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1901-08-29

Senate.

The President took the chair at 2.30 p.m., and read prayers.

PAPER

Senator DRAKE

laid upon the table

A return to the order of the House of Representatives, showing the quantity of imports of maize, hay, potatoes; sugar, and timber.

Ordered. to be printed.

QUESTIONS

DR. MAXWELL'S REPORT

Senator STEWART

- I wish' to ask the Vice-President of the Executive Council when a copy of Dr. Maxwell's report on coloured labour will be laid: upon the table?

Vice-President of the Executive Council

Senator O'CONNOR

- - The report, of which there was only one manuscript copy, has been laid on the table of the other House, and*, as soon as it has been printed, it will be laid on the table of the Senate, and circulated amongst honorable senators.

TENANCY OF PARLIAMENT HOUSE

Senator DOBSON

- Shall. I be in order, sir, in asking: you if the report is true that certain members of the Legislative Council of Victoria have been refused accommodation in this building?

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The PRESIDENT

- I am not aware of any such alleged fact. There has been a room on the Senate side set apart, for the use of the members of the Legislative Council of Victoria, ever since we have been in possession of the building. I understand, that they consider that room too small, but that does not alter the fact that a room has been set aside for their use if they choose to make use of it. They ask that some other room shall be placed entirely at their disposal; but, until a contract has been signed, it is difficult to comply with their request. The joint House Committee, which did me the honour to appoint me their chairman, decided that matters should remain as they are until a contract has been signed. They were of opinion that they ought to leave everything as it is until they can make final arrangements, and they conceived that final arrangements can not be made in regard to the allotment of rooms and other matters affecting the control of this building until after a formal contract has been entered into.

Senator MILLEN

- Can Senator O'Connor give the Senate any idea as to whether an agreement is likely to be arrived at with regard to the tenancy of the building; and, if so, when?

Senator O'CONNOR

- I can say that an agreement is likely to be arrived at I see no reason why it should not. There are negotiations going on which must come to a conclusion soon, but when, I cannot tell the honorable senator; I can assure him that there is not the least likelihood of there being any hitch in the proceedings which is likely to result in the revocation of the present arrangement. Practically an agreement has been arrived at, but there is some difficulty as to particular details of it.

LEAVE OF ABSENCE

Resolved

(on motion by

Senator Sir Wil-

liam

Zeal) -

That leave of absence for one month be granted to Senator Fraser on account of ill-health.

ELECTIONS AND QUALIFICATIONS COMMITTEE

Vacant Seat.

Vice-President of the Executive Council

Senator O'CONNOR

. - I move -

That the President be requested to lay upon the table as early as practicable, his warrant for the appointment of a member of this House to act upon the Committee of Elections and Qualifications in the place of Senator Fraser resigned.

That, unless disapproved of by resolution of this House, in the course of the four sitting days next after the laying of the warrant on the table, such warrant shall take effect as an appointment of such member to act upon such committee.

This motion has become necessary by reason of the resignation of Senator Fraser. I take it that if it is right that there should be a Committee of Elections and Qualifications it is right that when a vacancy occurs thereon it should be filled up, and precisely in the same manner as the original appointments were made. I have taken the care to follow exactly the terms of the motion which was carried on the 6th June, appointing the committee.

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Senator CLEMONS

- I move -

That all the words after the word "that" be omitted, with a view to insert in lieu thereof the following words: - "the Elections and Qualifications Committee be deemed duly constituted notwithstanding the resignation of Senator Fraser."

If any standing order requires the appointment of a successor to Senator Fraser, I shall move that it be suspended, but I am of opinion that there is no standing order which prevents me from moving this amendment. My object must, I think, be apparent to every honorable senator. We know that in consequence of the recent debate on the report of the committee sides were taken here and I put it to you, sir, as one strong reason why the amendment should be adopted that you will be placed in a position which I cannot help describing as one which you might very earnestly desire to be exempted from - the position of selecting an honorable senator who spoke or voted in a very decisive manner on that occasion. I think if I could urge no other reason why my amendment is desirable I have said enough. But there is an additional and a practical reason. If an honorable senator is appointed to fill the vacant place, it is obvious that he will have to be a certain extent educated in the proceedings which have taken place before the committee. Such a procedure will necessitate delay, and wherever we sit we are desirous of avoiding further delay. I am suggesting something which, if it meets with any opposition at all, should be opposed by those who now represent the majority who brought in the report which was discussed here; Obviously, if they are willing to accept my amendment, no opposition should come from any honorable senator who was in a minority on the adoption of that report, or from any honorable senator who refused to accept it here. Unless, therefore, opposition comes from those members of the committee who represented the majority at that time, I think I shall be quite safe in saying that I cannot expect any opposition to come from the senators who represented the minority, or from the senators who indorsed their action on that occasion.

Senator O'CONNOR

(New South Wales - Vice-President of the Executive Council). - If this was a committee which could possibly have any other than one petition to consider I certainly should oppose the amendment, because it appears to me that if we are to have our proceedings properly constituted and carried on - if we decide that a committee should consist of so many members, especially in this House where each member represents a State, I think it is highly desirable that its constitution should be maintained whenever a vacancy occurs. If there was any other application of the powers of this committee likely to take place I certainly should oppose the amendment. But I want to deal with this matter in a practical way. It is quite evident that there is only one petition likely to be considered by the committee. Its work so far as one can see will be confined to that petition. If the Chairman, as representing the committee, had expressed any wish to oppose the amendment, or if any honorable senator had opposed the suggestion, I, certainly should have listened with a very great deal of respect to his observations. But as apparently it does not meet with any opposition on the part of any member of the committee, as the committee I gather from

their silence seem to think that their proceedings can be carried on without any addition, I do not propose to oppose the amendment.

Senator Sir Josiah Symon

- It will save a very great deal of time.

Senator Sir Frederick Sargood

- Is it not an awkward precedent?

Senator Sir Josiah Symon

- It is no precedent.

Senator O'CONNOR

- To avoid anything I say being drawn into a precedent, I wish to reiterate that, if there was another petition which could possibly come before the committee, I think that its proper strength should be kept up. But as there is only one matter to be dealt with, and as the committee seem to have no objection, and to think it better that a speedy conclusion should be come to, I have nothing to say. I wish it to be understood that it is only under the special circumstances in which this matter finds itself that I consent to the amendment.

Amendment agreed to.

Question, as amended, resolved in the affirmative.

CUSTOMS BILL

In Committee

(consideration resumed from 28th August,
vide

page 4203).

Clause 219-

The following ships or boats shall be forfeited, to His Majesty : -

Any ship or boat from which any goods are thrown overboard, staved, or destroyed to prevent seizure by the Customs.

Any ship within one league of the coast having false bulk heads, false bows, sides, or bottoms, or any secret or disguised place adapted for the purpose of concealing goods, or having any hole, pipe, or other device adapted for the purpose of running goods.

Upon which Senator Pulsford had moved by way of amendment -

That after the word " boats," line 1, the words " not exceeding 250 tons burden " be inserted.

Senator PULSFORD

- Last night I moved the amendment of this clause, and after some discussion Senator O'Connor offered, if that amendment were withdrawn, to consent to the omission of sub-clause (4).

Senator O'Connor

- Not the omission of that sub-clause, but the insertion in it of an amendment limiting the tonnage to 250 tons.

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Senator PULSFORD

- I consent, on the terms proposed by Senator O'Connor, to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment (by Senator O'Connor agreed to -

That after the word " boat," sub-clause (4), the words " of not more than 250 tons registered tonnage" be inserted.

Clause further verbally amended.

Senator MACFARLANE

(Tasmania). I move -

That after the word "having," line 3, the words " to the knowledge of the master" be inserted.

Some vessels carry perhaps 1,000 persons as passengers and crew, and that the captain should be held responsible for every hole made in his vessel by any member of his crew or any passenger anxious to smuggle, seems to me very unfair. No injustice can be done by adding these words. It may be urged, that difficulty would be experienced in proving the knowledge of the master, but I think it is reasonable to presume that he would not consent to any hole being made in his ship any more than he would acquiesce

in smuggling being carried on by his crew. A letter has been received from some of the steam-boat companies, pointing out that they give notice to all the passengers and crew that they are held responsible for any smuggling that may take place from their vessels, and that on many occasions, when a foreign member of their crew has been found guilty of smuggling, they have had to pay the fine, inasmuch as if the man were left in gaol they would still be liable for the expenses. The writer continues - It appears to me that this subject brings up possibilities of very great annoyance to shipowners carrying coloured crews, and which they have not to contend with in any other part of the world.

The amendment will not interfere with the forfeiture of a ship having false bulkheads, false bows, sides, or bottoms, or any secret or disguised place adapted for the purpose of concealing goods. The first part of the sub-clause is not touched. This is only a small matter so far as the Customs department is concerned, but a very serious one for the ship-masters.

Senator O'CONNOR

- I cannot accept' the honorable senator's amendment. I think that if he will look' at the legislation on this matter in other parts of the world, he will find that this clause follows the invariable practice in providing that the mere existence of a hole, or pipe, or any device which may be used for smuggling on a ship is something at all events which calls upon the master for an answer. In section 179 of the English Act the words -

Any secret or disguised place adapted for concealing goods or any hole, tube, pipe, or device adapted for running goods - are to be found. The New Zealand and the New South Wales Acts contain the same provision, It is quite obvious why it is unnecessary in these cases to prove the knowledge of the ship-owners. It would be almost impossible to do so. If a ship-owner had on board one of his vessels a crew from some Eastern country, for instance, and a number of holes or pipes were found on that vessel, containing hundreds of pounds worth of goods, the captain would simply say - " I am very sorry. I happen to have a very unscrupulous crew, and I do not know anything about this matter." On the other hand, if we make the mere existence of these devices for smuggling an offence, we may be sure that in the administration of the Act, care will 'be taken that the captain is not punished if it is shown that he has no knowledge on the subject, while at the same time the captain will make it his duty and the duty of his officers to keep a sharp look-out for anything of the sort. Who could better aid in the prevention of smuggling by these devices than the captain 'and officers themselves ? We may be sure that they will give the department their assistance if it is made obligatory on them to do so, at the risk of a penalty on the owner for the existence of such devices. In Great Britain and in all the States precisely the same provision has existed, and I do not know that there has ever been any serious complaint in regard to its administration. This is one of the very large powers that we must give to the Customs officials, and we must trust to its reasonable exercise by them. Unless there is some pretty strong evidence to show that a captain had knowledge of the existence of such devices on board his ship, one could not understand his being made liable. I would therefore ask the committee not to alter the sub-clause, and not to consent, at a time when above all others we should take care that there is no leakage of the revenue, to take away a safeguard which has existed in all Customs Acts in Great Britain and the Australian States for very many years.

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Senator Major GOULD

- I am quite sure the committee sympathize with the desire of the Government to prevent any leakage of revenue. We realize that it is highly important that the Commonwealth should receive every penny of revenue to which it is lawfully entitled, but the clause itself seems to be rather serious in its effects. We must bear in mind that it does not provide for forfeiture of the ship after certain proceedings are taken, but that a ship shall be absolutely forfeited by statute if it is found to contain any hole, pipe, or other device adapted for the purpose of running goods. This is a case in which I think provision might very well have been made for a money penalty, so that punishment by forfeiture of the ship would not be possible. I sympathize with the Government, but at the same time I also strongly sympathize with the position taken by the mover of the amendment, because it is perfectly clear that we must give fair consideration to the general public in any clause we pass. Let us make the provisions as stringent as possible, but do not let us go beyond what is fair and equitable to the parties concerned; Possibly the amendment might be accepted, but with the proviso that the captain of a vessel on which any of these devices were found

should be liable to a penalty of £500. Then there would be a prosecution, and it would be possible to show the condition of affairs that existed.

Senator CHARLESTON

- It seems to me that the insertion of "to the knowledge of the master" is an amendment of considerable importance. I have had a good deal of experience as a sea-going engineer, and as such traded for a great many years to the East. I have seen much smuggling on board steamers, and I have known devices to be adopted of which I am sure the captain, could not possibly have been aware. If this clause were administered strictly, very serious results might happen to the ship. I remember on one occasion that, whilst I was walking round the grating above the boilers of a vessel on which I was employed as an officer, I came across a plank about ten or twelve feet long by two inches thick. My foot went through it, and I found that it was hollowed out, so that it would just take in thin tins of opium. I presume it had been used for the purpose of smuggling, but no one knew anything about it. If, as engineer on board that vessel, I had failed to discover that plank, I cannot see how the master of the ship would have been able to find it out.

Senator DE LARGIE

- Was there a coloured crew on board?

Senator CHARLESTON

- I am not saying whether it was a white or coloured crew. White crews can smuggle as well as coloured men. Smuggling also takes place through a port-hole, through the hawse-hole along which the anchor chain runs, and through the waste pipe. I am not disposed, however, to think that any Custom-house officer would administer the Act according to the strict letter of the law. I know very well that great power should be given to them, so that they may be able to deal with any captain whom they suspect of being concerned in smuggling. The experience of the Custom-house officers is that captains take no part in smuggling rings. I would like the Vice-President of the Executive Council, to limit the proposal, so that no injustice shall be done to the owner or captain in relation to matters over which they have no control. I was told on one occasion by a fellow officer, who had been on the old China, a wooden, side-wheel ship, that he had known one of the planks hollowed out, almost to the copper, in order that opium and other dutiable articles might be concealed. But no captain would permit such a thing as that one moment after he had discovered it. I mention these things to show that it is impossible for a captain or officers to discover all attempts made at smuggling, and the words of the clause, which are very sweeping, should be altered in such a way that less responsibility will rest on the captain, while the revenue is protected.

Senator MACFARLANE

- The examples mentioned by Senator O'Connor are hardly applicable, because in the old days ships were managed in a very different way to what they are now. Notice is put upon ships that all dutiable articles must be declared, and it is most unjust to provide that a ship shall be forfeited if a small hole is found filled with dutiable goods, in a way which must be beyond the captain's knowledge. The onus of proving that the captain does not know is thrown on the captain, and that ought to be a protection to the revenue.

Senator Ewing

- The difficulty might be met by providing that the ship "may" be forfeited; so as to leave some discretion with the Government in case it be shown that the captain knows nothing of the smuggling.

Senator O'Connor

- That is really how the provision operates now, but the Government want to have the power of forfeiture if necessary.

Senator MACFARLANE

- If Senator O'Connor will consent to the insertion of the word "may" I shall be satisfied; but I think the words I propose are harmless so far as the revenue is concerned, and do justice to the innocent party.

Senator MCGREGOR

- The revenue of the Commonwealth should be protected to the fullest extent. Some senators say that we have to look to the interests of the public, an expression which would give the idea that all the public are concerned in ships, smuggling, and the transport of goods, whereas not one person in a thousand is connected with such business. If we desire to protect the public we must make this provision as stringent

as possible. I entirely agree with Senator O'Connor when he says it is almost impossible to prove that a person accused under this clause knows of the offence. Senator Charleston has given a very clear idea of what is possible on the part of an officer placed under an obligation to see what is going on. No officer was responsible for the smuggling in the example quoted by Senator Charleston, and consequently nobody knew anything about the plank ; but if the officers of a ship know that at the next port their vessel may be forfeited, if a plank be found under such suspicious circumstances, they and the captain will be on the alert, and will take care that no smuggling takes place.

Senator Staniforth Smith

- They are not omniscient, and do not know everything.

Senator McGREGOR

- They will not know everything if they are supposed not to know anything. I have generally found that ship's officers have very little interest in preventing smuggling on the part of passengers or crew, but leave that matter to the Customs officers ; but a provision such as this will cause them to take care that nothing of the kind is done. I hope the sub-clause will be passed, for the protection of the public against the fraudulent intentions of the few.

Senator WALKER

- Perhaps Senator O'Connor might see his way to recommit this clause merely for the purpose of altering the word "forfeited" to "forfeitable."

Senator O'Connor. - That would alter the clause altogether.

Senator WALKER

- If there is any person in this committee more competent than another to speak with knowledge on this subject it is Senator Macfarlane, and the possibility of a ship worth £100,000 being forfeited for an offence unknown to the authorities connected with the vessel is unfair and un-British.

Senator Sir JOSIAH SYMON

- There seems to be an omission with regard to the interpretation of " shall be forfeited." Those words, when used in reference to goods, really mean that the goods shall be liable to forfeiture. 'On a seizure of the goods as forfeited, notice has to be given to the owner, who may then claim them ; and if the collector thinks there is innocence on his part; the goods may be restored without further proceeding. If, however, the collector chooses not to restore the goods, the owner is put to his action to question the legality of the condemnation. Clauses 197 and 198 refer to both ships and goods; but clause 199, which shows what the owner must do in order to test the legality of the condemnation, is limited to goods. In my opinion this provision ought to embrace both ships and goods. There appears to have been a clerical omission.

Senator EWING

- The words " shall be forfeited " are very strong in the absence of a provision such as appears in the "Victorian Act, which, in the case of the forfeiture of goods, gives power to the Governor in Council to order a restoration. If a similar power were given in this Bill the position would be met.

