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1901-07-10

House of Representatives.

Mr. Speaker

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

ELECTION PETITION

Adcock versus E. Solomon (No. 2).

Sir Edward Braddon

- (Tasmania), as Chairman of - the Committee of Elections and Qualifications, presented a report upon the second petition of William Eddrup Adcock. against the return of Elias Solomon, which was read by the Clerk, as follows : -

The Committee of Elections and Qualifications have the honour to report as follows on the second petition of William Eddrup Adcock against the return of Elias Solomon for the electoral district of Fremantle, in the State of Western Australia : -

Your committee find that the petition of William Eddrup Adcock, now presented; dated the 8th of May, 1901, is the same in substance as that dated the 7th of May, 1901, reported on by your committee on the 14th of June last, and as the matter has already been heard and determined, your committee recommend that the petition be not entertained.

E. Braddon,

Chairman

House of Representatives, Committee Room, 10th July, 1901.

Resolved

(on motion by

Mr. Barton)?-

That the report be adopted, and the petition dismissed.

PETITION

Sir Edward

Braddon (Tasmania) presented a petition from citizens of Tasmania, asking that the 54th clause of the Post and-

Telegraph Bill might not be agreed to.

Petition received.

QUESTIONS

THE TARIFF

Mr POYNTON

- Can the Prime Minister give the House any idea as to when the Government intend to introduce their Tariff proposals?

Minister for External Affairs

Mr BARTON

.- It might be to the interests' of a few, but it will certainly not be to the interests of the many, that I should give the information at this time.

INTER-STATE COMMISSION BILL

Sir MALCOLM McEACHARN

asked' the Minister for Home- Affairs,: upon notice -

Whether, in framing the Inter-State Commission Bill, he has taken into consultation any of- the State Railways Commissioners, or any representative of steam-ship owners, or any representative of carrier companies ?

If he has so consulted any of the above, whether. : they have given their opinions in writing?

It they have given opinions in writing,- - whether he will cause such written opinions to be placed before the House for the information of members when discussing the Bill ?

Mr Deakin

(for Sir William Lyne).I am informed that there are a number of reports; but it is at present believed that they were- obtained as confidential. Inquiries will, however, be made as to whether that condition can be withdrawn. If it can be withdrawn, I shall be very happy to lay them on the table.

PACIFIC ISLANDS : LABOURERS BILL

Mr FISHER

asked the Prime Minister, upon notice -

Whether he will inform the House of the probable date of the introduction of the Pacific Islands Labourers Bill?

Mr BARTON

- I shall fix this date as soon as certain information has been received and circulated, which will, I have no doubt, be useful to honorable members. I regard this measure as of primary importance, and it will not be unduly delayed'.

INDEX TO COMMONWEALTH ACTS

Sir MALCOLM McEACHARN

asked the Prime Minister, upon notice -

Whether he will order an index of the various Acts, as they are passed, to be made, the index to -be as complete as possible, showing especially by cross reference sections- dealing with the same- subject in different Acts ?

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Mr BARTON

- It is. not considered advisable, in view of the time and trouble that would be involved, and the undesirableness of multiplying, the- indices, to prepare a separate index- for each Act ' as passed; but- it is - intended) when the Acts of the session are' published' in book- form, to prepare an index to the volume; which will be made as complete as possible.

TRANSFERRED OFFICERS

Mr ISAACS

- In asking the Prime Minister, upon notice -

Whether, in view of the time that has now elapsed since the establishment of the Commonwealth and the transfer of departments, the Government regard the officers of the transferred departments as- "retained" within the meaning of the Constitution,

I should like to point out the importance of this question.. Many officers in the State departments are applying, for vacancies, as they are not quite sure they are to be considered Commonwealth officers, and the State Governments are anxious for information on the point, so that they may arrange their Estimates accordingly.

Mr BARTON

- In answer to the honorable and. learned member's question, as to the importance of which I quite agree with! him, the Government - unless there are some exceptional cases - and as to these I have no particular information - now regard the officers of transferred departments as having been " retained" within the meaning.of the Constitution.

FEMALE EMPLOYEES OF THE COMMONWEALTH

Motion (by Mr. McColl) proposed-

That there be laid before this House a return showing-

The number of female employees in the service of the Commonwealth, giving the departments in which they are employed.

The average salary paid to female employees, and the total amount paid to them.

The number now receiving a salary of £110 per annum.

The additional amount that will be required to bring the salary of all female employees to £ 110 per annum.

The answers to the foregoing requests to give their application to each State separately.

Mr MAUGER

- I should like to suggest to the honorable member that he should add another paragraph to his motion asking for information as to the minimum wage paid. Information as to the average wage is always misleading.

Mr KIRWAN

- I move. That the following paragraph be inserted in the motion, to follow paragraph 4 : - " The number of female employees acting on probation who are not receiving pay, and the length of time they have been in the service."

Mr Mauger

- That is what I want to get at..

Mr.KIRWAN. - In the State from which I come, and I believe in other States of the Commonwealth, it is customary for girls to be employed in the telephone department as probationers.They are taken on to learn the duties of the office, and no one would object to their being employed for a certain number of months without pay, but it often happens that they are kept on for twelve or even eighteen months without receiving any payment whatever.

Mr CROUCH

- I think I might ask my honorable friend-

Me. Watson. - I should like to know if a motion moved by a private member can be discussed - and the moving of an amendment involves discussion - in time set apart for Government business. . The rule in the New South Wales Legislature is that a motion moved by a private member may be taken only before the Government business of the day is called on formally without discussion or amendment. I take- the point because we have resolved to set apart a certain amount of time for Government business and to give up Fridays to private business, but it might happen, if a private member's motion is allowed to be discussed in this way, that a motion might be moved the discussion of which would take up the whole sitting. I therefore ask your ruling, Mr. Speaker, as to whether it is in order for the honorable member for Echuca to do more than formally move his motion. Personally I do not object to the amendment.

Mr Barton

- I understand that, where the consent of the Government has been obtained, a motion can be put down on the business paper as "unopposed," so that it may be taken without discussion before we reach Government business. It was on that assumption that I said that I would not oppose this motion.

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Mr SPEAKER

- I would direct the attention of honorable members to Standing Order 1 1 3 of the draft standing orders which have been temporarily adopted to govern our procedure. That standing order says -

Unopposed motions for returns shall have precedence of other motions on the notice-paper, except motions for leave of absence, and shall be formally moved without debate.

The honorable member for Echuca moved his motion without debate, and I think that if the amendment had been moved without debate no objection could have been reasonably taken to it. The honorable member for Bland was right in calling attention to the fact that unopposed business must be taken without debate, because otherwise much time might be expended on private members' business contrary to the intention of the standing orders.

Mr REID

- May I point out that a difficulty may arise from this practice, inasmuch as the House may be precluded by some arrangement to which it is no party from discussing certain motions.

Mr SPEAKER

- The position is this : that if any honorable member desires to debate an unopposed motion it must at once stand over until private members' business is called on.

Mr Thomson

- May I ask if the rule that there shall be no debate does not necessarily exclude amendments. If amendments are proposed, they cannot be considered without explanation and debate. That is the very thing to be avoided, because it involves the delay of business which is on the business paper.

Mr Barton

- May I say a word on this point. The understanding on which the Government consents not to oppose a motion is that the motion remains in the same form. If the motion is amended, or a proposition of amendment is made, it becomes then a question whether the Government can, on its own motion, maintain the question in that form. We should let in debate on amendments if that understanding were once departed from. That would be a very serious question - it is one that was raised earlier in the session - because it might lead to the consumption of a great deal of valuable time on Government days, although the matter could be properly dealt with on private members' days. In order to save any trouble, I will say that if the honorable member who raised the question about new paragraph (4 a) will withdraw his motion and hand it to me in writing, I will have the return prepared so as to include the particulars he

wishes.

