the actual cost of labour and material used or expended in putting up and manufacturing the goods will be, and, after deducting that from the other known elements of value, to state upon the entry of the goods, and before they are put up, what the value for the purpose of duty will be. The question for our determination is: which of these constructions is more in accordance with the intention of the legislature as indicated by the Act as a whole.

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There are two main underlying principles in the Act which must not be lost sight of. The first is this: the whole policy of the *Customs Act*, as indicated by a number of sections, is that from the time of importation until the time of paying duty, the customs shall not lose control of the articles imported. That is indicated directly in sec. 30, which provides that imported goods shall be subject to the control of the customs from the time of importation until delivery for home consumption or exportation. The object of that provision, if it were necessary to give any reasons for its enactment, is obvious; if once goods go into home consumption, that is, into circulation, it becomes almost impossible to trace them. The only security the customs authorities could have in such a case for the payment of duty would be in most cases the personal security of the importer. Therefore it is, if the Act is to be effective, that all through the dealings with the goods, from the time they are first imported until duty is paid they must be kept under customs control. In order to secure that end it is provided that no goods can be landed from the ship until the entry has been passed or a permit given by the collector. The entry must be passed before goods can be landed. Entry may be passed in one of three ways. It may be made for home consumption, that is to say, by passing an entry immediately which, according to the Act, is a warrant for taking the goods away and dealing with them. Before they go out for consumption duty must be paid. For that purpose it is essential that there be a payment of duty contemporaneous with the entry. The other cases for which they may be entered are for warehousing and for transhipment. Warehouses under the Act are of several kinds. There are some in which a manufacture may be carried on in bond. If goods are imported for the purpose of being manufactured, the manufacture is carried on in the warehouse in bond, and when the manufacture is completed, an entry for home consumption is made and duty is paid. It will be seen from these different kinds of entry that the time for valuation is different in different cases. In the case of an entry for home consumption, it must be made when the goods are landed. In the case of an entry for warehousing, it is not necessary to make a valuation until the time arrives for payment of duty. And if goods are entered

for manufacture, matters may be arranged so that the manufacture may be carried out in a warehouse, and duty paid when the manufacture is complete. Thus the time for payment of duty arises only when all the elements necessary for making the valuation are in existence. But if we look at the entry in question here we see that it is an entry for home consumption. That entry cannot be made without payment of duty. Duty cannot be fixed without ascertainment of value, and according to the whole scheme of collection of duties under the Act, the time for payment of duty is the time for valuation. But it is contended that in cases under sec. 144 the valuation may be deferred. If it is to be deferred to some later period that is absolutely contradictory of the whole scheme of the Act, because then the goods must go into consumption without an entry, and the provisions for keeping control of the goods in the customs become valueless. Now, it is said by Mr. Gordon that there is no reason why the entry should not be made, that is, an entry on importation, under sec. 154 in the ordinary way, leaving out sec. 144 altogether, and afterwards when the manufacture is completed, and the product ready for home consumption, the additional value may be ascertained and the extra duty recovered. But in my view that contention is not sound, for this reason:—Sec. 144 must be taken as qualifying sec. 154, and, although in regard to ordinary goods where duty is imposed according to value, the valuation is to be made under sub-section (*a*) of that section, immediately it appears that the goods which are being imported are of the kind indicated in sec. 144 they are taken out of the general category and must be dealt with under the latter section. If Mr. Gordon is right in saying that the goods are not within sec. 144 until they have been bottled, labelled and put up ready for sale, the importer would not need to make any entry at all, for in that case no duty would be payable until after the process of manufacture was completed, and the goods had gone from the control of the customs. Now, one objection that was put very strongly by Mr. Gordon, and which at first impressed me a good deal was this, that as the making of an incorrect statement under sec. 144 is punishable by severe penalties, the legislature could not have intended that the Act should compel an importer to

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make such a difficult estimate, in which he might very easily make a mistake, and then provide a heavy penalty for the making of any mistake. But the answer to that is this, that it is one of the underlying principles of the Act that the Government should rely upon the importer to honestly state the truth according to his knowledge, in reference to a matter of which he knows everything and the customs authorities know nothing. If in the case of duties payable *ad valorem* the customs authorities took steps in each case to satisfy themselves of the value of the goods for duty before allowing them to land, trade would be seriously hampered. Almost of necessity they must take the importer's statement of value *primâ facie* as true. The policy of the Act, therefore, is that the customs authorities trust to the statement of the person importing the goods. There are cases in which there is no difficulty in stating values accurately. In the ordinary case of goods purchased abroad the importer will have no difficulty in stating the market value. But there are many cases in which the goods have not been purchased abroad, but have been exported for sale in Australia. How is the market value in the country of export to be fixed by the importer? In such cases he cannot do more than make an estimate of the fair market value of the particular goods in the principal market of the country whence they are exported.

The necessity of estimates of value by importers is apparent through all that portion of the Act which deals with duties imposed according to value. In the case of all these estimates of value the importer is liable to be proceeded against for misstatements of value. It appears to me, therefore, that the interpretation contended for by Mr. Gordon would be absolutely contrary to the whole intent and purpose of the Act as shown in its other provisions, and would render nugatory the precautions displayed all through the Act for keeping the goods under the control of the customs till duty has been paid. On the other hand, Dr. Cullen's contention is one which the words are capable of bearing grammatically, and it is a construction which will bring this section into harmony with the underlying principles of the Act and the rest of its provisions. I do not think it is necessary to strain

any of the words of the section to give effect to that interpretation. Several cases were cited to us in which the Court, in order to avoid reducing a section to a nullity, had gone a very long way in its construction in order to bring out a workable meaning. There is no necessity to do that in this case. I think the case of *Rex* v. *Vasey* (1), in which Lord *Alverstone* C.J. makes a statement of the law as applied to a criminal case, states correctly the principle laid down by all the authorities. He said, (2):—"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship, or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." He there quotes with approval the passage from *Maxwell on the Interpretation of Statutes*, 3rd. ed., p. 319, in which the principle is laid down to its fullest extent. It is not necessary to go to that extent here, because, it appears to me, you may interpret this section as my learned brother the Chief Justice has suggested, by construing the words "actual cost of labour and material used or expended" not as meaning labour and material actually used or expended on these particular goods, but actual as drawing a distinction between cost of labour and material only and other costs which might fairly in the ordinary estimate of trade profits be put upon that labour and material. I think that is the proper contruction of the words.

That is a construction which makes it possible to have the entry made when the goods are landed. If the goods are entered for home consumption the estimate must, of course, be made before the cost has been incurred. But, if the other form of entry, namely, warehousing for manufacture, is adopted, the parties may be able to arrange to wait until as the result of actual experience they are able to ascertain the exact amount involved in the cost of labour and material necessary for putting up and labelling the goods in this country.

For these reasons I am of the opinion that the verdict should be for the plaintiff on the whole of the claim.

(1) (1905) 2 K.B., 748.

(2) (1905) 2 K.B., 748, at p. 750.