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Senator O'CONNOR

- It is quite true that there is no power expressly given in the Bill to the Governor in Council to remit forfeiture. But that power is not necessary, it being a prerogative right of the Governor-General as representing the Crown, and having the administration of what is called the prerogative of mercy, to remit forfeiture and penalties exactly in the same way as he has power to remit imprisonment, or order a release, if, under the circumstances, justice will be served by so doing. That power always exists in the Executive, and it is that power which is really exercised very frequently, and which enables Customs Acts to be administered with a due regard to the circumstances in each particular case. In regard to the matter mentioned by Senator Symon, I think that, in the number of clauses that have to be looked at, he has omitted one which makes a difference. In the first place the mere fact of the ship having false bulkheads and other conveniences for smuggling calls for her forfeiture ; but under clause 197 the owner always has knowledge of the forfeiture, either by notice sent to him, or by his being present when the seizure takes place. If within a month after that he makes a claim, the seizure does not take place until after further proceedings ; but if he does not make a claim, the forfeiture is complete and the ship may be sold. It is true that in the case of goods, as provided by clause 199, the onus of proving that there ought not to be a forfeiture is thrown on the owner of the goods, and he is compelled to bring an action ; and if he does not

bring an action, there is forfeiture. But no similar provision is made in regard to ships ; and the result is that where a ship is forfeited, and notice of objection has been made, it is incumbent on the Custom-house officials to take action under the proceedings referred to in Part 4. There is no special clause directing how the proceedings are to be taken, because that is unnecessary in view of the fact that proceedings in a suit for condemnation or forfeiture are well known. Clause 235, however, recognises such proceedings by the Customs for the recovery of penalties, or "for the condemnation of ships seized or goods forfeited." If the owner chooses to make objection, the operation of forfeiture is stopped there and then, and it cannot take place unless by order of the court which hears evidence. If, on the other hand, he does not make his claim, the forfeiture is absolute without any legal proceedings. It is only right that a serious matter such as the seizure of a ship should be put in a different position from a seizure of goods ; and to adopt the suggestion of Senator Sir Josiah Symon would be to put goods and ships on the same plane, and force the owner of a ship to begin proceedings in order to show that there should not be a forfeiture. The law at present is, therefore, more favorable to the owner of a ship than to the owner of goods. In regard to the amendment we must be careful in the interpretation of the powers given here not to apply the principle which is often applied, and assume that the strongest possible power given to meet serious occasions is always to be used by the Customs officials under the most trivial conditions. These large powers are given to meet large occasions, and in 99 cases out of 100 large powers are not exercised to their fullest extent. The administration of the power of seizure is regulated by certain principles' which are recognised in all Customs systems. For instance, in a little book on the Customs of England I find this statement about seizures -

Seizures of smuggled goods, and of ships, are matters of daily occurrence, but' the Commissioners of Customs have, by the statute, full discretionary power as to the restoration of seizures, either freely, or subject to such conditions as they may think fit : and, it is a matter of actual practice, while smuggled goods are always forfeited in toto, ships are, except in very rare instances, released upon a small, and, in many cases, a mere nominal fine.

That is the practice which has gone on for a great many years in the United Kingdom, and in all the States where power to the same full extent has been given. To make an amendment such as is suggested would be to relax in a very important particular one of those provisions for the protection of the revenue which have always been found necessary. There is an additional reason why knowledge on the part of the captain should not be made a necessary part of the proof here. If you make the captain or the owner responsible, then you make the captain and every officer allies of the authorities to see that no smuggling takes place on the ship. On the other hand, it is impossible to prove knowledge on the part of the captain. And, in addition to that, you possibly make him an absolutely indifferent spectator to any amount of smuggling by his crew, and possibly by his officers. As' the ship is under his control, he has the right of access to every hole and corner of it, and he can see by the regulations, which are always made in these ships, that no possibility is given for any smuggling to go on. I cannot imagine any case where the ship ought not to be forfeited in which it would be forfeited by the Executive Government. All these provisions are to be administered under the control of public opinion, of the press, and of Parliament. Under these circumstances, I think we need never fear that there will be any arbitrary or unjust exercise of this necessary power. I hope that the committee will leave the clause as it is.

Senator CHARLESTON

(South Australia). - I think

Senator O'Connor

is mistaken in supposing that any words in the clause will make the officers co-workers with the collector in preventing smuggling. The officers are not responsible.

Senator O'Connor

- I should think the captain would direct them as part of the ordinary discipline of the ship.

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Senator CHARLESTON

- The captain may direct the officers, but I can assure the Minister that no words such as are inserted here would make the officers in any way serve the purposes of the collector. At the same time I quite see that everything will depend on the administration. I think that from the cases given by the Minister no harm is likely to be done to the ship.

Question - That the words proposed to be inserted be so inserted - put.

The committee divided -

Ayes 11

Noes 16

Majority 5

Question so resolved in the negative.

Amendment negatived.

Clause, as amended, agreed to.

Clause 220-

The following goods shall be forfeited to His Majesty : -

All goods which are smuggled or unlawfully imported, exported, or conveyed.

Senator CLEMONS

- At the first blush it seems a rather difficult operation to forfeit goods which are exported. If goods are exported, I take it that they are outside the Customs control and cannot be forfeited.

Senator O'CONNOR

- There may be duties of import and duties of export. We have to do principally with duties of import, but as there may be duties of export if goods are unlawfully exported . then they are liable to forfeiture. If, while a ship is going down a river or a harbor, the Customs officer finds that there are goods on board which have not paid export duty they may be seized.

Paragraph agreed to.

All goods found on any ship after arrival in any port, and not being specified or referred to in the inward manifest, and not being baggage belonging to the crew or passengers, and not being satisfactorily accounted for.

Senator PULSFORD

- I am not satisfied that under this paragraph stores are excluded from the possibility of forfeiture. I understand that the manifest is supposed to cover not only cargo but stores. In a schedule to the Imperial Act the form of entry or ships manifest is given, and that covers a reference to the stores, but in this Bill there is no schedule, and consequently there is some little doubt left as to the matter of stores. * I ask Senator O'Connor to satisfy himself that the position of the stores is made sufficiently clear so that they will not run any risk of forfeiture. The same point will arise in paragraph m, where the outward manifest is referred to.

Senator O'CONNOR

-I inquired into this matter on the suggestion of my honorable friend, and I find that the manifest in its body contains a particular description of the goods which are in the ship, but in addition to that every manifest has also the statement - " ships stores as per schedule or surplus stores," and the words "referred to " are to apply to that very case.

Senator Pulsford

- I suppose it will be made clear in the regulations.

Senator O'CONNOR

- Absolutely clear. It is clear now, I think.

Paragraph agreed to.

All goods in respect of which any entry, invoice, declaration, answer, statement, or representation which is false or misleading in any par ticular has been delivered, made, or produced.

Senator CLEMONS

(Tasmania).- When we use the word "false" we imply some intention to deceive ; but when we use the word " misleading " we leave ample scope for innocence. There may be some absolutely innocent omission which may mislead without any intention to deceive. By the insertion of the word " wilfully " before the word "misleading " I. do not think that

Senator O'Connor

will injure the provision, and he will correct what, I think, ought to be corrected. I ask him to accept an amendment.

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Senator O'CONNOR

-As the word " false " appears in the paragraph, I do not think it matters whether we insert the word " wilfully " or not, so far as the protection of the revenue is concerned.

Amendment (by Senator Clemons) agreed to-

That after the word "or," line 3, the word wilfully " be inserted.

Paragraph, as amended, agreed to.

Paragraph (l) -

All spirits, opium, tobacco, snuff, cigars, or cigarettes in packages of less than the prescribed size found on or attached to any ship or boat.

Senator PULSFORD

(New South Wales). - I move -

That after the word " size " the words "not being ships' stores " be inserted.

As the clause stands, tobacco and spirits legally on board ship for the use of the passengers and crew would be liable to forfeiture. Then I would suggest that the words " found on or attached to any ship or boat" really limit the application of the paragraph, and that it would be stronger if they were omitted. If any of these goods once got into a warehouse, then, according to the wording of the paragraph, they could not be forfeited.

Amendment agreed to.

Paragraph, as amended, agreed to.

Paragraph (p) -

Any package having concealed therein goods not enumerated in the entry, or being so packed as to deceive the officer.

Senator CLEMONS

(Tasmania). - I ask

Senator O'Connor

to consent to the addition to this paragraph of the words appearing at the end of paragraph (m), "and not accounted for to the satisfaction of the collector." The addition of those words would not interfere with the efficiency of the paragraph, but would afford a loop-hole of escape for an innocent person.

Senator O'Connor

- I cannot consent to that.

Senator CLEMONS

- I fail to see what difference there is "between the two cases.

Senator O'CONNOR

- There is a great deal of difference. Paragraph (m) provides that -

All goods not being passengers' baggage found on any ship after clearance, and not specified or referred to in the outward manifest, and not accounted for to the satisfaction of the collector, shall be -forfeited. It is quite obvious that there may be perfectly innocent circumstances connected with 'the finding of such goods, and nothing to indicate any intention to defraud. But on the face of paragraph (p) it is an attempt to defraud that is dealt with.

Paragraph agreed to.

Paragraph (q) -

All dutiable goods found in the possession or in the baggage of any person who has got out of or landed from any ship or boat, and who has denied that he has any dutiable goods in his possession, or who when questioned by an officer has not fully disclosed that such goods are in his possession or baggage.

Senator PULSFORD

(New South Wales). - It is quite conceivable that people may' come to Australia from various parts of the world in complete ignorance of the duties on the Australian Tariff, and an innocent person bringing in some few goods liable to duty might, under this paragraph, find the whole of his baggage confiscated. I would ask the Vice-President of the Executive Council whether he cannot accept some slight modification of the severity of this provision. I would also ask him whether he does not consider that the words " or in the baggage " are not surplusage.

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Senator O'CONNOR

- I think the paragraph must remain as it stands. Probably every time the honorable senator comes from

New South Wales he is asked whether he has any dutiable goods. That question is often put to me, and I know that when I reply in the negative I take the risk of assuming knowledge as to what are dutiable goods. No person is bound to say that he has no such goods, but if he takes the risk it is his own look-out. I think this provision must really lead to a saving of time, because it enables the Customhouse officer, instead of going through a traveller's baggage, to ask the question whether any dutiable goods are contained in it, knowing that if the answer is in the negative the traveller takes the risk of a prosecution. By the statement being made at the risk of punishment, the passenger is put really upon inquiry. It is a great convenience to passengers and Customs officials alike.

Senator PULSFORD

(New South Wales). - Everything that the honorable and learned senator has said, is perfectly true so far as experienced travellers like himself are concerned. I am speaking rather on behalf of those thousands of people who are likely to emigrate to Australia in entire ignorance of the trouble they may get into under such a provision as this. At the same time, if the "Vice-President of the Executive Council is very anxious to retain the paragraph, I do not desire to press my objection.

Paragraph agreed to.

Clause, as amended, agreed to.

Clause 221-

The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained, and the forfeiture of any package shall extend to all goods packed or contained in the package.

Senator Sir FREDERICK SARGOOD

- I move-

That the following words be added to the clause: - "Provided that this section shall not apply to the exceptions referred to in sub-section (b) of the last preceding section.

I think it is necessary to put in that provision, otherwise goods innocently shipped might be liable to be seized and forfeited with the rest of a package. The clause means that certain goods are liable to forfeiture. A package is seized by the Customs as containing goods liable to forfeiture under this clause, and all goods in that package are liable to forfeiture because the package has been seized. Although some of them should not be forfeited, yet under the concluding words of this clause the whole contents come under the ban.

Senator CHARLESTON

- Prohibited books may be packed in cases containing other books which are free to be imported into the Commonwealth, but if the Customs officer, in going through the package, came across any prohibited work, then, as I understand the clause, the whole of the books would be liable to forfeiture.

Senator Sir Frederick Sargood

- That is the ground we take up.

Senator CHARLESTON

- I think that would be extending this clause further than" even the Customs department desires.

Postmaster-General

Senator DRAKE

- I think very few cases will be found in which a package, as a package, is forfeited. Under paragraph (p) of clause 220 it is provided that -

Any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer - shall be forfeited. A package being forfeited, all the goods contained in it are forfeited, whether they are prohibited or not. With regard to the first part of this clause, it is clear that if the goods are forfeited the package should be forfeited, and the latter part of the clause clearly refers to exceptional cases where the package itself is declared to be forfeited. The only instance that occurs to me is that in the clause we have just passed, where the package seized is being used for the purpose of smuggling. Where a package has been put up in such a way as to deceive a Customs officer, all the goods contained in it are to be forfeited. In view of the various clauses in this Bill and in other Customs Acts, such as those relating to the forfeiture of ships possessing contrivances for the purpose of smuggling, it does not seem too much to say that where a package seized is packed for the purpose of smuggling goods, everything in that package shall be forfeited.

Senator Sir Frederick Sargood

- What is the meaning of "package?"

Senator DRAKE

- "Package," according to the interpretation clause, includes -

Every means by which goods for carriage maybe cased, covered, enclosed, contained, or picked. .

Senator Sir Frederick Sargood

- That does not bear out the honorable and learned senator's interpretation.

Senator DRAKE

- Yes ; I think it does. In view of the provision in previous clauses, I think the clause should stand.

Senator CHARLESTON

(South Australia). - It seems to me that if a prohibited book happens to be in the same package with a number of other books which are not prohibited, then according to the clause every book in that package must be seized.

Senator PLAYFORD

- Custom-house officers as a rule administer a law like this with a certain amount of common sense. As head of the Customs in South Australia I have prohibited the importation of certain books, and caused them to be destroyed.

Senator Stewart

- What were they?

Senator PLAYFORD

- Some of Zola's novels. The other books in the consignment were not in any way interfered with, and although there are these powers of forfeiting goods and packages in which prohibited goods are -contained, they are not, as a rule, strictly exercised.

Senator EWING

(Western Australia.).If the common sense of the Customs officers is embodied in the views expressed by Senator Playford

as to the prohibition of certain works, extending to the prohibition of Zola's novels--

Senator Playford

- Only some of them.

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Senator EWING

- I do not know that any of Zola's novels are so very bad that they must be excluded from the community. This is not a fair provision, because it provides for the forfeiture of the packages, and the forfeiture of a package means the forfeiture of everything contained in it. It is said we have sensible men administering the Customs law ; but sometimes I doubt that when I hear what has been done in the past. If the Customs officials are not to carry out the provision, why put it in the Bill ? The necessities of the department would be absolutely met by forfeiting the packages in which these goods come, but not necessarily forfeiting the whole of the goods. I would suggest that ' all the words after " contained " be struck out.

Senator DOBSON

- I should say that all the 3e sub-clauses have been framed and introduced because practice has shown that they are necessary to guard against devices used over and over again by persons who attempt to evade Customs duty. Senator Playford is quite right in saying that our Acts are administered by men with brains and common sense, and I can quite understand there might be an offence for which the whole of the goods should be forfeited, and also an offence in which no forfeiture should take place. A book may be prohibited on the grounds of public morality, and as the public are anxious to get what they ought not to have, that book may be worth from £\ to £5. But suppose a bookseller asked his agent to send a private copy for his own use, with no idea of selling it, I should say that in such an instance he might be let off lightly. ° But supposing two or three copies of such a book were found in a package otherwise filled with books worth from 6d. to 1s. 6d. each, and they had been sent with the deliberate intention of putting them on the market and making money out of them, surely it will not be denied that it would be perfectly right for the Customs collector to forfeit every book in the case.

Senator MILLEN

(New South Wales).It has been said that we may take it for granted that those who administer this law will be men with brains and discretion. I am afraid that these men will not be able to return the compliment

and say that those who framed the law were so endowed. We are proposing to rely on the Customs officers to do something which we say they ought not to do.

Senator Dobson

- It would all be a question of intention. Suppose a book were sent out for scientific purposes 1

Senator MILLEN

- I never heard a more dangerous doctrine than that laid down by Senator Dobson. It means that we leave it to the discretion of the Customs officer to let one man go free and to punish another man for a similar offence.

Senator Dobson

- Look at the intention.

Senator MILLEN

- We can only look at the meaning of the Bill itself. If we have a law administered, at the option of a Customs officer, in one way towards one offender, and in another way towards another offender, we are going the right way to bring the Customs law into disrepute.

Senator CHARLESTON

(South Australia). - The Minister for Trade and Customs might prohibit certain books which for a long time it has been legal to import. If, under these circumstances, a man packed some prohibited books with other works, with no intention of deceiving, but without the knowledge that they had been prohibited, the whole case of books might be forfeited. I ask whether that is just or fair. We ought not to give such power to the Collector of Customs, and in the next breath tell him that he is not to exercise it. The clause gives him imperative instructions to forfeit the whole case or package.

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Senator MCGREGOR

- I am sorry to see our free-trade friends turning themselves into what appears to be a smuggling protectionist association. The discussion has got on to the question of books, but I would like the committee to take a broader view. Suppose there was a package containing ready-made moleskin trousers, in the middle of which was found packed a quantity of exhausted tea, put there with the intention of evading the Customs. Would any one say that the whole of the goods should not be forfeited 1 If prohibited books are concealed in a package containing other books, it must be with the intention of introducing them against the provisions of this Bill, and the people who attempt to do such a thing ought to be punished. Of course, if an individual proves that there was no intention to defraud, a certain amount of discretion might be given; but if, for instance, in the midst of a lot of legitimate articles, a quantity of oleomargarine not painted the proper colour were found, would any one say that the whole of the package should not be forfeited ? It is clear that where anything, unintentionally or accidentally, happened to be placed in a package of the kind, no officer would be so arbitrary as to destroy the whole lot. But it is absolutely necessary, for the purpose of protecting the public, not only against prohibited books, but against other articles, that the Customs officer should have this power.

Senator Sir FREDERICK

SARGOOD (Victoria). - Every honorable member will agree that where an attempt is made to evade the Customs by packing prohibited goods amongst unprohibited goods, the whole package and its contents should be forfeited. This clause goes a good deal further ; but if it could be qualified in the direction which has been indicated, there would not be the slightest objection to the provision. I believe the clause' has something to do with a difficulty which occurred some years ago, when, in the case of the importation of some prohibited machinery, the owner held that, while the goods could be forfeited, the cases could not be seized. The result was that the goods had to be opened on the wharf and carted away at considerable expense to the Customs, the cases being left on the wharf. It is right that that difficulty should be met, but, as I say, the clause goes further. If

Senator O'Connor

will insert words limiting the clause to attempted evasion of the Customs, I shall be perfectly satisfied.

Senator Dobson

- The collector would read such words into his administration of the clause.

Senator Sir FREDERICK SARGOOD

- It is not a question of option ; the word used is "shall."

Senator O'Connor

- But he must exercise discretion even then.

Senator Sir FREDERICK SARGOOD

- I propose to ask leave to withdraw my amendment, because I do not think it meets the case fully ; but the clause as it stands is liable to do great injustice.

Amendment, by leave, withdrawn.

Amendment (by Senator Ewing) proposed -

That all the words after "contained," line 3, be omitted.

Senator DRAKE

(Queensland - [Postmaster-General]). - From the speeches made on the other side of the Chamber, I am sure there is some misapprehension. The clause may be divided into two parts, which have no connexion one with the other. In the first place, it is provided that where goods have been forfeited, the case goes with them and is forfeited too. There is no difficulty as to that. The other part of the clause states what happens when the package has been forfeited.