Mr Reid

- Will the Prime Minister explain whether there is any standing order which governs questions unopposed
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Mr Barton

- Standing Order 113 is the only one.

Mr Reid

- What does it mean unopposed by the Government, or unopposed by the House?

Mr Barton

- I think the standing orders refer to motions unopposed by the Government. There is, in the State from which land the right honorable and learned member for East Sydney come, a preceding form of ascertaining whether a motion is opposed - it is just as well to mention the matter now - under which the Speaker goes through the business paper and through the list of notices of motions, no matter how many notices there may be, and ascertains whether any are . objected to. Those not objected to are passed without debate, and the others remain for discussion.

Mr SPEAKER

- Perhaps it is just as well to settle the matter now. With the approval of the House, in the future, whenever an honorable member rises to debate or amend a motion on the unopposed list, the debate will at once stand adjourned.

Mr SYDNEY SMITH

- Would it be competent for any honorable member to object to a motion 1

Mr SPEAKER

- I have just said that if a member rises to debate or amend a motion, that motion will at once stand over and lose its position as unopposed business. The standing orders do not define what is " unopposed business," and there is some difficulty in exactly interpreting this particular standing order. But for the future it will be interpreted in the way I have indicated.

Question resolved in the affirmative.

QUESTIONS

Mr G B EDWARDS

- I would like to ask, on a. matter of some urgency to my mind, whether the Prime Minister will take some steps-

Mr SPEAKER

- Does the honorable member intend to submit a motion 1

Mr G B EDWARDS

- I desire to ask a question.

Mr SPEAKER

- The honorable member cannot ask a question at this stage.

CUSTOMS BILL

Second Reading

Debate resumed (from 4th July, vide page 2102) on motion by Mr. Kingston -

That this Bill be now read a second time.

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Mr REID

- I regret to say that I have not had a full opportunity of studying the provisions of this Bill, and I am inclined to think it rather inconvenient that the Bill should proceed without a proper interval, such as would admit of some regard being paid to the views of persons who are engaged in business connected with the Custom-house. We have had the advantage of the labours of a very able board of Customs officials, and I think we see the results of those labours in the Bill. I wish to congratulate my right honorable and learned friend the Minister for Trade and Customs on the generous manner in which he acknowledged the labours, of the officers of his department. That is an acknowledgment which is sometimes omitted in cases in which it ought to be made, and I rather admire the attitude of the Minister, who is not ashamed to acknowledge his indebtedness to the officers of his department. At the same time, with characteristic humility, my right honorable and learned friend omitted all reference to himself. I know his abilities as a

draftsman, and I can see in this Bill, traces of those abilities. Whether we agree with the provisions of the Bill or not, it certainly has in an unusual degree the merit of plain and direct expression. I have had occasion to administer Customs Acts, and I must say I have never had the good fortune, in Australia, at any rate, to see Customs provisions expressed in such direct language. One of the results, of course, of a Bill framed by Collectors of Customs is that sort of result which one would expect from a Bill with reference to the prevention of crime framed by a policeman. Every provision is made in favour of the policeman and against the victim. This Bill, I think, transcends every other Bill of the kind in the thoroughly brutal fashion in which it suppresses the individual who may happen to come in conflict with His Majesty's Customs. There are some most remarkable provisions of this character. At the same time it is only fair to say that when the nature of the charge brought by Customs officials against an individual is that of an attempt to defraud, the Customs officials will be good enough not to assume his guilt until he establishes his innocence ; or if the matter in reference to which a man may be charged is in the nature of an indictable offence, this Bill with very rare tenderness admits that it will not be the duty of the person accused to establish his innocence, but that the old-fashioned rule will be applied which requires the accuser to establish the guilt of the person accused. But, putting these two cases aside, the onus of proof is put always on the person who comes into conflict with His Majesty's Customs. I do not know whether our fiscal enthusiasm will go so far as to look on the institution of a Custom-house itself as a sacred edifice, and the persons who inhabit it as sacred individuals. Some persons carry their fiscal views so far that a Customs badge is held to be sufficient proof of a right to do things which no other person in the King's, dominions is allowed to do. But I feel that in this discussion we ought to eliminate altogether the fiscal question we ought to deal with this Bill entirely apart from any view of fiscal policy ; we ought to aim at a Bill which will be absolutely fair both to the Crown on the one hand, and to individuals who may happen to come in conflict with the Crown on the other. In fact, in this department we should follow the time-honoured rules of legislation. I quite admit there are some* aspects of custom duties which do require sometimes, and in rare cases, rather exceptional powers. But making that fair admission, I am bound to say, as the result of the inspection which I have been able to make of this Bill, that it seems to me to go very much further than any law that I am aware of in connexion with the administration of Customs. I think honorable members will see that a business firm, which is bound to come often in conflict with the Customs authorities, is under a sufficiently heavy obligation not to unnecessarily ruffle the susceptibilities of the Customs authorities.. An individual in a matter of appeal against the decision of the Customs authorities in a particular case may prove he is absolutely right, and that the Customs officials were absolutely wrong ; but it is questionable in actual experience whether a victory of that sort is not one of the dearest luxuries which a large firm can possibly indulge in. Persons who have to deal with the Customs authorities are sufficiently in their hands from the very nature of the business, and I will take occasion when we get into committee to draw attention to some of what seem to be the too drastic provisions of this measure. I wish now only to select one or two of the most important clauses, because we ought to recognise that our useful labours will probably begin when we are in committee. This, is not a Bill which -raises any very great principle in itself. Whatever may, be -the fiscal policy of the Commonwealth, a -Bill of this -sort -will -be necessary. Some of the clauses, perhaps, will be inoperative, but the Bill will ,be equally necessary whatever the. Tariff of the Commonwealth >may .be, -so* that there is no large principle involved in the second reading of -the measure. T-here is nothing in this Bill which I think is . not in our Customs Regulation Bills, or .which would call- on the House to seriously consider the question of - negating .the motion for the second reading. Consequently I do not intend to . 'take up the time .of the House by any reference to matters of . detail which can be .fairly dealt with in committee. But in the first place I do hope 'that we shall have the- assistance in committee of some honorable members who are familiar -with the working- of such Acts, not only as they affect the Customs authorities, but as they affect the trading .interests 'of the sports -of Australia. Of course, -to a certain extent the remark will not be accepted universally, though I think with certain qualifications .it may -be so -accepted, that 'beyond the -requirements of the fiscal pOLiCy of the Commonwealth no honorable member, either of the Federal Government .or :of this House, desires :to throw .unnecessary obstacles -in' the- way -of the transactions »of commerce. As -we know, -the -more .difficult the :operations of commerce are -the >more expensive -the results are likely -to be to the ,great mass of the .people of the -community. Therefore, putting -aside all 'fiscal differences for a time, I suppose we all desire to unite

-in. an endeavour to -make this law as just and as little of a 'meddlesome character as we possibly can. I wish to refer first to what I conceive to be the clause which will raise the most difficult and important question-in connexion -with the Bill, namely, clause 257. When the .Minister for Trade and Customs was in .his most able -and lucid manner giving this House a bird's-eye view of the scope and character of the measure I ventured to interject a 'remark of which he apparently .approved, that instead of a resolution of the House authorizing the collection .of Customs duties when the Budget speech had been delivered in this House, 'perhaps an amendment might .be made to the effect that upon the delivery of the Budget speech, without any resolution the duties might be collected. Obviously, that, seemed to .be at first sight the most .convenient course. This- Bill .-first came into my hands at the time the right honor . able -gentleman .was delivering his speech, and I had not had , D11118 for reflection. But after an interval for reflection, I -began to perceive -that there are some very serious difficulties in connexion with the- matter - that -it is not so easy of solution as it appeared -to me to be. In the first place the difficulty arises whether the, duties -embodied in a Budget speech, -and which might be collected -next morning, would in their collection amount to the imposition of uniform duties .within the meaning of the Constitution Act. If they would - and indeed I am afraid if they would not. - there would .still remain some very -serious questions to consider. As we know, the right of imposing duties is not a right which can- -be exercised -on the statement. -of a Minister delivered in this House. The proper basis for collection -of - such duties is the. authorization of law. First, as to any difficulties- which may arise as .to- the time at which the Tariff was submitted, I- ought to point out what perhaps is perfectly familiar already to the Government, namely, that if this Tariff statement -is .not -made at a very , early period, we shall be driven. on to a time about Christmas, -when it will -be- simply impossible, if there be any -difficulties at .all, to arrive .at. a -legal settlement of those difficulties - that is to .say arrive at a Tariff Act - 'before the Christmas-pro rogation. If the- duties are to be- collected for an indefinite period,.under a mere statement of the finance Minister ,-honorable members will see that, from the very 'pressure of circumstances and owing to. the expiration-of the time, the free -discretion of this House and the proper constitutional rights -of - another Chamber .may absolutely go by default. They will see that a situation might arise-of mere delay, which -would make it .-impossible to exercise in a full and fair way the judgment either of this,or of any other House -upon the Tariff. I begin-to see, therefore, that the suggestion which I threw out is one -to which I am not prepared to. adhere at present. I see the very-serious difficulty- of the matter, because, assuming that the Tariff proposed by the Treasurer were not ultimately successful, all the powers of the States -to carry on Tariff legislation, or even the State Tariffs which were in force at the time the Budget speech was delivered would, on a certain interpretation, of the effect of a Budget statement, have disappeared. Thus-, we should neither have a Commonwealth Customs Tariff nor a State Customs Tariff. Honorable members will see that if on the statement of the Treasurer the duties are collected next morning, and if that is taken to be the imposition - within the meaning of the Constitution Act - of uniform duties, the State Tariffs and the State powers over such matters have gone, and gone for ever.

Mr Watson

- Does .the right honorable member think that that would be the interpretation ? ' Mr. RE ID. - It is a matter of such importance that we cannot very well leave it in doubt. There are a great many matters which we can leave in doubt, but this seems to be one which is too serious altogether to be left in that condition. It suggests -itself to me as a very serious difficulty which we shall have to consider. I will not say any .more in reference to it, but I thought 'it necessary to say what I think, in order to qualify the interjection which I made. There is another matter which is perhaps not of very great importance in the view of this House, but which I think will acquire considerable importance in view of the interests and convenience of the steamship companies who do business upon the Australian coast - I allude of course to the provisions of clause 121. I believe that at first there was considerable consternation aroused owing to a misapprehension as to the full scope of this clause. 'The first impression amongst some of the shipping authorities was -that under this Bill it was proposed practically to seal up the ships' stores when vessels were trading between Inter-State ports, but as any one who studies the clause can perceive, that is not the proposal of the Bill. The proposal of the Bill is that a certain allowance should be made out of the ships' stores for what may be considered the fair requirements both of the crew .and passengers between Interstate ports. I suppose that the authority who prescribed the allowance would be at .liberty to prescribe an allowance which would cover the whole movements of the ship from the time it arrived at the

first Australian port until the time when it reached its port of destination within the Commonwealth. I suppose that could be done.

There was no intention on the part of the Minister to deprive ships of their usual or proper allowance of ships' stores for crews and passengers on the coast.

Mr ISAACS

- The term "prescribed" means "prescribed by the Act."

Mr REID

- Does it?

Mr Isaacs

- Yes; will the right honorable member look, at the interpretation ?

Mr REID

- Then an unusual meaning is put on the word "prescribed."

Mr Kingston

- The intention is to charge for stores consumed on Australian waters.

Mr REID

- As a rule, the term "prescribed" refers to regulations, but in this particular Bill I see that it refers to things contained in the Act itself.

Mr Isaacs

- The Act includes regulations also.

Mr REID

- Then really it comes back to what I said before, because if the Minister proposed to prescribe in the Act, I think he would have prescribed in this Bill. I do not suppose that the Minister intends to bring down a new clause dealing with this subject.'

Mr Kingston

- No. Mr. REID. - Consequently the action of the Minister must be taken to mean that in this particular case the word "prescribed" means "prescribed by regulation." I do not suppose that the Minister would undertake to prescribe in the Act for a matter of this sort. I suppose there are two things aimed at in this clause: one is to levy duties upon ships' stores which are consumed by passengers who embark at Inter-State ports.

Mr Kingston

- Our idea is to provide for charging duties on stores which are consumed in Australian waters or between Australian ports.

Mr REID

- Even upon goods which are consumed by the ships' crews

Mr Kingston

- That is so.

Mr REID

- Then the Bill, goes much further than I anticipated.

Mr Kingston

- It would be most unfair to treat those who trade only within the States differently. We must have the practice uniform one way or the other.

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Mr REID

- I would be quite prepared to give the States' vessels the same advantages which are enjoyed by other vessels. Of course the brain of my right honorable friend is not capable of taking in an idea of that sort. Instead of relaxing anything, his idea is to give another turn to the screw.

Mr Kingston

- I think the right honorable member will admit that uniformity is desirable, and that we ought not to give a preference to the oversea ships.

Mr REID

- Uniformity is desirable, but I think my right honorable friend, in endeavouring to remove a mole-hill, will find that he has created a mountain. That is one of the things that may arise in connexion with this Bill. I do not wish to indulge in any anticipations that our legislation will be interfered with.

Mr Higgins

- Would the right honorable member allow them all free?

Mr REID

- I do not know that the terms become " free " necessarily.

Mr Kingston

- The right honorable member is contending that they should take bonded goods out of a warehouse free.

Mr REID

- I contend that when a man is travelling on the high seas - say, from London or South Africa to Sydney - he is always entitled to be free of our Customs regulations. Why, he is not within our jurisdiction for more than a few hours in the course of many days, and when he is within our three miles' limit - say, in coming from Fremantle to Adelaide - it is not for more than a very short period. No man's right to consume intoxicating liquors upon the high seas, apart from any Tariff of the Commonwealth, can be successfully interfered with under such circumstances.

Mr Kingston

- Then the right honorable member might have as many floating hotels in Sydney harbor as he pleased, with free goods there.

Mr REID

- My right honorable friend is changing his ground. I am not speaking of a harbor when I talk about a ship that is within the three miles' limit of our coast. I am quite in sympathy with a Minister in any attempt which he may make to bring under proper control any sort of drinking traffic upon vessels whilst they are within our jurisdiction, or say at our wharfs.

Mr Kingston

- And from Sydney to Newcastle.

Mr REID. - That is perfectly immaterial, if the ship is within the three miles' limit.

Sir Malcolm McEacharn

- They cannot sell liquor within a harbor now.