An Honorable Senator. - Why is the package forfeited ?

Senator DRAKE

- In a case where a package is forfeited, the goods contained in that package are forfeited too. If we turn to paragraph (p) of clause 220, we find a case where a package is forfeited -

Any package having concealed therein goods not enumerated in the entry, or being so packed as to deceive the officer.

In a case of that kind the package is forfeited, and the goods which are in it are also forfeited. The possible instance, which has been quoted, of a prohibited book being accidentally in the package, clearly does not apply, because in that case the package could not be forfeited. But there would be a forfeiture of a package which contained dutiable goods, and had been packed in such a way as to deceive the officer. There may be other cases where the package is forfeited, but, if so, you will find that the forfeiture is for a somewhat similar reason. Surely it is not unreasonable to provide that where a box, case, or trunk has been deliberately packed with the intention to deceive the Customs officer, and to smuggle in goods, all articles contained in the package should be forfeited.

Senator EWING

(Western Australia). Any one who can agree with the argument of

Senator Drake

will no doubt be justified in voting for the clause, that is if, as he puts it, the only cases in which a package could be forfeited are comprised in paragraph

(p)

of clause 220. But a package can be forfeited under clause 221, merely because it contains one prohibited article. If one prohibited article be found in it, not only the package, but everything it contains, no matter whether legally imported or not, is to be forfeited. I submit that the construction put by

Senator Drake

is not consistent with the facts of the case.

Senator DRAKE

(Queensland - Postmaster-General). - I have just been informed that the Bill contains no other provision for forfeiting a package, so that the onus will rest on any honorable senator who asserts to the contrary to show where it is to be found.

Senator Ewing

- It is in clause 221.

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Senator DRAKE

- That is a case where the goods are forfeited, and the outside package goes with them. That is not a case where there are some goods dutiable and some goods not dutiable. The second part of the clause simply refers to a case where the package itself has been forfeited, and the only condition under which a package can be forfeited is to be found in paragraph (p) of clause 220.

Senator MILLEN

(New South Wales). The statement of the Postmaster-General is really a very extraordinary one. He says

that only under one clause is a package forfeitable, and that is where it has concealed within it goods so packed as to deceive the officer. But the clause we are discussing shows how a package can be forfeited which may contain one forfeitable article with several non-forfeitable ones. Take a case which is found to contain one forfeitable book and 199 non-forfeitable books. That package can be forfeited in spite of the assurance of

Senator Drake.

Senator O'CONNOR

- The only difference between us now is really as to whether the forfeiture referred to is only the forfeiture under paragraph (p) of the previous clause, or whether there is any forfeiture worked by the first part of clause 221, to which the second part would apply. If there is any doubt about that, I am quite willing to make an amendment which will clear it up, and to let the clause read in this way -

The forfeiture of any package under the preceding section shall extend to all goods packed and contained in the package.

Amendment, by leave, withdrawn.

Amendment (by Senator O'CONNOR) agreed to -

That the words "under the last preceding section" be inserted after the word "package," line 3.

Clause, as amended, agreed to.

Clause 223-

Whoever -

Being an officer of the Customs or police makes any collusive seizure, or delivers tip, or makes any agreement to deliver up or not to seize any ship, or goods liable to forfeiture, or conspires or connives with any person to import or export, or is in any way concerned in the importation or exportation of any goods for the purpose of seizing any ship or goods and obtaining any reward for such seizure shall be guilty of an indictable offence and shall be liable to imprisonment, with or without hard labour, for any term not exceeding three years.

Senator PULSFORD

- The provisions of this clause bring into very vivid relief the fact that there is one law for the public, and another law for the Custom-house officers. We have just passed a clause which subjects to the possibility of five years' imprisonment 'any poor wretch who does a bit of smuggling. Now we are asked to pass a provision which would enable a well paid Custom-house officer to be guilty of a breach of trust, and also to be guilty of smuggling or other great offence, and to > connive at it, and be liable to imprisonment for only three years. That is not fair. If the punishments were properly distributed, a well paid officer who is found to be guilty, not only of a great breach of trust, but of defrauding the Customs, should be liable to the higher punishment. A recent cablegram has informed us of the discovery in New York of some great frauds in the silk trade brought about by some Customhouse officer, which, it is said, represent millions of dollars. I am not sure whether it means that the frauds represent millions of dollars, or that they are connected with goods of that value. I propose to transpose paragraph (a) to immediately after the word, "whoever," and to insert after the word "seizure" the words -

Shall be guilty of an indictable offence, and shall be liable to imprisonment, with or without hard labour, for any term not exceeding five years. *

Then I propose to insert the word "whoever" before paragraph (6).

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Senator O'CONNOR

- The object of the proposed amendment, I take it, is to increase the maximum punishment for the offence stated in the first paragraph from a maximum imprisonment of three years to a maximum imprisonment of five years. But I presume that, inasmuch as there are offences specified in paragraphs (6), (c), and (d) to which Senator Pulsford does not want five years' imprisonment to extend, he is obliged to split up his amendment into parts. The whole question really turns on whether the punishment of three years as a maximum is sufficient for the offence in paragraph (a). If there is any doubt about it, the term of punishment at the end of the clause might be amended. It is only a maximum, and is not likely to be enforced except under circumstances where its enforcement would be justified. If Senator Pulsford would move an amendment of that kind I shall accept it.

Senator PULSFORD

(New South Wales)... - I am willing to accept five years as a maximum, and when some prior amendments are disposed of, I shall move to that effect.

Clause verbally amended.

Amendment (by Senator Pulsford) agreed to -

That the word "three," line 15, be omitted, with a view to insert in lieu thereof the word "five."

Amendment agreed to.

Clause, as amended, agreed to.

Clause 224-

No person shall smuggle or unlawfully import, export, convey or have in his possession any goods, and no master of a ship shall use or suffer his ship to be used in smuggling or in the unlawful importation, exportation, or conveyance of any goods.

Penalty : One hundred pounds.

Senator MILLEN

- The clause seems to read rather peculiarly. I do not understand why a person should be punished for having in his possession any goods. I should take it to be intended to mean that no person shall have unlawfully in his possession any goods. I should like to know if the Minister is satisfied with the phraseology.

Clause amended to read as follows, and agreed to -

No person shall smuggle or unlawfully import, export, convey, or unlawfully have in his possession, any goods subject to the control of the Customs, and no master of a ship or boat shall use, or suffer his ship or boat to be used, in smuggling, or in the unlawful importation, exportation, or conveyance of any goods.

Clause 225-

No person shall -

Refuse or fail to answer questions or to produce documents.

Senator MILLEN

(New South Wales).I would ask

Senator O'Connor

whether paragraph

(g)

should not be amended. A Customs officer might put questions which, if answered correctly by the individual concerned, would incriminate him. Is it intended that a man shall be fined £100 for refusing to answer such questions?

Senator O'Connor

- Yes.

Senator MILLEN

- Then it is an entire reversal of the course usually adopted in all legal proceedings, criminal or otherwise.

Senator O'CONNOR

- I think the honorable senator is mistaken. No doubt there is a rule, and a very good one, that in giving evidence in a court of justice no man shall be compellable to answer questions which will incriminate himself. But this is a very different matter. This paragraph simply puts a man in the position of being compelled to answer questions. If the honorable senator turns to clause 4 he will find that "answer questions" means -

That the person on whom the obligation of answering questions is cast shall to the best of his knowledge, information, and belief truly answer all questions on the subject mentioned that the collector shall ask.

Senator Millen

- That means any question.

Senator O'CONNOR

- Any question relating to the subject in hand. Then "produce documents" is defined in clause 4 to mean -

That the person on whom the obligation to produce documents is cast shall to the best of his power produce to the collector all documents relating to the subject-matter mentioned.

Senator Millen

- There is no limitation of the subject on which questions may be asked.

Senator O'CONNOR

- Of course not; but the Custom-house officer would confine his questions to the particular matter in hand. This is a very valuable power, enabling a Custom-house officer to put questions in an authoritative way to the only person from whom he is likely to get information. If a man is honest he has nothing to fear, but if he is dishonest, then there is no reason why he should not be called upon to answer these questions.

Senator Dobson

- According to the interpretation clause, the questions are limited to the "subject mentioned."

Clause agreed to.

Clause 231 -

If any penalty hereby provided shall be less than three times the value of any goods in respect of which the offence has been committed the maximum penalty shall be thrice the value of the goods.

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Senator PULSFORD

- I think we are entitled to a little explanation in regard to this very severe clause. We have certain clauses which say that, for some offences with regard to goods, a penalty of £100 may be inflicted. Supposing the goods to be worth £100, it appears to me that under this clause the maximum penalty would be raised to £300, and consequently the penalty of £100 provided at the foot of previous clauses relating to these matters would not be the maximum. The penalty is so heavy, and the clause seems to be so arbitrary, that I think we might well ask Senator O'Connor to throw some light on the point.

Senator Sir FREDERICK SARGOOD

- The honorable senator who has just spoken fortunately comes from a State where they practically have free-trade, and where they are free from the very powerful temptation at times incident to a very high Tariff. In the interests of honest traders this clause should stand. A penalty for an evasion of duty cannot be too high, not only in the interests of the Custom-house, but for the protection of the honest trader. only wish the clause was a little more stringent.

Senator Major GOULD

- This clause is not confined to cases in which there is an attempt to defraud the revenue. Under the Bill persons are made liable to punishment for offences which may have been unwittingly committed. An honest mistake may be made by a man or his employe, but under this provision the penalty provided for the particular offence might be largely increased. Therefore, this clause does not only apply to the cases to which Senator Sir Frederick Sargood seems to think it refers. I do not take exception to the maximum penalty. > I should hope, however, that the court, in dealing with these cases, would not go to the extent of inflicting the maximum penalty, although, under most favorable circumstances, the penalty would have to be large.

Senator MILLEN

(New South Wales).The point raised by

Senator Pulsford

is that all penalties previously passed and approved by this committee are really not the penalties at all, inasmuch as a special penalty is provided for in this clause. The penalty of £100 attached to previous clauses only relates to cases where the goods do not exceed the value of £33, and when I approved of that penalty I thought it was the maximum. Once the goods go beyond that value, however, the offence comes under this clause, which provides that the penalties previously imposed shall be pushed on one side, and that a penalty not less than three times the value of the goods shall be inflicted. The next clause goes on to still further increase the maximum.

Senator O'CONNOR

- The reason for the insertion of the clause in this form is this : It may be that a large quantity of goods are involved in the commission of some offence under the Act. The penalty may be £50, but the advantage gained in regard to the goods themselves may amount to some hundreds of pounds. If the only punishment were forfeiture of , the goods, it would be worth a man's while to run the risk.

Senator Millen

- Why not provide a higher penalty in each case 1

Senator O'CONNOR

- Because it is impossible to say beforehand what advantage a man may gain by violating one of these

clauses. Of course, the forfeiture of the goods is provided for, but it is necessary in addition to provide a penalty. There can be no difficulty in ascertaining in each case what is the penalty under these various clauses. The man who attempts to evade the Customs law in regard to certain goods knows perfectly well that, if the penalty specially provided for is less than three times the value of the goods, there must be added to it the penalty fixed by this clause. There is no uncertainty about the matter.

Senator Millen

- What is the object of attaching specific penalties to the various clauses ?

Senator O'CONNOR

- So that the person who has to administer the law, or the person who commits an offence, may see on the face of the Act the penalty provided. In many cases this is necessary because the goods may be of small value. Senator Sir Frederick Sargood, who, perhaps, has had more experience in these matters than any of us, has pointed out that a clause of this sort does not press on the honest trader, but upon the dishonest one. The question can only arise after a man has been guilty of dishonesty. If he is guilty why should he not be punished? In Section 186 of the English Customs Consolidation Act there is a general provision dealing with a number of matters. ' Then the section goes on to provide that every person who - Shall be in any way knowingly concerned in any fraudulent evasion, or attempt at evasion, of any duties of Customs, or of the laws and restrictions of the Customs relating to the importation, unshipping, landing, and delivery of goods, or otherwise, contrary to the Customs Acts, shall for each such offence forfeit either treble the value of the goods, including the duty payable thereon, or £100, at the election of the Commissioners of Customs.

Senator Millen

- That is a very different thing. There, £100 is the maximum.

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Senator O'CONNOR

- No, it is not. In that case the maximum is treble the value of the ' goods. In the general smuggling section of the New South Wales Act it is provided that the offender "shall for each such offence forfeit either treble the value of the goods, or £100, at the election of the collector." Instead of leaving it to the election of the collector, we have provided a much more reasonable rule - that where the penalty provided is less than three times the value of the goods, then the maximum shall be thrice the value of the goods. We practically follow the laws of other places. It is necessary that we should impose such penalties in order to make it not worth while for a man to run the risk of smuggling.

Senator CLEMONS

- I was very much interested to hear the Vice-President of the Executive Council quote his authority. I am going to quote from exactly the same authority, and also a marginal note upon it dealing with the question of penalty. The words of the section are -

Shall for each such offence forfeit either treble the value of the goods, including the duty payable thereon, or £100, at the election of the Commissioners of Customs.

Senator O'Connor

has tried to induce the committee to believe that these words do not limit the penalty to £100. I quote now the marginal note to the clause in the book on the Customs laws prepared by Mr. P.

J. Hamel, a recognised authority, who deals with the penalty in these words-

Penalty, treble value, or not exceeding £100.

There is a very great difference indeed between the interpretation placed upon these words by Senator O'Connor, and that placed upon them by the author of this work.

Senator O'Connor

- That is only a marginal note.

Senator CLEMONS

- Yes, but it gives us the interpretation placed upon the section by the man who prepared the book. Under the English Act the penalty is limited to £1 00.

Senator MCGREGOR

- To my mind Senator Clemons is misinterpreting his authority, Hamel. In a case where a specified penalty is imposed, that undoubtedly will be £100, but where the penalty is three times the value of the

goods, it may amount to many thousands of pounds. There are many penalties imposed under the Bill which do not apply to goods at all, such as penalties imposed for not heaving a ship to, and so on ; and there may be no goods on such a ship to forfeit, nor does the Bill provide for the forfeiture of a vessel under the circumstances. This clause simply deals with cases where the guilt of smuggling has been clearly proved.

Senator MILLEN

(New South Wales).I can understand, if I do not admire, the ingenuity which induces those who, have spoken to entirely misconstrue the purport of my remarks. I have no objection to the penalty being as high as it can be made for evil-doers, and the objection I raise is against what I call the slovenly workmanship in the Bill we are asked to pass. In the English Act, after all the offences are enumerated, the penalty is provided as £100, or three times the value of the goods.

Senator McGregor

- At the option of the collector. The honorable senator should quote the whole.

Senator MILLEN

- I am only quoting those portions material to my argument. We first of all say that for certain specified offences the penalty shall be £100, and that is shown throughout the Bill in a score of places. If we follow the English Act we shall be all right, and we ought to strike out the words "Penalty £100," wherever they occur, simply leaving in clause 231 a general provision prescribing the penalty as £100, or three times the value of the goods.

Clause agreed to.

Clause 232-

Any person may at the same time be charged with an offence against this Act and with an intent to defraud the revenue, and if in addition to such offence he is convicted of such intent the maximum penalty shall be double that otherwise provided.

Senator Major GOULD

- It is a well-known rule of law in summary proceedings that no man shall be charged on one information with the commission of two offences. Under this clause, however, a man may be charged, first of all, with an offence against the Act, and then with an attempt to defraud the revenue, and a double penalty is provided. It is introducing a novel thing to provide that persons can be charged under this Bill in a way in which they cannot be charged under any other Act. It would be well to omit this clause, or to recast it so as to provide' that a person must be charged with an intent to defraud the revenue. The clause provides for a double charge. If a . man commits an act without intent to defraud, he is punished, while if he does it with intent to defraud, he is punished doubly.

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Senator O'CONNOR

- There is really no difficulty about the clause. If Senator Gould will look at clause 225 as an illustration, he will see that it is an offence to refuse or fail to answer questions or to produce documents. That is an offence which a man may commit through mere obstinacy or some motive other than an intent to defraud. But if a man commits this offence with intent to defraud the revenue, then it is provided that the offence of which he has been guilty involves two elements ; first of all the refusal, and then the refusal accompanied with intent to defraud. The court, therefore, will have to say whether a person guilty of the offence of refusing to answer a question is guilty with the aggravation of the intent to' defraud, and if that aggravation is found, the provision applies.

Senator Major Gould

- Will a man ever be find £100 for pure obstinacy ?

Senator O'CONNOR

- That is entirely beside the question. I am willing to admit a man may be fined anything from £5 to £100. If he is proved to be guilty of simply refusing out of obstinacy, he may be sufficiently punished by a penalty of £5 ; but if the Judge finds he refused with intention to defraud the revenue, 'then he is subject not to £100, but to double that penalty.

Senator Sir John Downer

- In the case of a man charged with murder, the offence may be reduced to one of manslaughter.

Senator Ewing

- And the difference in the punishment is regulated not by doubling penalties but by mitigating them.

Senator O'CONNOR

- That only happens in the particular illustration given by Senator Downer.

Senator Ewing

- No ; in every case.

Senator O'CONNOR

- The principle is exactly the same, and it is not at all uncommon to have two elements involved in one offence. There is no new principle here at all, and it is an exceedingly convenient thing to provide that the Judge may take into consideration whether there has been a breach of the law which does not affect the revenue, or whether there has been a breach accompanied with the aggravation of intent to defraud.

Senator CHARLESTON

- I understood there was a maximum penalty and a minimum penalty, and that should an offence be proved to have been committed innocently, the minimum would be imposed, while the maximum would be inflicted where intent to defraud was shown. Now we find that that is not so, but that practically three times the maximum penalty can be imposed

Senator O'Connor

- I do not think that any one but the honorable senator is of that opinion.

Senator Major GOULD

(New South Wales). -

Senator O'Connor

has to a great extent avoided the issue. According to his argument, a man who refuses or fails to answer questions or produce documents out of sheer obstinacy may be fined to the extent of £100. It is utterly absurd to imagine that any court would fine a man such an amount for an offence of that character.

Senator O'Connor

- I do not say that a court would.