Mr REID

- I understood so ; still I think that the twelve policemen who have drawn this Bill - the Customs officials - have been annoyed - very properly annoyed to a certain extent - by an abuse of the consumption of ships' stores while vessels are at anchor, particularly upon Sundays. The mail steamers anchor at the Williamstown Pier, and I believe that upon Sundays particularly there has been a great deal of evasion of the proper intention of the law with reference to ships' stores, and that a considerable trade is being done in intoxicating liquors, not with the passengers, but with people who are merely visitors to the ships. This is a matter which has troubled the minds of the Customs people a great deal. It is to meet abuses of that sort that this clause is principally directed. But I think that there is nothing which we can do that can take away the rights of the officers, crew, or passengers of a ship coming from some place beyond the Commonwealth, to their freedom as to ships' stores, as well as to navigation when they are beyond the limits of our jurisdiction. The Imperial Government were careful - I think I am right in saying so - to alter a clause which we put in the forefront of our Constitution so as to make it perfectly clear that the Commonwealth should have no jurisdiction over ships whose first port of clearance was not within the Commonwealth.

Mr Kingston

- They withdrew that. They did not insist on the alteration. They tried to get the alteration, but abandoned it.

Mr REID

- But the Bill as drafted contains the words which I have mentioned.

Mr Barton

- They abandoned the proposed alteration.

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Mr REID

- I can quite understand their abandoning any objection which they might have had, because the clause itself seems fairly to protect the interests of Imperial shipping. Section 5 of the Constitution provides that the laws of the Commonwealth shall be in force only on British ships whose first port of clearance and

whose port of destination are in the Commonwealth. Now the first port of clearance of, say, foreign-going steamers from the old country is certainly not within the Commonwealth. The word "first" is put in with some meaning. The section clearly puts the position in* the words "whose first port of clearance and whose port of destination are within the Commonwealth." Now, under those words, it does seem that Inter-State vessels whose first port of clearance is, say, Fremantle - take an Inter-State steam-ship which trades between Fremantle and Sydney, touching at ports - would be subject to the laws of the Commonwealth, but that the great mail steamers, whose first port of clearance is, say, Southampton, will be absolutely beyond the laws of the Commonwealth whilst they are on their voyage even to Sydney, touching at all ports in between. I do not at all dispute that while a vessel is lying in harbor it may become subject to the local laws. I do not at all wish to dispute that, because it may be perfectly true that the moment a vessel anchors at a Melbourne pier or at a Sydney pier, or even in Adelaide waters, it is for certain purposes subject to the laws of the State, but I think the Government has stretched this clause to such an extent that it may lead to the whole Bill being reserved. The Government are stretching the powers of this Bill too far when they 'assume a dominion over ship's stores when the ships' are outside territorial limits, say on a voyage between London and Fremantle, and thence on to Sydney.

Mr Kingston

- The right - honorable gentleman does not think our rights, of Customs legislation depend upon that definition of British ships.

Mr REID

- I consider that the words to which I have referred have a meaning. I think the expression is a very wide one, and that the section which defines the operation of the Constitution is the most important one in the Act. It was thought necessary to define the operation of the laws and Constitution of the Commonwealth, but we had no need to define our local Acts, because we know that they can operate only within our own jurisdiction. But in our Commonwealth Act, before we come to the Constitution itself, we have sections which are clearly intended to safeguard the rights of persons outside the Commonwealth, and the expression to which I refer seems sufficiently wide to cover everything. Section 5 of the Act says- This Act and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts Judges and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State ; and the laws of the Commonwealths

Now we come down to the very point in this Bill-

And the laws of the Commonwealth shall be in force on all British ships.

If the section stopped there the position would be very clear, but it does not. First of all, all the Queen's ships of war are excepted altogether, and then there is a further definition of British ships which are to be ships only, "whose first port of clearance and whose port of destination are in the Commonwealth." It is absurd for any one - even for a Customs authority - to contend that a P. and O. steamer such as the India, which first leaves Southampton or the Thames, would be subject to this law. I suppose the Thames would be considered the first port of clearance of a P. and O. or Orient steamer.

Sir Malcolm McEACHARN

- Yes.

Mr REID

- Then clearly it could not be said that Fremantle was the first port of clearance of such a steamer? The expression "first port of clearance" is put into this general section for an object, and it means that our power is limited to vessels whose first port of clearance and whose port of destination are in the Commonwealth. In other words, if a P. and O. liner, instead of trading between * London and Sydney touching at ports, should trade between Fremantle and Sydney, that P. and O. liner would immediately come under the operation of the Commonwealth laws.

Mr HIGGINS

- Does the right honorable gentleman mean if the spirits are delivered on board at, say, Fremantle

Mr REID

- - I do not mean anything of that sort. I am dealing with the section in the Commonwealth Act.

Mr HIGGINS

- But I wanted to put a concrete case to the honorable member.

Mr REID

- I will deal with that presently. At present I am dealing only with the wording of the Act, and this fool of an Act does not give a concrete case, but only contains a general expression.

Mr Higgins

- Does the right honorable gentleman mean that if spirits or other goods are delivered to these ships within 3 miles of the shore they need not pay the duty 1

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Mr REID

- That is another matter altogether. "What I mean to say is this, that a steamer having put ship's stores on board in the Thames may, while she is lying at a pier in an Australian port, be subject to certain domestic regulations of that port, but that these domestic regulations cannot follow her out of the port into a place that is beyond our jurisdiction, that is 3 miles outside.

Mr HIGGINS

- Quite so. That- is actually what I was asking the honorable member.

Mr REID

- Whilst -the ship is .within the 3 -miles limit, within a port or within the 3 miles limit generally, she may be subject to certain regulations, within certain limits affecting matters within a narrow local sphere, but her subjection to these regulations is not-such a subjection as- will extend to her when she is beyond the three miles limit.

Mr Higgins

- The right honorable gentleman means that she is liable to come under the operation of our Tariff as long as she is within 3 miles of the coast ?

Mr REID

- No, I do not, because the Tariff is so defined that no man is liable to its operation unless he lands goods upon certain wharfs within our jurisdiction. The Tariff does not arise until .then. But the provision in ' this Customs Bill is an attempt to take our Tariff on spirits .and tobacco out on the high seas in connexion with a ship that is -not engaged in the coastal trade.

Mr Isaacs

- Which clause does the right honorable gentleman say does that ?

Mr REID

- I am afraid that this clause in the Customs Bill does endeavour to do that.

Mr Isaacs

- I could not :follow that.

Mr REID

- I will explain why I think it endeavours to do- that. I do not think that my right honorable friend, the Minister for Customs, will dispute the view that- the clause does endeavour to control- ships' stores immediately a vessel touches, say, Fremantle

Mr Kingston

- She is -within our jurisdiction then.

Mr REID

- That is to say, that the moment a ship arrives at Fremantle she comes under the Commonwealth jurisdiction and even after she leaves Fremantle and goes on the high seas again her stores are still liable to the operation of our Tariff laws.

Mr Kingston

- I have not said that yet.

Mr REID

- I am very glad that the Minister 'does not go so -far as that.

Mr Isaacs

- How does clause 121 say that?

Mr REID

- - We are 'getting down nearer to the point, and it will save '-time if the Minister will show us what he means. ' This is not a mere idle discussion, but a very serious matter, affecting a very large number .of people in ordinary business, and affecting also the validity of this Bill. I desire to confine myself to the

important matters dealt within the measure, such as - the provisions of clause 121. If these ships I have referred to are included in it, and my right honorable friend does take the view, that they are- -these vessels that come from abroad and touch at Fremantle, intending to touch at other Inter-State ports - this Bill assumes a right to put the Commonwealth hand on the stores issued for the use of the crew. '

Mr Isaacs

- I cannot see that. The clause only refers to stores that are shipped from: Australia.

Mr Kingston

- Are the stores now obtained duty free out of the warehouse?

Mr REID

- If the -Minister says that this refers only to coasters and not to foreign-going- steamers-

Mr Kingston

- I am sorry I cannot oblige the right honorable gentleman.

Mr REID

- I do not want to be obliged. I have nothing to do with these shipping companies.

Mr Kingston

- The right honorable member knows very well that I would never dream -of imputing anything of the kind to him. He ought not to attempt to fasten such an expression upon me.

Mr REID

- Well, the expression was a very awkward one.

Mr Kingston

- I never dreamt of any such construction being placed upon it.

Mr.-REID. - I am not at all obliged by any particular construction that may 'be put .upon the provisions ;of the Bill, and- if the Minister adopted the view that I have put he would not oblige me in any wa3", as I occupy quite a disinterested position. If the .Minister-takes the view that this clause does not refer to vessels whose first port of clearance-is beyond the Commonwealth all my -remarks would be idle.

Mr Isaacs

- I understood that it applied only to goods that are shipped from Australia on to those ships.

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Mr REID

- If that were so I would not waste the time of the House, but it is not so. When we speak of the ships' stores of a vessel surely the Bill .does not mean that there are two dots of stores, the lot that has remained unconsumed since her departure from London, and the- fresh lot that is put on board at Fremantle. Ships do not keep their stores in geographical compartments. They have not a little store for the Fremantle stores, and another for those shipped at Adelaide, another for those taken on board at Melbourne, and a fourth store for the goods taken in at Sydney. There is no such absurdity as that, but the ships' stores are all kept together. If I am wrong in my view of the meaning of the clause I should ; be only --too glad to be corrected by the Minister, but I take it that the Minister uses the expression "ships' stores " in allusion to the whole of the ships' stores.

Mr Kingston

- These three clauses refer to the shipping, free of duty,from the warehouse of ships' stores for the use of the ship.

Mr REID

- That does not help us veiy much yet. May I ask this simple question - Does the expression " ships' stores " in clause 121 mean only the ships' stores that have been taken on board at an Australian port?

Mr Kingston

- Itdoes.

Mr REID

- Only that?

Mr Kingston

- Yes.

Mr REID

- Well, I wish my right honorable friend had said so before.

Sir Malcolm McEacharn

-Then we shall shut out any steamer from taking Australian stores.

Mr REID

- That is exactly what will follow. The ships, instead of buying in Australia, will take very good care to have enough stores to bring them out from London and take them back again.

An Honorable Member. - They do that now.

Mr REID

- This is a marvellous piece of statesmanship. It certainly removes the more-serious objection, because we want to see this Bill so framed that it can come into operation without delay ; and we do not want it to contain anything that will impede that. The explanation removes a serious matter entirely from my observations, and I do not wish now to say much more about this clause.

Mr Higgins

- Does the right honorable gentleman mean that the ships will take fresh meat from London to come through the tropics to Australia ?

Mr REID

- Are we going to put meat and bread and various other little luxuries of that kind on our Tariff? That is the sort of thing that only barbarians would think of. I do not mean any offence, because I am referring not to live meat but to dead meat. I fancy it will be along time before there will be a duty on dead meat. I think that even my most rabid protectionist friends will leave that alone. The construction which the Minister puts upon this clause now makes it, if possible, not more serious, but more ridiculous than ever. Now we understand that if a ship, whose first port of clearance was outside the Commonwealth, arrives at a port within the Commonwealth, there must be a strict distinction kept between the stores that come from the first port of clearance and the stores that the ship buys at that Inter-State port, and that over part of the stores the Customs will have authority and be able to seal them up, while over the other part the Customs will not have authority and cannot seal them up.

Mr Kingston

- I really have not said that.

Mr REID

- Well, let us know what the position is.

Mr Kingston

- It is so difficult to make the right honorable gentleman understand.

Mr REID

- If my right honorable and learned friend will correct his interpretation I will correct my statement.

Mr Kingston

- I think we shall get on better in committee in connexion with these points.

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Mr REID

- No doubt ; but still I think it is my duty to point out the difficulties connected with this question. As to the abuses in connexion with ships lying in harbor, I do not think there will be any serious question about the necessity of providing against them; but if an attempt is made to go beyond that, it will be found that there are a number of difficulties. My right . honorable friend, having first told me that the clause referred only to ships' stores purchased in an Australian port, now says that it must not be taken to mean that. If he will not give me any other explanation, I cannot go any further into the matter now. I am pointing out these things so that they can be properly considered in committee, and I shall not refer to the clause at greater length, because we shall get fuller information in regard to it in committee. As the clause is worded I feel that the term "ships' stores" is used indiscriminately - that it refers to stores, wherever procured. "The object of clause 132 is a very good one. As we all know, when there are duties upon certain articles, efforts are incessantly made to evade them by importing articles which do not technically come within the description, but which are really the same as the articles which do ; and this clause contains a provision which is necessary to check that practice. I observe, however, that it differs from other legislation of the kind with which I am acquainted, inasmuch as the matter is put entirely into the hands of the Minister. In Other Customs Acts, this power is given to the Collector of Customs, to be exercised subject to the approval of the Governor in Council, and personally I prefer that in this case the power should be given to the Collector of Customs rather than to the Minister.

Mr Kingston

- The power would be exercised by the collector, but the act would be a Ministerial act.

Mr REID

- I think the provision is worth considering, and that it would be more satisfactory to every one concerned if the power were exercised by the Governor-General in Council, which means by the Ministry acting upon the report or advice of the Collector of Customs. The matter, however, is not of much importance. There is, however, a matter of considerable importance to which I shall now refer. As I understand the Bill, the Minister may in some matters determine finally questions in dispute between the Customs department and any person having business with that department ; while, in other cases, if the person who has the dispute with the department does not bring an action against it within four months, he is to be taken to have admitted that the Minister's decision was right. That I think is an objectionable method of procedure, if any other is feasible. In some of the States, they have had boards of commissioners, and the person at difference with the Customs has had the option, instead of going to an expensive tribunal such as a court of law, of going before these boards, which are generally composed of three business men, who make inquiries and arrive at a decision without the usual legal formalities. Although I admit that these boards have not been used very much in the past, I suggest to my right honorable friend that it would be a better provision to give the option of something short of litigation in a court of law to persons who have had a dispute with the department. Speaking generally, there is no appeal against a decision except by a resort to litigation, and even that appeal is denied in many cases. The Minister spoke the other night about the forfeitures which are provided in the Bill being usual ; but some of them are very startling. For instance, here is a condition under which a ship worth, perhaps, £50,000 or £60,000, shall become forfeit to the Government -

Any ship found within 1 league of the coast failing to bring to for boarding upon being lawfully required to do so shall be forfeited to His Majesty. That is to say, that if the 'captain of a ship which is within 3 miles of the coast does not bring his vessel to when the Customs flag is hoisted, it shall be forfeited. There is no option.

Mr O'Malley

- That is tyranny.

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Mr REID

- It is something to which we are not much accustomed as applied to our own people. We do not apply that sort of law to Australians, but I suppose that any sort of law is good enough for any one who is not an Australian. Clause 214 also provides that a ship shall be forfeited to His Majesty for -

Hovering within 1 league of the coast and not departing within twelve hours after being "required to depart by an officer.