Senator Major GOULD

- But it is in the power of the court to do so. A person ought to be charged with intent to defraud, and proceedings taken on that issue straight away in all summary proceedings. I admit that if it can be proved that a man has done a particular act with intent to defraud the revenue, he should be liable to a more severe penalty than another who has not sought to defraud, but let the charge be made in the first instance for the offence which the prosecution thinks it can maintain.

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Senator Sir JOHN DOWNER

- I do not see any difficulty about the clause. It has been provided in all recent legislation that, although a man is charged with a major offence, he may, nevertheless, be convicted of a minor offence with which he is not charged at all. This clause merely provides that a man may be charged with the two things at once. The Government propose to take the person accused entirely into their confidence, and say to him - " If we happen to prove that you did this thing innocently, through pigheadedness or for some other reason, your punishment will be so much ; but incidentally if we happen to prove that you were acting deliberately, with a fraudulent intention, you will be liable to the utmost penalty." Which of us would not rather know the whole extent to which he is charged, and rely on the general criminal law? I think this is an excess of consideration, and I am surprised at the moderation of the Government.

Clause agreed to.

Clause 234-

The minimum pecuniary penalty for any offence against this Act shall be one-twentieth of the maximum, which is prescribed in pounds.

Senator PULSFORD

- Several times when we have come to a provision for the infliction of a large penalty, I have drawn attention to the fact, and I now draw attention to the necessity of omitting this clause, with a view to giving the court the power to inflict a small minimum penalty where the offence is really of a, trivial or nominal character. I propose to vote against the clause.

Senator O'CONNOR

- This is really a very convenient way of fixing a minimum penalty all through the Bill. It is a constant

practice in Bills to fix a minimum penalty as well as a maximum. It is a good thing very often that there should be no power to go beyond the minimum, for the reason that the offence should be known to the public to carry with it a certain punishment, which, under no circumstances, can be abated. All through this Bill Customs offences are treated on a different basis from other offences. The object of that difference is to deal stringently with them, and, above all, to let persons know that no matter what circumstances they may bring before the court, the lowest penalty which may be inflicted on them is mentioned as well as the highest. It is really a question of whether we should adhere to the principle we have followed, and that is, to make it particularly Stringent against the dishonest trader.

Senator CLEMONS

- The clause fixes a minimum penalty,, and clause 248 is a necessary corollary to it -

No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the court.

Obviously what is intended by this clause is to take it out of the discretion of the court to decide what minimum penalty shall be imposed. There are very few instances indeed in which that discretion is taken away from the court. I am not certain that it is desirable to enact in this Bill a thing which we would not enact in other Bills. I do not know what sort of a court it is that it should not be intrusted with the discretion to impose a minimum penalty. Under the Act there may be committed -certain offences which do not deserve the penalty which is fixed in this clause as a minimum. I do not like the way in which the clause reflects on «the court. I do not think it is right to say to any court, that . under no circumstances shall it have the power to inflict a penalty less than the minimum. It is true the minimum is not much, but to many a poor person it would be regarded as a substantial penalty. In the case of an offence for which a penalty of £100 is attached, the minimum penalty under this clause will be £5, but it will be entirely out of the power of the court to let off a person who is almost innocent - who has committed a technical offence - with any penalty less than £5. It represents a severity which I do not think any one of us wants to see in force.

Senator PULSFORD

(New South Wales). - In clause 225 eight different offences are mentioned. The first two of them are serious ones. Where a person evades payment of duty or obtains a drawback which is not payable - where there is clear and absolute fraud - I do not think the penalty of £100, with the power of reducing it to £5, is misplaced. But where a person misleads an officer in any particular likely to affect the discharge of his duty, although it may be a very trifling matter the fine is to be £100. We can conceive circumstances where a minimum fine of £5 would be a great injustice. Again, take a case arising under paragraph (A) of clause 225. Some person might offer an article which in itself was only worth a shilling, and stated that he was selling the article cheap because it was a prohibited import or smuggled. Would £5 be a reasonable fine to inflict in that case

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I can see no valid reason why the clause should be retained.

Senator EWING

- I agree with Senator O'Connor that it is desirable that persons who do wrong should be punished, and punished severely, but very many times people commit technical offences without meaning any wrong intention. Take a case under paragraph (d) of clause 225. Supposing that I go to pass an entry, but I make a mistake, I have committed an offence; but, although I prove that I did not intend to commit a fraud, still the court has to fine me £5.

Senator Playford

- Such a case would never come before the court, it would be dealt with by the collector.

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Senator EWING

- The collector could not possibly know until he got into court whether it was done innocently or not. He would not be justified in taking the word of a man that he never meant to do the thing. He would lay an information, and the man would prove in the court that he did it innocently. I think £5 is a very serious penalty to inflict in such a case.

Senator PULSFORD

(New South Wales). - In reply to the interjection by

Senator Playford

I shall read an extract from a letter, which I received this day, from a well-known Sydney and Melbourne firm -

We must remember that Dr. Wollaston will be enforcing this new Bill, and this company's experience of him has been that he will press for fines whenever possible.

All the information I have about Dr. Wollaston is that he is very able and in every way fitted for his position.

Senator Sir Frederick Sargood

- And a very just man.

Senator PULSFORD

- No doubt he is a very just man, but the committee will perceive that various collectors will take varying views of the seriousness of a given offence, and it will be possible for one fine to be levied in one part of Australia and another fine in some other part. Because there is a danger of any officer taking a view so severe of these nominal offences it is our duty to step in and omit the clause.

Senator O'CONNOR

- Honorable senators are astonished at the rigour of this Bill, simply because they are not aware of the provision in the Customs Acts of the States. It has always been recognised that it is necessary to make a Customs Act exceedingly draconic, and in previous clauses we have recognised that necessity. Let me call attention to section 243 of the New Zealand Act which deals with many of these same matters ; that is to say, making a declaration untrue in any particular, or when required to answer questions put by the proper officer not truly answering them or using counterfeits or false documents.

Every person so offending shall, for every such offence, forfeit a penalty of £100.

That is very much more stringent than anything we propose to do, but there is a method of reducing the fine provided in section 260.

Where any person shall or may be convicted before any justice in any penalty for any offence under the Customs Acts, the said justice may, in cases where, from consideration of the circumstances, he shall deem it expedient so to do, and, for a first offence only mitigate the payment of the said penalty so as the sum to be paid by such person be not less than one-fourth part of the amount of the penalty in which such person has been convicted.

In New Zealand, no matter what the mitigating circumstances are in the case of any of these offences, the minimum fine is not £5 as it is here, but £25.

Senator Sir Frederick Sargood

- What is it in New South Wales?

Senator O'CONNOR

- In New South Wales I do not think there is a minimum. The Tasmanian Act in the same way provides for the mitigation of penalties. Section 276 reads -

Where any person shall be convicted before any justices as aforesaid in any penalty incurred as aforesaid, and except as is hereinbefore provided, the said justices may, in cases where upon consideration of the circumstances they deem it expedient so to do, and, for a first offence only, mitigate the amount of the said penalty so as the sum to be paid by such person be not less than one-fourth part of the penalty in which such person is convicted.

In the same way under the sections they have fixed amounts with no minimums. These are two illustrations. In Queensland the system is to insert in a great many of the sections the maximum and the minimum penalty. For instance, with regard to the driving of carts, waggons, or conveyances against the law, it is provided by section 180 of the Queensland Customs Regulation Act 1873 that-

All persons driving or conducting such cart, waggon, or other conveyance refusing to stop or allow any such examination when required in the Queen's name, shall forfeit a sum of not less than £5 nor more than £20.

Similarly, in section 192 of the Queensland Act, where a number of offences are provided for, it is enacted that the oilender--

Shall forfeit for every such offence a sum not exceeding £100 nor less than £10.

In section 227 of the Victorian Customs Act 1890, it is provided that -

Every person who shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or in any

other way injure or conceal any boat, buoy, rope, or mark in the charge of or used by any person for the prevention of smuggling, or in or for the use or service of the Customs, shall, for every such offence, forfeit the sum of £20.

Senator Pulsford

- That is moderate.

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Senator O'CONNOR

- It is not a question of whether the penalty is moderate or not, but a question as to whether we should have a minimum as well as a maximum penalty. In section 253 of the Victorian Customs Act 1890, there is power for the justices to mitigate the fine in certain cases to not less than one-fourth of the amount of the penalty. I have thus quoted the provisions of four out of the six State Acts, and I think it is quite evident that in all these cases it has been considered necessary to fix a minimum as well as a maximum.

Senator Sir JOHN DOWNER

- Have not all the Customs Acts of the States a maximum and a minimum penalty 1

Senator O'CONNOR

- In the four Acts I have quoted a maximum and a minimum penalty is provided, and in other cases there is power given to justices to reduce the penalty in most instances to one-fourth the amount fixed. It comes precisely to the same thing whether we fix the minimum by saying that the penalty shall not be less than £10, or whether we say that the justices shall have power to reduce the amount of the fine below a certain fixed sum. It has been found by experience in all these States that particularly stringent provisions are necessary for the prevention of frauds against the Customs. These Acts may be administered by men, who, although very honest, and anxious to do their best to administer it properly, may not be very well educated or have a very good knowledge of the Act they are dealing with, or they may be disposed to look upon an evasion of the Customs as a trivial offence. It is to prevent offences from being treated in this way that it is necessary to fix a minimum as well as a maximum penalty. There may be cases in which even the minimum penalty would be too much. I would appeal to Senator Major Gould as an ex-Minister of Justice, to say whether it is not a common experience to have scores of cases in which the minimum penalty is inflicted, but which is far too heavy in the circumstances. In such cases the power of the Crown to mitigate penalties is brought into operation, and the fine may be remitted or reduced. I would therefore ask the honorable and learned senator who has suggested the amendment of this clause whether, in view of the explanation I have given, it would not be a dangerous thing for the Senate to depart from the rule that is laid down in all these Acts 1 It is necessary to insure that offences against the Customs law shall not be treated as trivial ones, and that those who administer these laws shall be compelled to inflict substantial punishment.

Senator CLEMONS

(Tasmania). - I can scarcely agree with

Senator O'Connor

in his remarks with reference to the persons who may be called upon to administer Acts of this kind. I do not sympathize with him when he casts a slur upon any magistrate who may be called upon to administer these clauses. Whether he feels the very greatest doubt as to the competence of these magistrates or whether he does not, I would point out that the Bill empowers these magistrates to vary a penalty from £100 to onetwentieth of that amount.

Senator O'Connor

- I cast no slur upon the magistrates. I spoke very carefully about them.

Senator CLEMONS

- That was the impression the honorable and learned senator's remarks conveyed.

Senator O'Connor

- No one knows better than I do how well' they discharge their duties.

Senator CLEMONS

- Senator O'Connor

has intimated that these clauses might be badly administered by certain justices. Although he may feel some doubt about their fitness to properly exercise their jurisdiction with regard to this Bill, he is at one

and the same time placing in their power the right to reduce the penalty from £100 to- £51 His argument on that ground, therefore, seems to be utterly inconsistent, but I welcome other parts of his argument. He -has indicated that it may be possible for this minimum penalty of £5 to be dispensed with on application to the Minister for Justice. If he admits that, then he admits part of what I contend for, namely, . that there may be cases in which the penalty is too severe.

Senator Drake

- But Senator O'Connor does not admit that. He only says there may be occasional cases in which even the minimum penalty would be too high.

Senator CLEMONS

- I am competent to draw my own inference from the remarks. I object to this clause, on the ground that it takes away from the courts that discretion with which they ought to be intrusted. I also object to it, because I see that practical hardship may result. In view of the fact . that the Bill gives these very courts full power to impose a penalty ranging from, £100 to one-twentieth of that amount, I do not see how Senator O'Connor can logically object to imposing in this clause a minimum penalty of £2. If he grants my request, he will mitigate many cases of possible hardship.

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Senator Major Gould

- Supposing the maximum penalty is £20, then the minimum penalty would only be £1.

Senator CLEMONS

- I would suggest that the clause be amended, so as to provide that the minimum shall be onetwentieth of the maximum which is prescribed in pounds, and in no case more than £2.

Senator Major GOULD

- I could see no difficulty in voting for the proposal to make the minimum onetwentieth, if I were satisfied that it would be applied only to cases where there is some intent on the part of a person charged with the offence. ' But we have had pointed out to us that a man may be fined for an offence unintentionally committed by him, or by some one in his employ.

Senator O'Connor

- We must leave the courts to discriminate in such cases.

Senator Major GOULD

- But we are limiting the discretion of the courts. In a clause which was under discussion a few minutes ago, we provided that if a person refuses to answer questions he shall be liable to a penalty of £100. The questions may be a mere bagatelle, but the man is summoned, and cannot be fined less than £5. Is that reasonable? I know that there is power to petition the Crown for a remission of the penalty, but a Minister is called upon to discharge no more troublesome duty than that of determining the course which the Crown should be recommended to pursue when the department is inundated with requests for remissions of penalties or sentences. Under the Weights and Measures Act cases are constantly cropping up in which applications are made for the remission of fines. The papers have to be remitted to the magistrates, who have in turn to report on them ; inquiries have to be made, and the whole machinery of the Crown has to be brought into play in a matter which could have been better dealt with by the magistrates themselves, at first, with the information fresh in their minds, if there had been no fixed minimum penalty. To a large extent the Minister, in dealing with these applications, is guided by the magistrates in exercising his discretion, if he has any confidence in them, and yet we would not allow the justices to exercise their discretion when the case is before them. I think it is unwise to have high minimums in cases of this character. Where a man has had no intention to defraud, and an offence has been committed almost unwittingly, we propose to make him liable to a fine of not less than £5, and if he wants- to get that reduced he has to petition the Crown, and invoke the aid of the Minister of the day, and the aid of half-a-dozen different officials, in determining that the fine shall be reduced.

Senator Lt Col Neild

- And probably he would not get the refund for three months.

Senator Major GOULD

- Yes. He might be put in gaol in the meantime, for non-payment of the penalty, and practically atone the offence by imprisonment before the matter could be dealt with. I would, therefore, ask the Minister to make the maximum £2 in the case of a penalty of £100 or £50; and in all other cases make it

one-twentieth of the maximum. I would rather see no minimum at all fixed, for I think we should leave the matter entirely to the discretion of the magistrates. If a minimum is fixed it should be fixed on such terms as will render it unnecessary for an appeal to be made to the Crown.

Senator Sir JOHN DOWNER

- I understand and sympathize to a large extent with the views expressed by honorable senators who have spoken on this subject. I would ask them to recollect, however, that this law is not to be considered in the character of a criminal enactment. There are certain things which we understand, as offences, as mala in se ; offences which we all regard as such ; but there are other classes of offences under the Customs laws which the public do not regard so much as offences against the community. Particularly stringent laws are required in such cases, to promote a greater sense of understanding on the part of the people in regard to the duties they owe to the State. Under these circumstances we provide penalties for offences which some of my honorable friends choose to call innocent ones.

Senator Clemons

- Technical offences.

Senator Sir JOHN DOWNER

- Offences committed without intention.

Senator Clemons

- For which the honorable and learned senator would impose the minimum penalty.

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Senator Sir JOHN DOWNER

- Yes. And we have intentional offences for which my honorable and learned friend and myself would impose the maximum. We are all law-makers. We cannot do things thoroughly, but we have to do them as well as we can. In a great number of instances in which the intention cannot be proved, the intention exists. In 99 cases out of a hundred a man who gets off with the minimum fine because he did not understand that he was evading the Customs is practically guilty, but the guilt cannot be brought home to him.

Senator Lt Col Neild

.- Then he ought not to be punished.

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Senator Sir JOHN DOWNER

- The only way in which we can secure the proper administration of laws dealing with offences which are not offences against the laws of nature, but against the conventional institutions which are necessary for our well-being, is to make them stringent in this way. We have to say to a man - "Never mind whether you meant to do it or not. It was your business to be aware of this Customs law, and if you did not know of it, you have to be punished, while if you did know of it and understood it you have to be punished very much more." Then it is said - "How shameful it is not to allow a minimum penalty. Some poor innocent fellow may have smuggled goods innocently." I say let the offender thank Heaven the authorities were not able to prove a criminal intent on his part, because as a general rule the persons who commit these offences know all about it. I appeal to the common humanity of every smuggler in this community, when I say that the only way to make our Customs law efficient is to do exactly what the Government are proposing to do, as a result of the world-wide experience of hundreds and thousands of men. We should not leave the penalty to the whim, humour, or mercy of a particular magistrate. We should rather say - "If you do this thing my dear sir, however innocently, you have got at all events to pay this penalty." If a man chooses to commit these offences let him pay, and let him also be thankful that the authorities have not been able to prove the intent which undoubtedly existed.

Senator PULSFORD

(New South Wales). - I am uninfluenced by anything that

Senator O'Connor

has said, or by any of his quotations from the Acts of the other States. The Commonwealth at present is engaged in evolving a Customs law for itself, and I submit that, instead of adopting conditions and penalties which are more or less obsolete, and which are already in process of being discarded or reduced by other communities, we should arrange our system of penalties on a basis that we can at least justify to our own conscience, and which is consonant with the principles of fair play and justice.

Senator Downer

in his recent speech spoke about a man innocently smuggling goods, as though we referred to an offence like that, or anything approaching it. The offence of smuggling must of necessity be dealt with in a severe manner. Clause 69 provides that goods may be unshipped only pursuant to a collector's permit or the passing of an entry, under a penalty of £100. Under that clause, if any person has received by steamer some small shipment of goods, worth, perhaps, only £2 or £3, and he omits to pass an entry, and the goods are put on shore, he incurs a penalty of £100, which cannot, under the clause as it stands, be reduced to less than £5. This is a small offence of omission, and yet the heavy minimum penalty of £5 is to be inflicted. With a view to bringing this matter to a conclusion, and doing what I think to be fair all round, I move -

That the word " twentieth " be omitted, with a view to insert the word " fiftieth."

Question - That the words proposed to be omitted stand part of the clause - put.

The committee divided -

Ayes 15

Noes 12

Majority 3

Question so resolved in the affirmative.

Amendment negatived.

Clause agreed to.

Clause 236-

Customs prosecutions may be instituted in the name of the Minister by action, information, or other appropriate proceeding in -

Any County Court, district court, local court, or court of summary jurisdiction.

Senator CLEMONS

- In Tasmania, and it may be in many other States, there is no jurisdiction to the extent of £500, except in the Supreme Court. At any rate, so far as Tasmania is concerned, this clause will be quite inoperative.