That provision reminds one of the old stirring times when lawful authority was armed at every point. A vessel is not to hover in a light breeze within 3 miles of the coast for twelve hours after being required to depart, without being compulsorily forfeited to His Majesty. This is rather a startling way of introducing the favorite idea of some people that ships which come from abroad are a curse. They are a great blessing if they come from abroad empty, to carry our goods away at double freights, but they are a great curse if they come from abroad full, so that they can charge only single freights for the Australian products which they take away. That view seems so much in the minds of those who drafted the Bill that a ship which hovers within a league of the coast for twelve hours, after being required to depart by an officer, is to be forfeited. Then there are a number of cases in which goods shall be forfeited to His Majesty. All goods in respect to which bulk is unlawfully broken shall be so forfeited. We know that bulk is often unlawfully broken on a voyage, not by the consignees, or consignors, but by gentlemen who suffer considerably from thirst, and have a tendency for getting into the holds of the vessels they are on. That is an unlawful breaking of bulk, which amounts to a criminal offence, inasmuch as it is a robbery. But under clause 215, the goods in respect to which bulk is so broken could be forfeited. The clause also provides that- All goods which being subject to the control of the Customs shall be moved, altered, or interfered with except by authority and in accordance with this Act - shall be forfeited. The removal may not be authorized by the person to whom they belong, but no provision is made for a circumstance of that kind. The clause says that goods so moved shall be forfeited. Then there is another provision which suggests

some difficulty. The Minister proposes, and very properly, to use the courts of the States for the administration of this measure ; but I do not think that we are in a position to make use of those courts in this way without some corresponding legislation on the part of the States. The Bill assumes that we can use the State courts as if they were Commonwealth courts, and that we have the same authority to legislate for the bringing of matters before those courts as the State Legislatures have. That is a matter which I think my right honorable friends will have to look into. I doubt if we have any such power.

Mr Kingston

- I think we have. It is given to us by the Constitution.

Mr Barton

- It is part of the law of the land under the section which the right honorable and learned member quoted as to the operation of the laws of the Commonwealth.

Mr Kingston

- The State courts will have to take notice of this measure, just as much as if it were an Imperial Act.

Mr REID

- It is a question whether we have that sort of power over the State courts.

Mr Barton

-

This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, Judges, and people of every State.

Mr REID

- I understand that our laws are binding upon the States ; but there are certain things which have to be defined by court regulations, and I question whether the State courts will not resent some of the assumptions of authority made by the Bill in regard to these matters. There are several other clauses to which I shall refer in committee. I thoroughly sympathize with the desire of the Customs department to put down frauds. The danger of frauds in a highly protected community is very great and very notorious. A protective policy requires a sort of code of its own, inasmuch as it breeds immorality and fraud in business communities ; and I am prepared to make allowance for that state of things. But clause 240 provides that a person charged with fraud shall have a more lenient trial than a person against whom no imputation of fraud has been made. Where an attempt to defraud is an element in a charge, the onus of proof is upon the Crown ; or, if an indictable offence is charged, the guilt of the defendant must be established by evidence ; but, in reference to the whole range of innocent offences - innocent in the sense that there is no element of fraud in them-

Mr Kingston

- They are equally injurious to the revenue.

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Mr REID

- Still, it is an anomaly that persons not charged with fraud, or with an attempt to defraud, may be liable to penalties which, if they cannot pay them, may bring upon them a year's imprisonment, upon the mere allegation of a Customs officer that they have been guilty of offences under certain sections of this Act, unless they can disprove the charges made against them. There may be some extraordinary necessity which requires this, but if there is any extraordinary necessity to except the ordinary rules of justice in British communities, one would think it would be levelled more against those who are suspected of fraud than against those who are charged with other offences, which may be more or less innocent, against the provisions of this Bill. It seems to me an anomaly that there should be a presumption of guilt against a man, which immediately becomes a presumption of innocence, if there be an allegation that he has been guilty of fraud. That seems rather an anomalous position, having regard to the effect of the imposition of a penalty up to £200. According to clause 245 a person who is unable to pay a penalty of £200 cannot be discharged until he has served an imprisonment of one year. Here is a case which may involve a year's imprisonment, and yet the man is supposed to be guilty on the mere statement in the charge made against him. That charge is proof of his guilt, and he has to set to work to disprove his own guilt. That seems to me an extraordinary way of legislating. As I say, if there is a sort of person to whom it should be applied it should be the man who intended to defraud, rather than some one guilty of some other offence. The Bill bristles - with penalties, and though I admit that the measure must to a certain extent do so, it-

seems- to me to be one of the -most- stringent Bills that, we could find; There is another provision about which, however, I do -not desire' to say ; much; because & it seems- to- bring in that, eternal controversy of which' -we shall have; enough later on-. Clause- 147 is a -provision which from my - point-of- view- -is- of a perfectly legitimate character. It is a pro-' vision -that 10 per cent, shall be- added to the invoiced value- of goods- as- representing, their value at the port' of discharge: That recognises a very sound theory - a- very sound free-trade- theory - that, goods, get dearer as they come across-- the seas,- and that we have to pay more- for- them in our ports than is their value at. the" port of exportation. We are going to put on, if we can,- 20 per cent, or 30 per cent, more, but the moment we' put-- that ; 20 per-cent. or' 30 per cent, more on to. the 10 per cent, the former is paid- by the foreigner, while the man who imports the goods- is charged the 10 per cent- right away. This importer is not a foreigner, but may be, a Melbourne merchant who imports £10,000 worth of goods. He lives in Victoria, and. pays his rates and taxes like every other man ; but he has to pay 10 per cent, added to the foreign value of the goods on' which" he has to pay a duty of -20- per cent, and- 30 per cent. Yet when it becomes 40'-- per cent.- it is said that the whole of- that 40 per cent, is paid by the mysterious foreigner. I only mention this as a little illustration from my right - honorable- and learned friend's bible of the fact that after all some of these elemental principles -are sound; and are acknowledged to- be sound when it is a matter of- money by those who affect to differ from them:- Even if my right honorable and- learned friend administers a- thoroughly protective-Tariff, he will be under no delusion. When he wants money, he will impose this 10 per, cent, straight away. He does not then assume that goods- are cheaper here, because he- would never put on the 10 per cent, upon the -English value when the goods arrive in Melbourne, if all goods were cheaper here than at the port of shipment. All these are little matters which- occur to one's mind in going over the Bill, but I do-not want to- bring them in obtrusively just now. I admit that, whatever- the fiscal- policy of the Commonwealth may be, this Bill will be- required,- or at- any rate a very large proportion of the clauses- will, be -required.- In: fact, most of- the clauses are- proper clauses- for a Customs Bill, whatever' the fiscal-policy of the country may be. The only thing is, that under a simple Tariff' the great bulk of the -clauses-would probably not be used, and under a simple- Tariff the temptations to fraud are not so numerous' and pressing, and in one sense the administration of the department becomes much easier. But in committee I will draw attention to some matters which I think' require consideration-. I am -very-pleased to again acknowledge the thorough' business-like way in which this- Bill ' is drawn. It will assist us very much in- dealing with the Bill, in committee, that we have a measure so excellently drawn, and I hope- that in future proposed legislation of the Commonwealth we shall see similarly good work.

Mr:- ISAACS (Indi).- I should like to say at the outset that I am one of those who have- looked with- a considerable- amount of satisfaction on the attempt made in this Bill' to shorten the verbiage and to clarify sections of Acts of Parliament. I hope the experiment will prove successful, and I have no' doubt that with care and attention very much' may be 'done to improve the phraseology of- -legislative Acts.- But care will be wanted, and the- discussion to-day has pointed' out one or two* particulars in which we, as a Chamber, shall have to see that we do not go- beyond what- we intend to do. For instance,- we find- that " prescribed " means " prescribed' -by this Act." But, later, on, we find that: this includes all regulations, so that when we see in the various clauses of the Bill that persons are punishable for offences against the Act/ it therefore means they will be punishable equally for offences against the regulations. We must be very careful to see that- we do not, to too great an extent at all events,- put it in the power, of .the Minister to create- criminal offences. But the scheme of the Bill is, I would' like to say,, admirable. It is a most praiseworthy attempt, to improve the mode of drafting measures. I shall attempt to address myself only very shortly to two or three important matters, the most important of' which is undoubtedly Part 17, clauses 257 and 25&. I do not quite under: stand what it is the Minister desires. The. verbiage of these clauses - if the Minister will forgive me for saying so - is not up to the standard-in point of clearness of the other clauses. Is it intended- and. I endeavoured to indicate the question- at the close of the Minister's second-reading speech - that .the duties are to be. collected-after the passing, of this Bill under the State laws' relating to Customs ? I think that the Minister might give an answer to that question.

Mr Reid

- And' after the Tariff proposals.

Mr ISAACS

- And after the proposal of the Commonwealth Tariff ?

Mr Reid

- And after the Budget speech.

Mr Kingston

- We shall collect the highest duties

Mr Reid

- There will be no duty on Australian products in the new Tariff.

Mr ISAACS

- I should like the Minister to give me. this information, because, if- his answer, which I think. -I caught, .is -that it will be the highest duty that will be- collected - if he means that it would be the highest duty under' either the State Tariffs or the Commonwealth Tariff - then I venture-to say a great error is being made.

Mr Higgins

- . - It is not a uniform Tariff ?

Mr Kingston

- . - It is not a uniform Tariff. We shall not be- collecting under a uniform Tariff; it will be an interim Tariff.

Mr ISAACS

- Then I venture to say the importance of the clause is even greater than I thought it was.- I have-not any real doubt in my mind that- 'if this- clause is passed it will impose a uniform Tariff:

Mr Kingston

- It cannot j it- does the reverse.

Mr ISAACS

- Then tins Parliament has not power to -pass it. This Parliament ' has no power to pass any Tariff -which is not', uniform, and the moment it passes a uniform!Tariff, then under section 90 of- the Constitution all the State Tariffs die.' The words used in the Bill are -

If any Tariff .or Tariff alteration shall hereafter be proposed to the House of Representatives by a Minister of State for the Commonwealth, and the House of Representatives shall, in connexion with such proposal, adopt a resolution authorizing the Minister to take any necessary steps-for the protection of the revenue.

What is to happen t The Bill goes on to say that duties may thereupon- be collected as- proposed. The clause goes- on to say something else, but- I stop- there 'for a moment because these- words must have legal effect. The Minister means;- at all events, that there is to be legislative warrant and sanction for carrying into effect the resolution- of the House of Representatives. When the House of Representatives says that the Government may collect the duties- as proposed in the schedule brought down, we are asked to 'say, as-- a Parliament, that- that- shall be legalized, and -that it shall- have the force of- law-. Can any one- tell me, that if an -Act of Parliament so provides, that that as-a matter of law is not imposing duties ? If there be the authority of an Act of Parliament to take money from a subject, is' .that not imposing duties or taxation of some sort - it depends what- it is - and in. this case- it is customs duties: The whole object, as I understand, is that -we may say to a court of law where the action of the department may be challenged - " We have legal warrant for doing this." This question is not a new one. As- far back a? the ship money case, when the king tried to collect money under the name of- "ship money," it was held he had no right to impose-those duties. The words are used over and over again in the old- books and in the ancient cases,- and there is no- distinction bet-ween imposing duties and- collecting them by force of- law. If, therefore, it is thought that we can steer any middle course -between relying on this House's resolution and converting that resolution- into law, I "say we are trying to do what is impossible. The doubt that I had as to -whether the Minister meant to keep alive the State laws arose from the words which' follow the word1 " proposed " in clause- 257, to which I have referred. These words are -

Duties may thereupon be collected as proposed at an increased rate or on any goods previously free

Mr Kingston

- At an increased rate, as proposed ?

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Mr ISAACS

- Yes ; at an increased rate. These words cannot under a first Tariff apply to any Commonwealth Tariff.

They seem to me to have beneath them -the underlying supposition that there existed some State laws at the time of the proposed collection which would justify the rest- of the duties being collected, and therefore that it was believed the State laws would exist notwithstanding the passing of this Bill. I feel, after the best consideration I have been- able to give to the matter, that this is an error. I believe that it was never the intention of the Constitution that there should exist at one and the same time two customs laws, but that it was intended that the Commonwealth should make up its mind what the duties of customs should be. Until the Commonwealth has made up its mind what the uniform customs duties shall be, it is not to impose any ; but the moment uniform duties of customs are imposed, then all State laws relating to this matter are to cease to have effect. If the Bill stands as it is, it will have a twofold effect. First of all, under section 90 of the Constitution Act, the State laws will die, and, therefore, the only duties we can collect will be collected under this Bill. But, secondly, under this Bill power will only be given, as far as the words are concerned, to collect a limited amount of duty, viz., "duties on goods at an increased rate " - whatever that means - or, " duties upon goods previously free." So that there will be some margin left, or intended to be left untouched by this clause, and yet that margin will have no operation in consequence of the destruction of the State laws by virtue of the Constitution. Now, unless it can be shown that the legislative authority to collect duties is different from the legislative authority which provides for the imposition of duties, that must be the result. I hardly thought that the position would be contested. I have here the Library edition of Broom's Constitutional Law, and under the report of the well-known case of Bates in regard to ship-money - Hampden's case - we find very learned notes by the author, and the words used from time to time are distinct about the collection and imposition of taxes. It is pointed out that whatever language is used by the King, whether it be James I. or Charles I., or any other King who tries to collect moneys from his subjects, whether he does it under the guise of loans or benevolences of ship-money or any other nomenclature, the courts have said that that is an imposition of taxation which is not warranted unless sanctioned by law. When it is sanctioned by law it is then the taxation of the subject with his own consent. I find on page 371 of this work the learned note by Mr. Hargrave, the editor of State Trials, who says -

James I. claimed the right of imposing duties-

Mr BARTON

- What part of the book is that?

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Mr ISAACS

- It is on page 371 of the first edition. The second edition is not in the Library, but it is the same as far as I have seen. Mr. Hargrave writes -

James I. claimed the right of imposing duties on imported and exported merchandise by prerogative. His son and immediate successor, the unfortunate Charles, not only persisted in the claim, but added to it the equally formidable pretension of ship-money. Realized, these claims, with loans, benevolences, monopolies, &c, would have comprised nearly a complete system of extra parliamentary taxation; for imposition at the ports was calculated to serve the purpose externally, ship-money to operate internally. I cite that merely to show that the language is exactly the same. In these old works the expressions, " imposed taxes " and " imposition of taxes," are constantly used, and from these old works they passed into the American Constitution and into American decisions, and they have also passed into our Constitution. Then we find, on page 406 -

Of the prerogatives respectively asserted by James I. and his son to impose and to levy ship-money, each was in turn successfully resisted and annulled.