Senator DOBSON

- The clause is not quite so inoperative as Senator Clemons thinks, because the custom has been to conduct smuggling prosecutions at the police court. Many such cases have been tried at the Hobart Police Court, and I can recollect instances in which the prosecution has involved the forfeiture of goods, and penalties amounting to several hundreds of pounds. The police court in Tasmania or in any other State can hear those prosecutions, which in nineteen cases out of twenty are conducted before two justices having summary jurisdiction. I was rather astonished to see by the clause that so many superior courts are given power to deal with this matter. It seems an anomaly that while a court of summary jurisdiction has civil jurisdiction only to a small amount, a smuggling case, involving not only hundreds of pounds, but the character of a man, may be tried before it. But it has always been the practice in Tasmania to try such cases before these courts, and perhaps it would not be well to take that jurisdiction away now. When an important case is on, the stipendiary magistrate makes a point of being there, and I know instances in which he has inflicted a penalty of £100, and has sometimes ordered the goods to be forfeited.

Senator O'CONNOR

- If Senator Clemons looks more closely into the matter, he will see that there is no difficulty. By the clause, it is left open to the collector to institute proceedings either in the High Court of Australia or in the Supreme Court of any State, or he may, if the prosecution is for a penalty not exceeding £500, institute it in any County Court, district court, local court, or court of summary jurisdiction. This clause gives the latter courts jurisdiction to hear these cases. The laws we make are binding on these courts, as they are on every person in Australia, within the limits of our right to make laws. If we give jurisdiction to a County Court to try Customs cases up to £500, what is there to prevent us ?

Senator Clemons

- Is the explanation that this clause gives any of these courts jurisdiction ?

Senator O'CONNOR

- Certainly. If under the local laws a local court has a limited jurisdiction, this clause increases that jurisdiction.

Senator Lt Col NEILD

- The explanation of Senator O'Connor does not make matters any better, because the statement he has made admits the plainest interference with State rights. The State Legislatures have appointed courts with certain limited powers of jurisdiction, and now we are told "that the Commonwealth is going to override the State authorities, and extend the jurisdiction of those magisterial tribunals. I shall not vote for such a proposition, because it is not desirable that the Commonwealth should seek to take to itself an authority which is absolutely at variance with the intentions of the State Governments.

Senator Dobson

- It is no infringement, of State rights.

Senator Lt Col NEILD

.- I contend it is an interference with State rights. The State Governments may be willing to appoint magistrates with jurisdiction up to a certain amount, but when we come to wholesale transactions of this kind, we have to look at the class of men who are . magistrates

Senator Dobson

- The Constitution gives us the right to confer federal jurisdiction on any of the State courts.

Senator Lt Col NEILD

.- That may be ; but it is too wide a power to leave to gentlemen who have never before been called on to exercise an authority of the kind, and would not be called on to exercise it under any other Act.

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Senator KEATING

- I should quite appreciate the force of Senator Lt.-Col. Neild's argument if the clause aimed at depriving the courts of any jurisdiction they already possess. But when the clause aims at conferring on State courts a jurisdiction which they have not hitherto exercised, and which some' tribunal must exercise in the future, for the due administration of this measure, I can. hardly understand his referring to the- provision as an interference with State rights. I cannot appreciate Senator Clemons' objection that the clause will be inoperative as it stands. . In addition to the High Court of Australia, or the Supreme Court of any State, it is provided that a prosecution may be instituted in any County Court, district court, local court, or court of summary jurisdiction. It is correct that the local courts of Tasmania have now no jurisdiction in the settlement of matters up to £500 ; but in that State there are courts, besides the Supreme Court, which have jurisdiction up to £5,000 if necessary, and they are the ordinary courts of petty sessions, before which prosecutions under the Tasmanian Customs Act are always instituted, and the jurisdiction of which is not limited so far as the amount is concerned. The Customs Act of Tasmania provides for certain penalties, and be those penalties large or small, the prosecution may be instituted before two justices. The proceedings do not take altogether the character of civil proceedings, but that of ordinary proceedings under the Summary Procedure Act. But if the State of Tasmania had no local courts with jurisdiction up to £500, that would be no reason why the Senate should hesitate in regard to a court in any other State, which has the necessary jurisdiction.

Senator Clemons

- I quite agree.

Senator KEATING

- Then I cannot appreciate the force of Senator Clemons' objection.

Senator Clemons

- There is no uniformity in the States.

Senator KEATING

- Can the uniformity come from this Chamber? The want of uniformity is not due to the federal authorities.

Senator Clemons

- This clause creates want of uniformity.

Senator KEATING

- It does not; but, although there may be want of uniformity, the clause aims at using particular courts for the proper administration of the measure. Whether Senator O'Connor's opinion is or is not correct, that the clause will confer on existing courts a jurisdiction, so far as this matter is concerned, larger than the jurisdiction they hold under the statutes which created them, we have still the fact that in Tasmania there are at least two tribunals which can, under existing conditions, entertain cases of this kind.

Senator Major GOULD

- I am inclined to accept the opinion expressed by Senator O'Connor as to the powers which are proposed to be conferred. In a matter of this kind we may very fairly leave with the Government the responsibility for the power to be conferred on different courts. It would be a matter of considerable convenience to the general public if, as far as possible, the local courts were utilized for the purpose of prosecutions under this or any other Act. It would be very unreasonable that a man should be taken to the High Court in every case. In that court the expense of defending his position would be very much greater than it would be in a court of petty sessions. Where the penalty for the offence is not high, it is very reasonable that it should be sought to be recovered in a court of summary jurisdiction which is close at hand and can be very readily invited. Whether £500 or a less sum should be the amount is a moot question, which may very well be discussed. I find in the Bill that where the penalty is more than £100 a person has the right to demand that his case shall be tried before a higher court if it suits his purpose and his convenience. I think that the clause, as it stands, might very well be agreed to.

Clause agreed to.

Clause 240 -

Customs prosecutions may be instituted at any time within five years after the cause thereof.

Senator Major GOULD

- The limitation to five years is rather longer than we might reasonably expect to find in a Bill of this kind. In the Imperial Act the time for beginning a prosecution is limited to three years. If the Customs authorities have a case in which they intend to prosecute they should proceed within as reasonable a time as possible. Of course, there may be circumstances under which it cannot be done immediately, but I think three years will be a quite sufficient period within which to institute a Customs prosecution. I suggest to the Minister that it is reasonable to reduce the time to three years.

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Senator O'CONNOR

- I do not feel disposed to accept an amendment. In a prosecution for an ordinary indictable offence there is no limit; you can bring the proceeding at any time. If you are suing a man in a civil case you can bring the proceeding within six years. This clause imposes a limitation of five years. In ordinary circumstances the prosecution will be brought as soon as possible. In very exceptional cases, such as where the fraud is not discovered, or something else takes place which prevents a prosecution being initiated, five years, I think, is a reasonable limitation.

Clause agreed to.

Clause 245-

In every Customs prosecution the defendant shall be competent to give evidence.

In every Customs prosecution except for an indictable offence or for an offence directly punishable by imprisonment the defendant shall be compellable to give evidence, and if called as a witness for the prosecution shall be liable to cross-examination as a witness adverse to the prosecution

Senator Major GOULD

- The clause raises a very important question with regard to the administration of our law. It is entirely in opposition to the ordinary rule, and to the principle laid down this afternoon by Senator O'Connor. Usually, when a man is charged with the commission of an offence, he is not compelled to give evidence. In recent years the law with regard to indictable offences was altered in favour of the subject by allowing the accused, if he saw fit, to tender himself as a witness and to give evidence. But in certain cases comments were made where the prisoners did not take advantage of the provision, and therefore the law has now been settled that if a prisoner chooses not to give evidence on his own behalf, no comment shall be made on that fact, nor shall any inference be drawn by the Judge. In Customs prosecutions I do not object to a defendant being competent to give evidence, but I do not think he ought to be compellable, nor do I think that if compellable he should be liable to cross-examination, in the first instance, as a witness adverse to the prosecution. If clause 246, which says that the averment of the prosecution shall be deemed to be proved in the absence of proof to the contrary is passed, and a man is charged with the commission of an offence against the Act, he is presumed to be guilty until evidence is tendered to show that it has not been committed. If the matter were within the knowledge of only the defendant he would be compelled in his own interest to go into the witness-box, and being there he would be liable to

cross-examination. But to say that a man, whether he wishes to do so or not, shall be compelled to enter the witness box and to convict himself, is contrary to all the principles of the law of evidence in criminal cases. In many cases the defendant, might, although innocent of the charge,, make some statement, or behave in such a way in the witness-box as really to cause a prejudice against him in the mind of the court. It is all very well for some honorable senators to ask, if a man is guilty of an offence, why should he not be punished. In the old days they went on the principle that a man must be guilty if he was charged with the commission of an offence, but our practice is not to consider a man guilty until the offence is proved. That ought to be the principle in Customs prosecutions. Supposing that a man has committed a serious offence against the law. It is proposed to drag him into the witness box, and to compel him either to convict himself or to commit the offence of perjury.

Senator Dobson

- The clause excepts grave offences from its operation.

Senator Major GOULD

- Supposing that a man is convicted of an offence to which a pecuniary penalty is attached, if he does not see fit to pay, or if he is unable to pay, he* can be detained in custody pending payment, or he may be committed to gaol for a specific period. Although a man may have gone to gaol for a specified time, it does not purge the liability for the payment of the- penalty if it can be recovered at a later date. Again, consider the class of cases to which a pecuniary penalty is attached. In one clause we" have provided that where a man is liable for an act he has committed in contravention of the law, and is also guilty of an attempt to defraud the revenue, he is liable, not to imprisonment straight away, but to a double penalty. In this clause we are going back on a principle which should guide us in all matters of criminal jurisprudence.

Senator Dobson

- In all cases of smuggling the defendant would not be compellable to give evidence.

Senator Major GOULD

- We are going behind the ordinary principles of our criminal jurisprudence. If a man is brought up in the police court for stealing halfacrown's worth of property, you cannot put him in the witness-box and compel him to give evidence.

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Senator Dobson

- Certainly not, and this clause would not enable any one to put him in the witness-box".

Senator Major GOULD

- Although an offence of that character is punishable by a fine in certain cases, still, you can not put the individual in the witness-box and compel him to give evidence. Where the offence is of a more serious and grave nature it is undesirable, in the interests of the public generally, that we should adopt this provision, because it would offer a direct incentive to a man to commit the crime of perjury. A great many men would not think twice about committing perjury in order to save' themselves from a penalty such as is provided for in this Bill. It is contrary to the interests of the community to legislate in such a way as will unnecessarily induce persons to commit crime. If we enact that an accused man is competent to' give evidence, and he enters the witness box, he is liable to cross-examination, he will put himself in that position deliberately ; but if he is charged with the commission of an offence, and has no evidence in rebuttal, under the next clause he will be liable to conviction for an offence of a character indicated by the clause under which he is compellable to give evidence.

Senator Sir Frederick Sargood

- What does cross-examination mean ?

Senator Major GOULD

- It means that a man can be examined in all sorts of ways as to his character and his previous life. He can be asked questions which have nothing to do with the prosecution in order to test his credibility, and every man who knows what cross-examination at the hands of skilful counsel is knows not only how vigorous, but -how cruel it is at times. Unfortunately we know there are certain counsel who, if there is the slightest stain on a witness's character, will drag it out before the world so as to intimidate, him from giving evidence which might be truthful. A person might give evidence which is not exactly true in order to please such counsel. We do not want any such provision in our customs law. We should not say that if there is a stain against the character of a man brought up for an offence it is to be dragged out, although

it may be in respect of an act committed many years ago.

Senator Keating

- Some of the States have statute laws protecting witnesses against such practices.

Senator Major GOULD

- All the States have not thought they should have such a law. This provision means that the prosecution need not confine attention to the offence with which a person is charged, but may roam all over his career for the last 30 or 40 years. Is that a reasonable thing? How many men are there on whose characters a blot could not be found and dragged out under such a provision as this? This provision is unnecessary for the interests of the prosecution. All that the prosecution is concerned with is the getting of a conviction for an offence against the Act. Clause 246 provides that -

In every Customs prosecution the averment of the prosecutor or plaintiff contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary.

With such a provision as that, what necessity is there for putting the defendant in the box? Do not let us make a defendant not only competent but compellable to give evidence, and in that way possibly obtain a conviction against a man which ought not to be secured. Many a man would readily plead guilty to a charge of this character, when he is possibly innocent, rather than go into the box and have some of his past dragged out.

Senator KEATING

- The defendant would not be compelled to answer a question which would incriminate himself.

Senator Major GOULD

- But he may be asked questions to test his credibility, and matters may be dragged up which occurred twenty years before. That is not a fair thing. If it is desirable to adopt such a drastic course in regard to a small offence, why not adopt the same drastic course in order to obtain a conviction for an indictable offence? We are making the Bill an instrument of oppression instead of an instrument to insure the conviction of a guilty man. The amendment I would suggest is that after the word "competent" we should insert the words "but not compellable." Then the second sub-section should be eliminated altogether. Of course, if a man is sworn on his own behalf he has to put up with the consequences which attach to any witness before a court.

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Senator DOBSON

- I was very much surprised to hear Senator Sir Josiah Symon remark during the debate on the second reading of this Bill, that he would object to this clause in committee, and I am equally surprised that Senator Gould should have taken so much trouble to try and persuade us that this clause is

In every Customs prosecution, except for an indictable offence, or for an offence directly punishable by imprisonment, the defendant shall be compellable to give evidence.

I would point out that sub-clause (2) excepts, all grave offences, such as smuggling, and every offence which is punishable directly by imprisonment; therefore, in all these offences the defendant is not compellable to give evidence. There are, however, certain minor matters which are very trifling, compared with the crime of smuggling, which come under this provision. A man goes to the Custom-house and tenders his declaration, giving the particulars of the goods and their value, and upon that declaration or evidence, a contract is entered into. The Customhouse officer says - "Take your goods and pay the duty for which you appear to be liable on your own declaration." Subsequently the declaration appears to be false, or there is an irregularity in it, which is not an indictable offence. Then some proceeding has to be taken, and in all such cases the clause says that the defendant shall not only be competent but compellable to give evidence. If there is one reason more than another why he should be compelled to give evidence, it is the fact that he started the whole proceeding by putting in his entry.

Senator Major Gould

- The honorable and learned senator is taking only one individual case.

Senator DOBSON

- Quite so, but I am suggesting that most of these trivial offences will all centre round the fact that the man, though he was not trying to evade duty, or endeavouring to pay less duty than the law compelled him to pay, and, as in most cases, the proceedings will have been started by the declaration of the importer, it appears to me that on that declaration the prosecution ought to be able to ask him about his

books and his invoices, and to cross-examine him as a hostile witness in regard to all his dealings with the different houses from whom he imports. If we do not allow that to take place, we put the Customs department at an absolute disadvantage in dealing with every man who tries by illegal acts to defraud the revenue. All these attempts to defraud the Customs are managed in a skilful way. The intending smuggler has to make arrangements of an illegal character before he ventures on a smuggling transaction, and it is more necessary to put every power in the hands of the authorities under the Customs Act than in connexion with any other Act. We have every right to put this power into the hands of the men who have to collect £8,500,000 through the Customs for the Common wealth. There are two essential points- one is the protection of the revenue, and the other the protection of the honest trader against the illegal trader.

Senator Keating

- Are there not similar powers in the Income Tax Acts 1

Senator DOBSON

- I am obliged to the honorable and learned senator for his interjection. A man sends in a certain statement showing what his income is. The Income Tax Commissioner, not being content with the declaration, institutes proceedings. In such a case some honorable senators would say that the commissioner should not be allowed to cross-examine the taxpayer on his own statement, which forms the very basis of the calculation of what he has to pay.

Senator Major Gould

- We do not say that.

Senator DOBSON

- That is the "logical outcome of the honorable and learned senator's argument.

Senator Lt Col NEILD

- It is the illogical outcome of it.

Senator DOBSON

- Supposing we have a statement in which there is no attempt to defraud whatever. Supposing an entry is wrong, but unintentionally wrong ; in such a case the first thing a defendant would want to do, if he were an honest man, would be to go into the box and explain the matter ; but if he were a dishonest man, that would be the last thing he would think of doing.

Senator Major Gould

- And we have a provision here to catch him.

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Senator DOBSON

- The honorable and learned senator has given the whole case away. I have been putting the case of the honest and the dishonest man, and Senator Gould now says that this clause . will

Customs

[SENATE.] catch the latter. That is all I am contending for.

Senator O'CONNOR

- The honorable and learned senator who raised this question seems to have forgotten that even the world of legal procedure has moved on during the last ten or fifteen years. It is quite true that a few years ago in no circumstances could a defendant in a criminal charge be compellable to give evidence. First of all he was not competent to give evidence ; but for many years in all cases of summary jurisdiction the defendant has not only been competent, but compellable, to give evidence.

Senator Stewart

- A very bad rule, too. His evidence is always looked upon with suspicion.

Senator O'CONNOR

- The ' honorable senator may think so, but I believe I- shall be able to satisfy him that it is a very good rule for an innocent man, but a bad one for a guilty man. It was really because of the difficulties under which innocent persons often found themselves placed by having their mouths closed that the old rule was departed from.

Senator Major Gould

- Will Senator O'Connor tell me of any legislation of recent years with regard to the competency of witnesses which I have not noted ?

Senator O'CONNOR

- I should like to draw the honorable and learned senator's attention to one section of the New South Wales Customs Act, which seems to me very much in point, and which I do not think he could have noticed. Senator Gould has spoken of this clause as if it were a particularly novel and cruel one, whereas the main portion of it is an exact counterpart of a section in the New South Wales Act. In section 92 of the New South Wales Customs Regulations Act of 1879 it is provided that -

If in any prosecution in respect of any goods seized for non-payment of duties, or any other cause of forfeiture, or for the recovering any penalty under this or any other Act relating to the Customs, any dispute shall arise whether the duties of customs have been paid in respect of such goods or the same have been lawfully imported or unshipped, or lawfully shipped or waterborne, to be shipped, or concerning the place from whence such goods were brought, then and in every such case the proof thereof shall be on the defendant in such prosecution, and the defendant shall be competent and compellable to give evidence.

Senator Major Gould

- In certain specified cases. 12z

Senator O'CONNOR

- The cases referred to here practically cover all the cases to which this clause will have any active application. The clause we are dealing with now has no application in the first place to indictable offences. We say that wherever a man may be tried before a jury and convicted under this Act, this has no application.

Senator Clemons

- Is smuggling an indictable offence ?

Senator O'CONNOR

- In certain circumstances, no. Senator Dobson no doubt referred to a class of cases generally called smuggling, which undoubtedly would be indictable offences. I have nothing to do with them. What I am pointing out is that the clause does not apply to any indictable offence, or to an offence for which a man may be imprisoned. The honorable and learned senator "says it is hard that it should apply in cases where, although the punishment of imprisonment, is not directly provided for, imprisonment may be inflicted as a remedy for recovering fines. If this is to be the limit to which, the honorable senator will confine it, then there are many cases where a witness is both competent and compellable, under summary jurisdiction, where a fine is recoverable by imprisonment in this way. The clause provides, as is provided in the New South Wales Act to which I have referred, that defendant shall be competent and compellable to give evidence. I would like to repeat here what was said by Senator Keating, that that does not mean that a man is bound to incriminate himself. He is compellable only to answer - all lawful questions, and it is one of the first principles of the law of evidence that no man shall be compelled to incriminate himself. He is not bound to admit that he has been guilty of an indictable offence, or that he has done anything which may result in the forfeiture of his goods, the payment of a penalty, or forfeiture of any kind whatever. So that all that this provides is that if a man is asked a direct question, "Did you take these goods out under certain conditions" ? he may decline to answer it, because the answer might subject him to a prosecution or a penalty.

Senator Stewart

- What would the Judge think if he declined to answer a question of that kind ?

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Senator O'CONNOR

- Probably the Judge would think he did not answer the question because he could not do so without incriminating himself, and if he claims the protection of the court he must do so distinctly on the ground that he refuses to answer the question because the answer might incriminate him. If he claims privilege upon that ground, what else is a Judge or jury hearing the case to think but that he would incriminate himself if he gave the answer ? If such a difficulty arises, and he does not want to incriminate himself, it is quite right to protect him; but, on the other hand, why should he not be asked the question ? Why should not the Customs authorities be put into the position of being able to examine the only man who can throw light upon the matter ? If the light thrown upon it is such as to clear him, he has the benefit of the proceedings, but if it shows that justice can be done only by convicting him, then he will be convicted. There is no principle of law or justice violated by this clause. On the contrary, under it, in 99

cases out of 100, an innocent person charged would be able to explain Ms position, and in the hundredth case a man, if guilty, would have his guilt proved out of his own mouth. What better way is there of proving it 1

Senator Dobson

- As Senator Gould said, It would catch him.

Senator Major Gould

- No ; I said that clause 246 would catch him if he gave no evidence in rebuttal.

Senator O'CONNOR

- All we want here is to see fail- play in connexion with these prosecutions, and to catch the right man. Another provision of the clause to which Senator Gould referred is that, if called as a witness for ' the prosecution, the defendant shall be liable to cross-examination as a witness adverse to the prosecution. If a person is called as a witness under the ordinary rules of -evidence, :and if he declines to answer certain questions, or answers .them evasively, he cannot be pressed or asked questions- outside the relative matters being dealt with, in order -to (find out why he will not answer the questions. He cannot be cross-examined or asked the same questions as he could be if he were an adverse witness. All that this clause provides is 'that under these circumstances a person who is called in his own defence, .although put into the box by the prosecution, may be cross-examined in the same way as df he went into the box on ibis own behalf.

Senator Clemons

- Is there any precedent for it?

Senator O'CONNOR

- I should think there are a great many precedents for it in different proceedings. If we want bo find out what the .facts are in an inquiry we. must have this liberty. I would remind the honorable and learned senator that in all cases of proceedings in bankruptcy, where .a bankrupt is put dato' the box to be examined to .get information out of him, he may be cross-examined and compelled to produce books and documents, and all his dealings may be probed in 'every way. This clause is for the purpose of putting the defendant in -the same position as a person examined in bankruptcy, and that is why this power is asked for.

Senator Major Gould

- In bankruptcy the power is given that we may be able to follow property.

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Senator O'CONNOR

- Eer the same reason we may want to follow property here. For the -same reason we may want to find out the entries made in different books ; we may want to trace a fraud which depends upon some ingenious working of accounts, and the only way in which that can be found out is by following aap the documents one after the other and cross-examining the defendant about the entries. Senator Gould endeavoured to raise a certain amount of sympathy for Ms view by detailing the horrors of cross-examination. We all know that the right of cross-examination is abused, but only if the presiding .Judge allows it to be abused. There is always a control over the power of cross-examination which will keep it within the Emits necessary -for the purpose of eliciting the truth, and without being unnecessarily severe, cruel, or unjust upon the person being examined. It may be that the only way of eliciting the truth from a man who wants to keep it back, is by asking him questions which may appear harsh and even cruel upon bini. I deprecate the attempt of the honorable and learned senator to lead the committee away from what they have to consider here to .a general consideration of the abuses of .cross-examination. I think the statements I have made with regard -to the existing law and the necessity for this provision ought to convince the committee that all we ;are doing here is enacting a provision which cannot bear hardly in any way upon a 'person who is 'innocent, but will enable a conviction to be brought home to "a person who is .guilty, and then .only . in such cases as will not render him liable to imprisonment. Considering the limitations of the clause, I submit that it does not .go one whit too far in order to prevent fraud.

Senator CLEMONS

- I listened with some interest ,to Senator Dobsons remarks, and I feel it necessary to criticise some of .the statements he made. One of the -first points the honorable and learned senator attempted to .make

was that the clause is to .operate only in. cases where the offences are not indictable offences, or offences directly punishable by imprisonment. Instead of that being a recommendation of the clause, it should be taken as a distinct reason for striking it out. What it means is that we are going to apply these very severe remedies, not in cases where the alleged offence is a very serious one, but in cases which .are trivial, which are not indictable, and do not involve imprisonment. I wish also to correct Senator Dobson as to smuggling being an indictable offence punishable by imprisonment. The honorable and learned senator will .find, on reference to clause 224 of -this Bill, that smuggling is an offence punishable by a penalty of £100, without any reference to imprisonment. I have suggested that there is no precedent for this, and I should like to point out to' the committee what the law under the English Consolidated Customs Act is in regard to this very question. It deals simply with smuggling, and in regard to cases of smuggling, or cases of alleged smuggling, it says that -

Where any such proceedings are had on the revenue side in the exchequer division -of the High Court of Justice, the defendant shall be competent and compellable to give evidence.

That is the only instance under the English Act in which the defendant is made both competent and compellable, and there is no provision there for what is regarded .as a most objectionable feature of this clause - that the witness for the prosecution shall be liable to cross-examination .as a witness adverse to the prosecution. Senator O'Connor was on the point of being interesting to me when he started an historical narrative .of this. question .of evidence, and (the possibility of -making a .witness .both competent and compellable. I would like to inform the committee that .at common law, to use almost Blackstone's own words, a man's fault shall not be wrung out of 12 z 2 himself, but shall be discovered by other means, and from .other men. He goes on to tell us that the first occasion on which, "into England .there .were brought the .principles of the Inquisition " - that is the way in which Blackstone stigmatized this making of a witness competent and compellable- " was when Mary married Philip," and 'he goes &on to say that Mary was said to have been a humane and generous person until she married "that gloomy fanatic Philip of Spain " ; and further, 'that even then magistrates generally warned a witness that he need not commit himself. So far .as I am .able to ascertain, it remains for the year 1.901,;and the Commonwealth of Australia, to initiate the conditions attempted to be brought about by this clause, under which a man is made not only competent .and compellable to give evidence, not in a serious, but in a trivial case, but .may also be subjected to the other indignities which may follow upon his being treated as .a witness adverse to the .prosecution. Many senators object to the whole of subclause (2), .and I am certain that more senators still must .object to the latter part of it. I am prepared to support the amendment of Senator Major Gould to eliminate the whole of the sub-clause, and if that amendment fails I shall .move that all the words from " and " down to " prosecution " be omitted. There is no warrant for compelling a defendant to give evidence and subject himself to cross-examination as an adverse witness. To do so is to practically ascertain a man's innocence by his effrontery or his capacity for lying, and his guilt by his .nervous sensibility.

Senator Major GOULD

- A great deal of what has been said in reply to .my objection is beside the point. In the .quotations. from the Customs Act of New South Wales, there is not one word to the effect that a man shall be liable to cross-examine an adverse witness. Although a man may .be compellable to give evidence in certain instances, those instances .are clearly specified ; but in the clause they are not specified at .all, and under the Bill there are prosecutions for a greater number .of offences than in the New South Wales Act.

Senator Drake

- They are limited to a class.

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Senator Major GOULD

- But there is not such ,a -wide .door as is proposed here. Senator O'Connor reminds me that the law has 'moved within the last 50 years, but in no instance did he point out where I had omitted to notice the change. The law, in certain circumstances, has made a man competent to give evidence who was not previously competent ; but I did not quote from the New South Wales Customs Act, because it was not necessary for the sake of my contention. Senator O'Connor stated there were a large number .of summary prosecutions in which the law provided that a defendant was competent and compellable to give evidence, but he did not show where that had happened. He admitted that the law which admits of the

cross-examination of an adverse witness is abused, but he said that the Judge may put a stop to it if he thinks unnecessary pain is being caused to the witness. Frequently exception is taken to the line of cross-examination adopted, but on counsel urging that it is to test the credibility of the witness, the Judge does not interfere. If that takes place where Judges are concerned, how much more likely is it to take place in prosecutions before magistrates, when there is an able and skilful lawyer appearing on behalf of the prosecution ? It is not so much desirable to do anything to get a conviction as to make sure we are not doing the community an injury by inducing persons to commit the offence of perjury, which otherwise they would not commit. . The Bill is framed so as to secure convictions. It is provided that no conviction shall be quashed in consequence of any defect or informality in the summons or information ; that witnesses for the prosecution shall not be compelled to discover where they got information, or the name of a person who gave it ; that the averment of the prosecution is sufficient in the event of the defendant not giving any evidence in rebuttal; and there is a further provision that an informer shall get a certain portion of the penalty if he secure a conviction. In addition to all this, power is sought to put the defendant in the box. Senator O'Connor told us that if a witness is asked whether he committed the offence, and he takes advantage of the law and declines to incriminate himself, the jury will naturally conclude that he is a criminal. The law has ample means of securing a conviction against a guilty person, but many a man would sooner confess to a charge of which he was guiltless than go into the box and answer a large number of questions which might do him a great deal of injury. Many an innocent man, against whom no charge of this character could be made, would be confused under severe cross-examination, and might easily lay himself open to the suspicions equivocation ; and it is treating honest men unfairly and unjustly to put them in such a position. There are certain cases of smuggling which can be dealt with summarily, but if it be necessary to obtain from a man's own mouth evidence as to his guilt in a small offence, how much more necessary will it be to adopt that course in order to convict a man of a major offence ?

Senator EWING

(Western Australia). This is a very important clause, which deserves the serious consideration of the Senate. What has brought about the present state of the law on this point in England and in the States ? The whole tendency of the age has been to cast the onus of proving an offence on the person making the charge. The clause is the thin end of the wedge ; and the day will come, if we authorize this sort of thing in connexion with Customs prosecutions, when it will be extended to other classes of prosecutions, and a man will be put in the dock, and compelled to prove his innocence. One of the privileges which has been extracted by representative government for the people has been that no man shall be detained in prison or held to be guilty until he has been proved so. The clause is simply harking back to the dark ages before Magna Charta, when a man could be put in prison without any charge being proved against him. The Crown is given the advantage, the Moment, it lays an information, of putting the defendant in the dock as a criminal, and he is assumed to be guilty. In no Bill or Act in British speaking countries has such a thing been heard of since the days when we demanded for every citizen the right of fair trial. It is unjust that, merely because an official of the Customs lays an information, a man shall be held guilty, and the onus cast on him of proving his innocence. It may be urged that a man can easily prove his innocence ; but we know that juries very often disbelieve a witness on account of his attitude in the witness-box, and if a man apparently equivocates they jump to the conclusion that he is saying what is not true. The reason that a man charged with an offence is not subject to cross-examination is that he may not be open to misrepresentation. A man charged with a serious offence knows that his liberty depends on his answer, and the consequence is that in nine cases out of ten he is in a very nervous and excited condition. He very often says that which is not strictly true, and that is why Judges exclude confessions made by persons under certain circumstances. The law up to quite lately was that no man charged with an offence could give evidence in his own defence, it being recognised that a man charged would generally endeavour, even to the extent of perjury, to protect himself against the consequences of his crime. The law was extended so as to allow a person to give evidence on his own behalf, but it was enacted that he should not be compellable to give evidence, and, further, that if he did not choose to go into the box the jury were not justified in making any inference from that fact.

Senator Stewart

- But juries do make an inference.

Senator EWING

- Unfortunately, juries very often do ; and, even if this clause is not inserted, they can draw an inference. A man is, competent to give evidence under the Bill, and Senator Gould seeks to say that he shall not be compellable. He does not attempt to put in another principle of criminal law that no inference shall be drawn from the fact that the man does not give evidence. We are going quite far enough when we go as far as Senator Gould allows the clause to go. I did not hear the speech of Senator O'Connor, but it has evidently been urged that these are only trivial offences, that a man is not to be visited with imprisonment as a consequence of the verdict. If we turn over the pages of the Bill we find that, although a man is prosecuted only for a pecuniary penalty in the first instance, yet, if he is too poor to pay the fine, he has to go to gaol for a term up to twelve months. The rich man or wealthy merchant will never be sent to gaol, because he can always pay the money, but what about the poor man who is fined £100? Where is the distinction between incidentally sending a man to gaol and sending him to gaol directly? This clause should be omitted, because it goes far beyond any provision we have seen in legislation for many years. It is flying directly against those principles which say that you shall not extort evidence from a man ; that you shall not compel him by reason of the consequence of his refusal to give evidence. There was a day when a man had thumb screws applied to him because he would not speak and give the evidence which the Crown wanted. But what more effective thumb screw can you have than to threaten him with a year or two years' imprisonment if he does not give evidence ? This is harking back to the dark ages. It is the thin end of the wedge which will compel persons to prove their innocence instead of compelling the Crown when it charges a person to prove his guilt.

Senator Lt Col NEILD

- I was rather surprised to hear the painfully elaborate defence of Senator O'Connor on this question of cross examination. I undertake to say that as an acting Judge of the Supreme Court he has never pulled up any counsel who was cross examining, and he has never been pulled up himself. That may be due either to his extra care, or to the fact, which is well known, that although Judges are supposed to stop cross-examination if it goes too far, such a case cannot be cited.

Senator Keating

- I have seen it done 50 times.

Senator Lt Col NEILD

.- The power is never used, because the counsel always harks back to the plea of proving credibility.

Senator O'Connor

- I have heard counsel pulled up by Judges hundreds of times.

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Senator Lt Col NEILD

- And counsel went on a little worse from being pulled up, tired out the Judge, and got in all the nasty things he wanted to say. Under clause 189 if the driver of a vehicle does not pull up when a Customs officer hails him, under the impression or suspicion that he is conveying dutiable goods, he is liable to a penalty of £20. Again, under clause 251, a man is liable to one month in gaol if he does not pay a penalty of £20. Imagine an unfortunate drayman who is instructed to catch a steamer, or to reach a warehouse or a store by a certain hour, being hailed to stop by some person who is not in uniform. If he does not stop quickly enough, or does not stop at all, he is liable to a penalty of £20 or a month in gaol, and he may be cross examined into convicting himself. Under British law a man is innocent until he is proved guilty, but under this clause a man is not only to be deemed guilty when arrested or charged, but every effort, rightly or wrongly; is to be made to convict him, even out of his own mouth. I repudiate such a proposal as that contained in this clause. It is an outrage on every known rule of British law and British right. It is a bare-faced attempt to set back the clock of British justice and to bring in a system of convicting by extorting confession at any hazard, and in defiance of every known safeguard which has hitherto hedged in the administration of British justice. I am astonished that the Ministry of all the talents, and representing all the high constitutionalisms of Australia, should bring forward a proposition of this kind to secure convictions at any price.

Senator Dobson

- It is New Zealand law. They like the poor man down there.

Senator Lt Col NEILD

- I do not care a brass farthing if it is New Zealand law. That does not make it Commonwealth law, and it is not going to be Commonwealth law if my vote can stop it. The Bill teems with provisions for conviction at any price. The informer is to get half the penalty, but I wish he could get half the imprisonment as well as half the money.

Senator Major GOULD

(New South Wales). - I think it will afford a better opportunity to the committee to test this question, if I move -

That sub-clause (2) be omitted:

Senator CHARLESTON

(South Australia). I look upon such a clause as this with considerable alarm. In South Australia the tendency has been to extend this principle to other measures, and whenever we fought against the extension we were always referred to the Customs Act as a precedent to guide us. In the interests of liberty, and, in the interests of justice, we ought not, in starting the Commonwealth, to establish a precedent which will rob the citizen of his liberty.

Senator PEARCE

- I also think that the clause goes further than we might fairly be asked to go to enable the Customs authorities to press home their prosecutions I am surprised that my free-trade friends do not. require that all legislation dealing with Customs taxation) is necessarily brutal ; it is, in fact; taxation extorted with a pistol held at the head of the taxpayer; and I think it would perhaps be advisable to allow such clauses as this one to stand. Then Customs taxation would become so objectionable that the people would demand direct attention. However, I presume they are not prepared to carry their free-trade principles to that extent yet. But I think' that the Government might very well be satisfied with the power which is given in clause 246, where the averment is taken to prove the case unless the defendant can bring evidence in rebuttal. I do not see my way clear to support the Government. It would be going back to the dark ages to compel a man to go into the witness box and give evidence which might lead to his own conviction, and at the same time to treat him as a witness adverse to the prosecution. If the clause is not eliminated, the words which treat a witness as a witness adverse to the prosecution should be eliminated.

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Senator Sir FREDERICK SARGOOD

- All through this Bill I have supported the Ministry on clauses that were certainly of a drastic character, because I felt that it was absolutely necessary that very large and exceptional powers should be intrusted to the Customs authorities. But in this matter I must draw the line. It is perfectly right that the defendant, if he wishes, should have the option to give evidence. In nine cases out of ten an innocent, honest defendant - for there are many such in disputes with the Customhouse - would willingly accept such a privilege. Although I am aware that there are some who might, after getting into the witness-box, very much regret that they went there, from nervousness or other causes. But sub-clause (2), which compels a man to go into the box as a witness and to be treated as an adverse witness, goes far beyond what is necessary in the interests of the State, and certainly is adverse to the leading principle in our law that a man shall not be treated as guilty until he is proved to be so: There is a great deal of difference between allowing a man to go into the box if he chooses to do so; and compelling him. to give evidence. I believe this is practically new legislation, although Senator Dobson says that there is a similar provision in the New Zealand Act. Probably I know more of the effect of legislation in that country than the honorable and' learned senator does. This provision is neither necessary in the interests of the country nor of the Customs department. There is ample power already in the Bill to insure punishment in all cases of fraud. I would give the Government the largest powers permissible; but I consider that this sub-clause' is not necessary.

Senator O'CONNOR

- I can quite see that there may be objections to the last two lines of sub-clause (2), although personally I do not think they are worthy of the serious attention that has been given to them. If the words - and if called as a witness for the prosecution shall be liable to cross-examination as a witness adverse to the prosecution - be struck out, the clause would then be similar to a provision in the New South Wales and New Zealand Acts.

Senator Charleston

- We were told that the clause corresponds with a provision in the New Zealand statute.

Senator O'CONNOR

- The provision in the New Zealand statute is the same, in so far as it makes the defendant not only competent, but compellable to give evidence. I am quite willing to move the elimination of these words if Senator Gould will withdraw his amendment to enable me to do so.

Senator Major GOULD

(New South Wales). - I am not prepared to withdraw my amendment. I think we had better test the whole matter.

Senator O'Connor

- It is unusual for such a course to be taken ; but still it is quite open to Senator Gould to adopt it.

Senator Major GOULD

- My objection goes altogether to the proposal to compel a man to give evidence, and also to a man being cross-examined in the way proposed. I object altogether to sub-clause (2).

Senator O'CONNOR

- Then it is quite open for the honorable and learned senator, if my amendment is carried; to vote against the whole clause. If he does not consent to withdraw his amendment in favour of that which I was about to propose-

Senator Sir Frederick Sargood

- Could a defendant be cross-examined under the clause as Senator O'Connor proposes to amend it?

Senator O'CONNOR

- If the Customs authorities called him as a witness he could not be cross-examined by them unless he proved; in the opinion of the Judge, to be a hostile witness:

Senator Pearce

- And if he refused to answer questions, could he be cross-examined as to his reason for refusing ?

Senator O'CONNOR;- No; unless in the opinion of the Judge he was a hostile witness. If a man gives evidence on his own behalf, then of course he may be cross examined. But if he is compelled to give evidence, then he cannot be cross-examined by the party calling him unless he shows by his conduct in the box that he is a hostile witness. It seems to me that my proposed amendment would remove any possible objection to the clause. If Senator Major Gould does not consent to withdraw his amendment so that I may put mine before the committee, I will ask those honorable senators who are willing to support my view of the matter to vote for the subclause on the understanding that I will ask to have the clause recommitted with a view of striking out the word's I have referred to:

Senator WALKER

. - I have listened with much interest to this long discussion, and I propose only saying a word or two. The very word " compellable" goes against my sense of fair play, and I shall therefore be- forced to support the amendment. With regard to Senator O'Connor's last proposal I am not very well up in parliamentary tactics, but I am not sure that we should not support his amendment, and then negative the clause.

Senator EWING

(Western Australia). - I should like to say a word or two in reply to

Senator O'Connor.

Supposing the Crown calls a man who is charged with some offence, and put a question to him which, if answered, would prove his guilt. If he refuses to answer that question he becomes hostile, and the moment that he becomes a hostile witness the Judge will order- him to be cross-examined'.

Senator O'Connor

- That is not so.

Senator EWING

- A hostile witness means a witness who will not answer a question.

Senator Pearce

- He need not necessarily answer every question.

Senator EWING

- A witness who is called for a party is bound to give all the evidence he can. in order to assist that party to obtain a verdict. If a defendant is called by the Crown and refuses to give an. answer to a question which will bring about a conviction, he fails to help the party that calls him to win the case, and

immediately becomes a hostile witness.

Senator Sir John Downer

- That' is not the correct definition-.

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Senator EWING

- A hostile witness is a man who refuses to assist the party who calls him.

Senator Sir John Downer

- A hostile witness is a man who attempts to avoid answering questions.

Senator Dobson

- The question Senator Ewing names ought not to be put to the defendant.

Senator EWING

- I contend that when a defendant is called by the Crown and refuses to help to prove his own guilt, he then becomes a hostile witness, and the Judge orders him to be cross-examined.

Senator DRAKE

- I can hardly understand why Senator Major Gould will not allow the amendment suggested by Senator O'Connor to take precedence.

The CHAIRMAN

- If the honorable and learned senator will allow me, I will show exactly how I propose to avoid the difficulty. As I understand, Senator Gould proposes to eliminate sub-clause (2). The way that the question would be put is "that the words proposed to be omitted stand part of the question." If that motion is affirmed, then all the words in sub-clause (2) stand, and no alteration can take place, except by recommittal. I think that as Senator O'Connor has indicated his intention of moving an amendment-

Senator Clemons

- Which amendment I gave notice of.

The CHAIRMAN

- That may be. Senator 'O'Connor has indicated his intention of moving an amendment later on in this particular clause, and my clear duty is to enable him to do so, by so° testing the amendment proposed by Senator Gould, as not to exclude the subsequent one. The question is referred to hy May in this way - Whenever several amendments are about to be moved to the same clause, the Chairman proposes each of them in such a form as not to exclude any later amendments ; and with this view he often proposes only the first words of an earlier amendment.

My proposal is that Senator Gould's amendment shall read down to the word " evidence." In that way, practically the whole question will be tested. I propose that Senator Gould's amendment shall be for the omission of the words -

In every Customs prosecution except for an indictable offence, or for an offence directly punishable by imprisonment the defendant shall be compellable to give evidence.

If those words stand, then it will be competent for the Vice-President of the Executive Council to move the exclusion of the words he has referred to. If they are struck out, then of course the balance must go.

Senator Major GOULD

(New South Wales). - I am perfectly willing that such a course should, be adopted. I had no desire to act discourteously to

Senator O'Connor

in refusing to withdraw my amendment. I thought that he himself had suggested a way out of the difficulty in stating that he would have the clause re-committed. I recognise that the course proposed by you

Mr. Chairman,

is the correct parliamentary practice.

Senator O'CONNOR

- I am quite satisfied with the way out of the difficulty suggested by the Chairman, and it seems to me a very happy one. I ask those who approve of the clause, as I propose to amend it, to vote against Senator Gould's amendment. If the clause is carried up to the point proposed, I will strike out the other words to which I have referred.

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Senator STEWART

- I intend to vote for the amendment moved by Senator Gould, because the principle sought to be embodied in the clause as it stands is a most vicious one. I at one time thought with the Vice-President of the Executive Council that this was an innovation which might probably assist an innocent person to prove that he was so; but when it was put into actual practice I found that, instead of operating in favour of the accused individual, it acted most injuriously against his interest. What is the position in which an accused person is placed by a law of this kind ? If he gives evidence on his own behalf, the Judge is very careful to point out that the accused is an interested person, and his evidence must therefore be looked upon with suspicion. He discounts in a very great measure any evidence an accused person may give on his own behalf. If, on the other hand, the accused ' refuses to go into the box, the Judge is very careful to point out the fact to the jury, and leaves them to draw their own inference. It has been said that an innocent person can have nothing to lose by telling the truth, but I know of instances in which an innocent person has .been placed in a most peculiar position, and his mouth has been shut performance. A case came under my own observation where a person accused was innocent, but he knew perfectly well that a couple of witnesses were prepared to give such evidence as would convict him. Under those circumstances he refused to answer questions put to him, for the reason that if he did give evidence in direct opposition to the' evidence given by the witnesses called for the prosecution, in addition to being convicted of the offence with which he was charged he would be liable to conviction also upon a charge of perjury, and an additional term of imprisonment for that offence. It appears to me that this Customs legislation overturns all the principles of justice as we know them. No man should be haled before a Court of Justice unless there is a prima facie case against him, but we place the Customs authorities in such a position that they may bring any man before a court., and throw upon him the onus of proving his innocence, while they are not called upon to prove his guilt at all. I do not think that ought to be done even in Customs Acts. One honorable senator has said that all taxation through the Customs is levied with a pistol at the payer's head, but I am not prepared to abrogate Magna Charta even for the Customs! I am not prepared to barter away the liberty of the subject, and the privileges that have been won for him after centuries of struggle, even for the sake of levying taxation. If the Customs authorities bring a case against a man they should be able to prove it, and the burden should not be laid upon a person accused by the Customs of proving his innocence.

Question - That the words " in every Customs prosecution, except for an indictable or for an offence directly punishable by imprisonment, the defendant shall be compelled to give evidence," proposed to be omitted, stand part of the clause - put.

The committee divided -

Ayes 11

Noes 4. ... 12

Majority 1

Question so resolved in the negative.

Amendment agreed to.

Amendment (by Senator Major Gould) , agreed to -

That the words "and if called as a witness for the prosecution shall be liable to cross-examination as a witness adverse to the prosecution " be omitted.

Clause, as amended, agreed to.

Clause 246 (Averment or prosecution sufficient).

Senator Major GOULD

- I think that some notice might be taken of this clause, which provides that -

In every Customs prosecution the averment of the prosecutor or plaintiff contained in the information declaration or claim shall be deemed to be proved in the absence of proof to the contrary.

This is a dangerous innovation, and might very well be omitted altogether, so that the ordinary course of procedure may take place in connexion with a Customs prosecution, and the prosecution shall be under the necessity of proving their case sufficiently to justify the court in granting a conviction.

Question - That the clause be agreed to -put.

The committee divided -

Ayes 13

Noes 11

Majority 2

Question so resolved in the affirmative.

Clause agreed to.

Clause 252 (Imprisonment not to release penalty).

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Senator Major GOULD

- In the event of a convicted person not paying a penalty of over £200, he is liable to go to gaol for one year, but according to the clause he is not, by this imprisonment, released from his liability for the penalty. If, at any future time, he should obtain means, it is competent for the Crown to" recover the penalty by levy and distress, and there is the further provision that where the pecuniary penalty is unpaid, the collector- may levy the same-by the- sale of goods belonging to the offender which may thereafter be subject to the control of the Customs. The ordinary law- is that a man who goes to gaol in lieu of paying a money penalty, is deemed to have purged his offence ; but under this clause a man may not only suffer imprisonment, but may have to pay the penalty as well. If a man cannot or will not pay the penalty, it is only fair and reasonable that his going to gaol should be sufficient to release him.

Senator McGregor

- That would be a nice way of getting out of a penalty, which might amount to £10,000.

Senator Major GOULD

- I was speaking of the penalty of £200. The probability is that a man who is ordered to pay a penalty to the extent of £10,000' will either have means of paying, or can procure means, and will sooner pay than go to gaol for a year. The committee might consider the propriety of accepting an amendment, or of omitting the clause altogether.

Senator O'CONNOR

- There is nothing new in the clause, which I hope will be accepted by the committee. When a Customs offence has been committed, punishable by a money penalty, and that penalty is not paid, the imprisonment is a remedy for recovering the money. Every opportunity is given- under "the previous clause for escaping imprisonment by paying. At one time a man could not be released without paying the whole of the penalty, but under clause 25.1 there is a sliding scale by which, on being imprisoned for a certain period, a person may be released on paying a given proportion of the fine. The defendant may be discharged at the end of seven days, where the penalty is under £2, or where it is over £2 and not more than £5, he may be discharged at the end of fourteen days, whether the penalty be paid or- not,, and so the scale goes on to a period of one year, according to the amount of the penalty. If a person is released without paying the penalty, the Customs ought not to- suffer because, instead' of. paying the money,, he has chosen to " take' it ' out," as- it is commonly called. A man by smuggling may gain £300- or £400] and; on being mulct in* a penalty of £100, may think it would suit, him much better to -stay in gaol rather than pay; and' if there were not this clause,, he could at the- end of the term of' imprisonment snap his fingers at the Customs

Senator Sir John Downer

- And in, the meantime- he has to be- maintained' at the. public cost..

Senator- O'CONNOR.

- There is a distinction between imprisonment as- punishment and imprisonment for" the purpose of recovering money ; . and it would be quite a new principle of law if the latter imprisonment were to- wipe' out the debt. In1 cases where pecuniary penalty is inflicted for libel or other offences, punishable in that way, the offender must: remain in gaol for the term prescribed, but his remaining there does- not discharge the debt unless he becomes insolvent, which he can do after a- certain period. The clause is- simply to insure-that the Customs authorities are put in the position of recovering money due. It will have- no- operation against an honest trader, and there is no re on, why a dishonest man should not compensate the Customs- for wrong done.

Senator O'KEEFE

-*- -I hope the committee will allow the cla-use- to stand. It has been quite- touching to hear the sympathy expressed by some honorable' senators on behalf of those who try to defraud the revenue.

Senator Major Gould

- We want justice.

Senator O'KEEFE

- If we allow the clause to remain as it is, we will, give justice not only to persons charged, but to the taxpayers of the Commonwealth. Senator Gould has tried to obtain our sympathies for a person who might not be able to pay the penalty on account of poverty, and who, after having served his term of imprisonment, would still be liable. But there might be inflicted a heavy penalty of thousands of pounds, and if there were not a clause of this kind, the offender, rather than pay that sum, might elect to go to prison. This is a matter of revenue which affects the whole of the taxpayers, and surely we should not make it more difficult than at present to collect that revenue, of which the Commonwealth will require a large amount. It is the duty of senators, whilst showing so much sympathy for those who try to defraud the revenue, to also show some sympathy for honest traders and the people who have to pay taxation.

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Senator CHARLESTON

. - All the afternoon well: we been striving to defend a man against whom a charge I made has not been proved. In the present instance; however, - we are all dealing with a person who has been proved guilty, and: I shall not do anything to shield him in any way. If by any means an offender has themoney to pay to the Commonwealth that which is the Commonwealth's due, he ought to be made to pay it at any time when it is available.

Senator Lt Col NEILD

- I move -

That, after the word 'penalty,' the words 'for smuggling' be inserted.

While it may be right to recover a money penalty as well as to imprison for the offence of smuggling, I contend that other breaches of the Bill, such as failing to supply satisfactory bedding, food, and drink to Customs officers, and neglecting, like the draymen to whom I referred; to stop when called upon, imprisonment should suffice to purge the offence. The amendment will, I think, cover all Senator O'Connor desires; it certainly covers all he said in his speech.

Senator O'CONNOR

- I cannot accept the amendment, which I think is irrelevant to what we are dealing with

Senator Lt Col NEILD

- If a man is convicted of smuggling, the revenue ought not to be injured, but for those paltry breaches of the law, if a man is too poor to pay, his going to goal ought to purge his offence.

Australia

Senator EWING

. - I think this amendment should commend itself to Senator O'Keefe and Senator Charleston, because; after all, its object is to protect the revenue. If a person has made a wrong entry or committed a mistake he is fined, and if he does not pay the fine - say £2 - he is imprisoned for seven days. Surely, in a case of that kind, the imprisonment should purge the offence. I agree with Senator O'Keefe that if a man has been robbing the community, the imprisonment should not wipe out the offence, and the country should get the revenue it was defrauded of, notwithstanding the infliction of the punishment. There are two offences in smuggling, but in any other case there is only the offence against the law. Every offence against the law is purged by the service of a term of imprisonment. If a man, for a breach of the law, is fined £2, with an alternative of seven days' imprisonment, and he serves the term, he cannot be made to pay the fine. I think that the principle ought to be the same in a smuggling case as well as in other cases. Like Senator O'Keefe, Senator Lt.-Col. Neild wants to protect the revenue, but in addition, to fining a man; we do not want to imprison him for an ordinary offence where there is no robbery of the revenue.

Senator Major GOULD

- Honorable senators are under a misapprehension in fancying that I want to shield a bad offender against the law - a man who may have smuggled some goods and possessed himself of large sums in consequence of his wrongful act. I directed attention to the clause because I think that small offences might very well be met by the imprisonment of the offender if he was unable to pay the penalty, and not to have him liable to have the penalty taken out of him at any time and under any circumstances.

Holding these views, I support the amendment of Senator Neild for the punishment of a man who has wittingly defrauded the revenue perhaps of a considerable sum. I would assure Senator O'Connor that my only desire is to meet the case of trivial offences which do not merit severe punishment, and which probably would be committed by persons who could not pay the penalty. "

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Senator O'CONNOR

- Over and over again it has been explained that we cannot legislate for all these cases to which Senator Gould has alluded.. We must lay down a general rule, and then trust to the proper administration of the Customs Act. If there was any case in which, for a trivial amount,, a man had served his term and not paid the fine, it is not likely that the payment of the money would be insisted upon. But I really cannot understand this amendment. I can quite understand, as a general rule, that wherever imprisonment, is suffered it ought to purge the offence.. But I cannot understand that here, because what we require to do is to protect the revenue and insure- that the Government shall recover the fine. I cannot understand the limitation of the clause to smuggling.. What would be the position of things if we did? ' According to the interpretation clause -

Smuggling means any importation or introduction or attempted importation or introduction of goods with intent to defraud the revenue.

But there is a number of cases just as serious - for instance, cases connected with ad valorem duties. If a man is found in possession of false invoices - of invoices which obviously have been prepared with a view to defraud the revenue - why should he be allowed, when perhaps he has made a large amount by this sort of practice, to escape payment simply because he has spent a certain time in gaol? If a man produces an invoice which is not genuine, why should he be allowed to escape? The man who smuggles, or attempts to smuggle, a few boxes of cigars is to come under the clause, but the merchant who may make a very much larger amount by presenting a false invoice is to escape. The sailor who may be found with contraband goods about him is to suffer, and not to have the protection which the honorable senator wishes to extend to the merchant; but the importer who presents an invoice which is not genuine, or makes a false entry with intent to defraud the Customs, or commits any other offence of that sort, is not to come under the clause. Is it not quite obvious either that the clause is right or that it is wrong? The amendment is quite irrelevant; it has nothing to do with the principle, and I think honorable senators will see that there is no ground on which we can distinguish between smuggling and the other offences of a serious nature which are to be dealt with under the Act. Of course, with regard to these trivial matters, which are always used as an illustration, the answer is, in the first place, in 99 cases out of 100 there will be no prosecution over these small things; and, in the second place, if there is, it is not likely that they will be pressed in any way for the recovery of the few shillings or the pound or so which may be involved.

Senator Lt Col NEILD

- After hearing the speech of Senator O'Connor, I ask leave to extend the wording of my amendment by adding the words "or for attempting to defraud the revenue." That will cover the objection which he makes. It will cover attempts at fraud of any kind. It will leave the offences which are not attempts to defraud the revenue to come under the penalty of imprisonment or fine only, while all attempts at smuggling or defrauding the revenue will come under both headings if need be.

Amendment amended accordingly.

Postmaster-General

Senator DRAKE

. - Senator Neild seems to have left a very difficult question open now, and that is to define exactly what offences are offences of defrauding the revenue. The whole object of the Customs Bill is to insure the proper collection of the duties imposed, and to prevent people in every way from defrauding the revenue. You can hardly find in the Bill any offence which is not directly or indirectly connected with an attempt to defraud the revenue. The whole object of its penal provisions is to protect the revenue and to prevent it being defrauded.

Senator Major Gould

- There are many offences not in fraud of the revenue, which are punishable.

Senator Lt Col Neild

- There are offences here which would be to the advantage of the revenue.

Senator DRAKE

- I hardly think that. Although I maintain that a vast majority of the offences in the Bill must be offences having in view or having as a result a defrauding of the revenue, still even if there are any offences which can be said to be outside that category, it would be an impossible task for anyone to define exactly ' whether an offence is an offence of defrauding the revenue. Supposing that there are no offences except offences to defraud the revenue, then it is unnecessary to insert these words. But if there are any offences which can be described as offences which have not for their object to defraud the revenue, this amendment if inserted will make it necessary for somebody to decide whether a particular offence is an offence of defrauding the revenue. If Senator Neild will think over the matter for a moment, he will see that it will be an impossible task for any one to decide whether an offence, which is on the border line, comes within the definition of an offence to defraud the revenue.

Senator Lt.-Col.

NEILD (New South Wales). - I would direct the attention of the Postmaster - General to clause 49. Surely he will not say that the importation of books or works which infringe some copyright, and the attempt to pay duty on them is a reduction of revenue. I would ask him if it would defraud the revenue to pay duty on blasphemous and indecent works ?

Senator Drake

- You cannot pay duty on them.

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Senator Lt Col NEILD

- I am meeting the Minister's own objection. He said that in the Bill there are no. offences which are not offences of defrauding the revenue. ' If some person pays or seeks to pay duty on blasphemous works, that would not be defrauding the revenue.

Senator Drake

- He cannot pay. There is no such offence as attempting to pay duty on prohibited goods.

Senator Lt Col NEILD

- The Minister need not split hairs in that way, because, although he may be technically right, he knows that the offence is not defrauding the revenue, but attempting to import a long list of prohibited articles. The offences in that category would come under my amendment, and would not be attempts to defraud the revenue. The goods could not be landed without payment of duty. Take the case of exhausted tea. Surely any one who imported tea and it happened to be exhausted - whether it was exhausted or not he would have to pay . the duty - would not be attempting to defraud the revenue. The offence would be the bringing in some prohibited or deleterious article. Would Senator Drake say that the non-supply of a particular brand of whisky to the Customs officer by the master of a ship, provided for in clause 181, is an offence ? Surely the offence of the captain who does not provide suitable sleeping accommodation for the Customs officer in the cabin of a ship, when there does not happen to be a cabin, is not defrauding the revenue ? It may be defrauding the officer of a comfortable sleep, but it is not defrauding the revenue. My honorable friend must have made a very eloquent speech without knowledge.

Senator Drake

- The officer is part of the machinery for preventing fraud.

Senator Lt Col NEILD

- Take the boarding conditions. If the captain does not bring his ship to the exact position which some person would like her to be in, that is an offence, but not an attempt to defraud the revenue. The condition of weather or the condition of tide may be a point on which the captain would be a much better authority than the Customs officer.

Senator Drake

- What is the object of that provision - to prevent smuggling.

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Senator Lt Col NEILD

.- I shall take the honorable gentleman on another point. The Postmaster-General may be running to get his train, when a Custom-house officer sees some one with goods on a dray going up the street. The Customs officer, under clause 189, calls on the drayman to stop ; the drayman does not stop, and under

clause 194, the Customs officer calls on the Postmaster-General to join in the chase. If he refuses to do so he must pay a penalty, or go to gaol. My honorable and learned friend when he started on the crusade of alleging that every offence under this Bill was in connexion with "a fraud on the revenue, did not see that he himself in the most innocent way might be affected by it. We see that certain other influential people, with large powers at the other end of the world, are absolutely taking steps already to prevent this Bill from becoming law. The Postmaster-General might have some little regard for these wild inroads on British justice, which it is sought to perpetrate in this manner. Therefore, I think he ought to exercise a little consideration, and not endeavour to pass through the Legislature that which will not be assented to by the Crown.

Question - That the words proposed to be inserted be so inserted - put.

The committee divided -

Ayes 8

Noes 14

Question so resolved in the negative.

Amendment negatived.

Clause agreed to.

Clause 255 (Application of penalties).

Senator MILLEN

(New South Wales). This clause leaves the application of penalties and forfeitures entirely to the Minister without any direction at all. I should like to ask

Senator O'Connor

whether that is a common principle in measures of this kind? The only one that I have had time to refer to is that which prevails in Great Britain, and there I find that the penalties are handed over to the Commissioners for Inland Revenue, to be disposed of by them in such manner as the law directs. These penalties may involve very large sums, and should not be left entirely to the disposal of the Minister. Even if it is not desirable to embody a direction in the Act itself, it may be well to insert the words "as prescribed," so that the Minister may lay down a general rule.

Senator O'CONNOR

- in some of the Customs Acts there is a provision that portion of a penalty shall go to the informer, and that the balance shall be disposed of in other ways. In other cases the matter is left, as in the English Act, at the disposal of the Commissioners of Customs, as the law directs; or, if there is no direction by the law, then according to the discretion of the Minister and his officers. It appears to me that it is very much better to leave the clause as it stands, if we lay down a hard-and-fast rule that the informer shall get a moiety of the penalty, then it will be compulsory always to give a moiety to him. The Minister may not wish to encourage that means of detecting crime, except in certain exceptional cases. Unfortunately, it is necessary, in certain cases, to employ informers. In many instances, however, the Minister may think it advisable not to adopt that system, and the clause leaves it to him to take any course he may think fit. If regulations were prescribed, the Minister's hands would be tied, and we would have to provide that in certain cases the penalty should be divided, and that in others some different method should be adopted. Such a mode of administration would remove the elasticity from the powers which, I think it very desirable the Minister should have in disposing of these penalties. The clause has been deliberately drawn for the purpose of leaving the matter in the hands of the Minister. He conducts his administration under the scrutiny of Parliament, the press, and public opinion; and, if he acts improperly in the distribution of these penalties, he can be brought to account. For my own part, I should like to see these prosecutions conducted without the assistance of informers. Their employment is objectionable in many ways, but as it may be impossible to do without them altogether in some cases, the matter should be left to the discretion of the Minister.

Clause agreed to.

Clause 256-

If any dispute shall arise between any officer and any person with reference to any contravention of this Act, the Minister may in manner prescribed with the written consent of such person inquire into and determine the dispute and shall have power by order to impose enforce mitigate or remit any penalty or forfeiture which he shall determine shall have been incurred.

Senator DOBSON

- I have -been -asked by more than one person to -raise the question whether publicity .ought not to be given, tin cases where importers and others are found guilty of certain irregularities or attempts to .defraud the -revenue. It was the -practice in Tasmania for some 'time to publish the -names of such offenders. In one instance, however, a name was kept back owing to .a special effort 'being made on the man's behalf, and consequently the names of all other persons guilty of irregularities have since been withheld. "Honest traders consider that those who are guilty of defrauding the revenue should have their names published just as the name -of a man who infringes a corporation by-law is put before the public. I certainly think that there is very great force in this argument. Every (morning we read in the newspapers of people who howe offended -against simple laws, .and merchants, and importers and others of high repute who are found guilty of offences under this Bill, should have their -names published in the same way. The -publication can be made in such a way .as not to .cause -an injustice to .any man. I can quite understand that a merchant in .a leading position, who has never had a word breathed against 'his name might be found guilty of an irregularity, although lie .never had any intention to defraud. If he went to the Minister, however, .and asked that the dispute be settled, and the Minister discovered that an unintentional irregularity had been committed, it could be advertised in .that way. The facts could be put forward in such a way that they would not appear as a blot on the character >of .the man. I certainly should not like to see the innocent suffer with the guilty, but the publication of the names of these offenders may be done in such a way as to safeguard the character of the man >w-ho 'unintentionally breaks the law -while exposing the -man who .wilfully does so. Some persons think that -publication -should not take place for a first, 'but for .a second and every subsequent offence. I do not consider that any such distinction .should -be drawn. 'Either 'these -matters should ;be settled .-in the open -room of the collector, where .the press or any of Che public cam come in, or the clause should compel the Minister to publish 'the abort particulars of the dispute which he has settled, .and the order which he has 'made in reference thereto.

Senator Sir FREDERICK SARGOOD

- This is a matter which attracted a good deal of attention many years ago when the protective Tariff was first brought in. A good many merchants thought it would be a decided advantage to adopt the practice now suggested by Senator Dobson. I am bound to say, however, that most of us came round to the conclusion that it would be inadvisable. One reason I was that there would be a number of minor cases which, although offences against the act, might be neither intentional or serious.

Senator McGregor

- "Would not that fact be published.

Senator Sir FREDERICK

SARGOOD.No doubt it would, but it is a disgrace to be fined for anything connected with what is supposed to be a fraud on the Customs. Years after, when the details of what was practically -an innocent irregularity had been forgotten, a charge might be brought against an individual that he had been fined for defrauding the Customs, and there would be no means of repelling the charge. As a matter of fact, the course proposed would be most unfair to the honest trader, and to the advantage of the dishonest trader. Instead of doing the latter any harm, it would have distinctly the opposite effect. It would pay him to attempt to defraud the revenue,' in order that his name might be widely advertised. As soon as it was known that a firm was in the habit of doing such a thing there would be a rush of customers to it..

Senator Dobson

- The honorable senator is pushing the case rather far. If a firm was always selling goods at low prices it would always be defrauding the Customs.

Senator Sir FREDERICK SARGOOD

- I am only showing that the proposal suggested by the honorable : and learned senator would be to the disadvantage of the honest trader. As a matter of fact, for years past all these cases have been given to the press. Our present Chairman, 'when Commissioner of Customs for Victoria, made it a rule to give the details .of all such cases which came before him to the press. I presume that is all that Senator Dobson wants, .unless he requires a compulsory posting of the name of every person convicted of an irregularity. Anxious though I. am to support the Customs, J. cannot agree to this suggestion.

Senator HIGGS

- I do not like the clause at all. We have a number of clauses in which various pains and penalties are imposed for evasions of the customs laws. Now we propose to insert a clause which would allow the Minister to decide, in a Star-chamber, wises which ought to come before the public. When the Postal Bill was under discussion, you yourself, Mr. Chairman said that, as Minister of Customs in Victoria, you had occasion to decide cases of this kind, and that in one instance you had fined a smuggler £2,000. If a man was able to pay such a fine, he would know the provisions of the Act as well as the Minister, and he would be willing to take that risk and continue smuggling as long as he possibly could, knowing that he might in every occasion approach the Minister.

Senator Walker

- And square the matter.

Senator HIGGS

- Exactly. Under our criminal code throughout these States, persons who commit even the most trivial offences are compelled to come before the Court. Such persons have to bear all disadvantages attending a public exposure, and yet we propose now to introduce in a Bill of this kind a provision to allow big offenders to escape the penalties of their wrong doing.

Senator Sir Frederick Sargood

- This applies to large and small offenders alike.

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Senator HIGGS

- We know very well that larger offenders are more likely to have the ear of the Minister than the smaller ones. The more wealthy the smuggler, the more likely he is to have the attention of the Minister. The small offender will have his goods confiscated, because, as a rule, his case will be too insignificant to secure the attention of the Minister, hence I am not reflecting on any former Minister of Customs in saying this. I know that the Minister of Customs has a great deal to do, and that he will not have time to deal with the smaller cases. When pressure is brought to bear by people in high social positions to get him to deal with the case of a large offender, no doubt he will be able to find the time. I do not think this is a wise provision. It only encourages smugglers and others to violate the provisions of the Customs Act.

Senator O'CONNOR

- I think the honorable senator who has just spoken is mistaken in his view that it is only a particular class of person who can take advantage of this clause. This is really a clause which is immensely in the interests of the Customs authorities, because it enables questions of dispute as to the amount of duty, as to the forfeiture of goods, and other matters of that sort to be dealt with expeditiously. If there was not this opportunity of dealing promptly with cases, they would be hung up for months, the time of officers would be taken up in attending courts, and expense would be incurred. It is to the interest of every person who comes into collision with the Customs authorities that his rights should be determined expeditiously by the Minister. There is nothing to prevent a Minister doing exactly what he likes in regard to the question of publication. The practice in Victoria has been to communicate all these cases to the press.

Senator Sir Frederick Sargood

- The cases are dealt with openly.

Senator O'CONNOR

- Then the press and public would be admitted. If that is the rule there need be no fear, because an appearance before the Minister would be equivalent to an appearance before a tribunal which conducts its business in open court. I certainly think the clause ought to remain, and that the question of publicity might very well be left to the Minister.

Senator Dobson

- Supposing that there was no publication by the Minister, but that a newspaper heard through the collector that a firm had been fined, and published the fact, would not that be libellous?

Senator O'CONNOR

- Whether it was libellous or not, the newspaper which published the paragraph would probably not be called upon to pay any damages.

Senator HIGGS

(Queensland).-I find that I made a mistake in suggesting that you,

Mr. Chairman,
had held a Star-chamber inquiry into the conduct of some person who had broken the Customs Act. I understand that the inquiry was held with open doors, and that the details were published in the press at the time.

Senator O'CONNOR

- The Minister has power to hold a court in the manner prescribed, and this clause enables him to make any regulation for holding the court with open doors. That I think will carry out what Senator Higgs wishes. The proper method to administer the Bill is as the law has been administered already namely, with open doors, the press and the public being admitted.

Clause agreed to.

Clause 258 -

The Minister in holding any inquiry under this part of the Act may -

Amendment (by Senator Higgs) agreed to-

That after the word "Act" the words "shall hold such inquiry in public and" be inserted.

Clause, as amended, agreed to.

Clause 260-

The Minister may make regulations not inconsistent with this Act -

Senator Sir FREDERICK SARGOOD

- Clauses 260 and 261 are not framed in accordance with similar clauses in the Post-office Bill, the Audit Bill, and other measures which we have already passed ; and as we are commencing legislation, it would be advisable to have a uniform practice in dealing with regulations. It is the Governor-General who makes the regulations, and I move -

That the word " Minister " be omitted with a view to insert "Governor-General."

Senator O'CONNOR

- There are a number of regulations which are merely departmental, and which the Minister has power to make. That is what clause 260 deals with, while clause 261 provides for the confirmation of the regulations by the Governor-General.

Senator Sir Frederick Sargood

- It is not the usual form.

Senator O'CONNOR

- I know, but this gives Parliament more power over the regulations than is generally given.

Senator Sir Frederick Sargood

-I am not speaking of that. Why should there be a difference between this and other Bills ?

Senator O'CONNOR

- There really is not very much difference, except that the Minister may make regulations, which do not have force unless confirmed.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 261 (Publications of regulations) - consequentially amended.

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Senator Major GOULD

- I had intended moving that the regulations should not take effect until they had been on the table of the House a certain time. But I find there are many matters which have to be dealt with expeditiously, and I shall not move any amendment in that direction. The only amendment I suggest is in regard to the period within which the House may differ from any of the regulations. It is proposed that the period should be fifteen sitting days, but in my opinion that should be extended to 30 sitting days. The amendment would make no appreciable difference, because the regulations would have effect until disallowed, if disallowed at all.

Senator O'CONNOR

- I could not accept such an amendment. The power given to disallow regulations is really very unusual. In the bulk of cases regulations are simply laid on the table of the House, and take effect then, if they have not taken effect before. This is a very special provision, and if it be acted upon, that should be done as soon as possible, because the regulations will control business to a very large extent, and the whole

mercantile community will be interested in their being passed into law.

Senator Major Gould

- As there seems to be strong' objection to the suggested amendment, I will not press it.

Clause agreed to.

Clause 262-

As regards goods imported before the imposition of uniform duties . . . this Act shall apply to the collection of duty to which such goods are liable in manner prescribed.

Senator O'CONNOR

- I move-

That, after the word " Act," the words "and any State Act relating to Customs" be inserted. Under section 92 of the Constitution Act, after the introduction of Inter-State freetrade, and for two years afterwards, an account is to be taken of goods passing from one State to another. To enable that to be done, it will be necessary to apply the provisions of the State Acts, which will have to be kept alive for the purpose ; and for that reason it is necessary to have power to apply the State Acts as well as the Commonwealth Act. . .

Amendment agreed to.

Clause, as amended, agreed to.

Clause 263 (Records of Inter-State trade).

Senator Major GOULD

-This clause deals with " duties of excise paid on goods produced or manufactured in a State." Does a provision of this kind really come in a Customs Bill ? Would it not more properly appear in a Bill dealing with excise?

Senator O'CONNOR

- This Bill is to enable statistics to be collected, and as the same authority will collect both Customs and excise statistics, it is more convenient that the authority should be given in one Bill instead of two.

Clause agreed to.

Schedule 1 agreed to.

Progress reported.

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22:35:00

The Senate adjourned at 10. 35 p.m.