There the word "impose" is used in the constitutional sense, and wherever Kings tried to get money out of their subjects it was called the "imposition of taxation." In their case, not having the warrant of Parliament, it was an illegal imposition. Here, under the authority of Parliament, it will be a legal imposition. Then again the word " collection " is well known, and on pages 39S, 399, and 401 there are considerable notes about the compulsory collection of benevolences and loans. It is there stated that -

The compulsory collecting of money by the Crown, whether as a loan or a benevolence, was thus explicitly declared to be illegal.

In fact, there is no distinction between the compulsory collection of money from the subject and the imposition of a tax. In the well-known case of Stevenson and the Queen, which was decided in the

Victorian courts, and which is reported in 2 Wyat, Webb, and a'Beckett, in 1865, Stevenson and Co. and a number of other firms sued the Crown to get back money that had been collected under a resolution of the Legislative Assembly of Victoria. As the session had expired without the Act being passed, they recovered the money on the ground that the Legislative Assembly had not the power to impose taxation; but if an Act of Parliament had come in, and said - "It shall be lawful to collect these moneys," there would have been legislative authority behind the matter, and the court would then have decided the other way. In the other case to which reference has been made - and it is the one, I think, which my honorable friend had in his mind - the case *ex parte Wallace and Co.*, which is reported in 13 New South Wales Law Reports, the New South Wales Legislative Assembly, in 1891, passed the ordinary resolution. The money was collected, the firm refused to pay, the Collector of Customs refused to sign the entry and pass the goods, and the firm applied to the court for a mandamus to compel the Collector to pass the entry. The court said - "This is the constitutional practice of Parliament. You apply to us for a writ of mandamus, and as the issue of that writ is in our discretion we refuse to issue it." But if it had been a question of legal right, there is not the slightest doubt that the Supreme Court of New South Wales would have decided precisely as did the Supreme Court of Victoria, and would have held that there was no legal power, simply because Parliament did not give its sanction to the collection of the moneys. But I should like honorable members to look at the wording of this clause and see what is going to happen. Power is given here to collect these duties -

At any increased rate or on any goods previously free, but so that any excess collected above any amount imposed by Parliament during the session shall be refunded.

Let us suppose the Parliament passes an Act, and the amounts imposed under it are lower than the amounts collected under the State laws, are those amounts to be refunded? The Minister for Trade and Customs will say "no"; and yet the imposition of the rates under the new Commonwealth Act does not appear to be retrospective. Therefore, the collection will take place under this Act, will rest for its validity on this Act, and yet it will be said that the duty is not imposed. Surely we impose the duty, even if it be only temporarily; and if there should happen to be no Act of Parliament passed, those who have paid duty will get their money back; while if there should be an Act of Parliament passed, and if the rate should be lower, they would get the difference back. But in the meantime we impose this duty, and compel persons to pay it. Does the Minister say that if anybody refused to pay this money he could successfully resist? Supposing he were sued in a court of law, [146] what would be his answer? Would it be - "Oh, you had power to collect money, but not to sue for it. You had power to collect it if you were able to, but you must not touch the goods. You may collect money from me, but you must not avail yourself of the other provisions of the Act, and sell those goods or sue me. You can collect the duty, whatever is meant by that." Surely the Minister would say at once - "That is not the meaning of the Act; you owe the money at law. Parliament has imposed that duty upon you, and you must pay it. You are entitled to a refund only in the cases mentioned in the section." Therefore, beyond all question, as far as I can see, there is an imposition of uniform duties. I want to see the imposition of uniform duties. I wish that clearly understood. I believe that the people have closed their eyes to many things in our Constitution, and rightly so, for the purpose of getting Inter-State free-trade at the earliest possible moment. It would be a very serious thing to delay the inauguration of Inter-State free-trade one moment longer than we can possibly avoid, and therefore I should like to see this Bill so framed as to give legal force and effect to the first schedule brought down by the Ministry. But I want to see that done in a way that is beyond all possibility of dispute or doubt. I do not want - despite my personal attachment to the traditions of my profession - any doubts to arise, because it would be a very serious thing if merchants were in doubt as to whether these State laws were in operation or not. It would be a very serious thing if the merchants were in doubt as to whether the State laws were in existence or not - it would be a very serious thing if these duties were to be collected, and if merchants had also to pay under the State laws. Now, I may say that the clause, whatever view may be ultimately taken of it, is eminently in need of further consideration. I believe the Minister, desiring to do what is best in the interests of the country, will give it that further consideration. There is one additional reason why it seems to me imperatively necessary to legalize the resolution. Under ordinary circumstances, as we have known them both in the mother country and in the various Australian States, existing Tariffs have been in operation, and the resolution constitutionally giving power - though not legally giving power - to the authorities to collect the increased duties effected no

inconsistent results. But here if we were to rely merely on the resolution of the House of Representatives we should have a very serious state of things arise. For instance, I will just give one example to illustrate what I mean. We will say that goods are brought into Sydney under the Commonwealth Tariff' under this-Bill, assuming it to be one which allows a State Tariff also to operate." The Commonwealth Tariff would impose, say, 20 per cent, duty on these goods, and they would therefore pay 20 per cent, on entering the port of Sydney. If the goods were to be brought over to Melbourne, and if the Victorian Tariff so prescribed, they would have to pay 25- per cent., making in all 45 per cent. If these same goods were taken to Melbourne first, they would pay 25 .per cent., and they would afterwards go over to New South Wales free ; thus they "would only pay 25 per cent, duty in all. Consequently, having regard to the varying State Tariffs, we must not hesitate- to bring into legal operation at the earliest possible moment the Commonwealth proposal for a uniform Tariff ; but in doing that I want to see its complete adoption, so that our Tariff shall be absolutely uniform. The trade difficulties and the uncertainties are great enough without having matters complicated by legal difficulties. The leader of the Opposition referred to clause 121 in connexion with the matter of ships' stores. I should just like to point out, what I tried to make clear by means of an interjection. Whatever ships' stores may be included, it seems to me at all events clear that the clause relates only to such goods as are taken on board a ship from the particular port in Australia where she may be lying. 1

Mr Reid

- - It is all right no doubt, if that is so.

Mr ISAACS

- The clause provides that the prescribed allowance of stores for the use of the passengers and crew and for the service of the ship may be shipped free of duty on board any ship of not less than 50 tons gross registered tonnage entered outwards for parts beyond the seas. "Parts beyond the seas" under this Bill would mean parts beyond Australia.

Mr REID

- Surely they could take any quantity of ships' stores for parts beyond the seas. The Commonwealth cannot limit the quantity of stores a ship shall take for use beyond the 3-mile limit.

Mr ISAACS

- But the Commonwealth can say how much of the stores shall be free of duty.

Mr REID

- Not for a ship bound for a destination 10,000 miles- off. The- Commonwealth has nothing to do with the goods used outside the limit.

Mr ISAACS

- But until the ship gets outside the limit she is subject to our jurisdiction.

Mr Reid

- Undoubtedly.

Mr ISAACS

- Therefore, we must assume the case of a ship within our ports, and therefore within our jurisdiction, quite independent of the 5th covering clause of the Constitution Act. If a ship in port wants, to put stores on board, and if they are bought in the ordinary way from a merchant, duty has to be paid ; whereas if the goods are taken out of bond, they may be taken out free of duty. What would there be to interfere with our limiting the- amount to be taken out free of duty ? I do not see any difficulty at all. The next clauses show that that is reasonable. It is provided that ships' stores shall be used only by the passengers and crew, and for the service of the ship, and that no stores, after being shipped, shall be unshipped, except by permission of the collector. That means, of course, that when a ship has got the stores on board, she is not to take advantage of the permission of the collector, and put them on shore, thus evading the duty. I do not see that there is any difficulty about that. Then there is another clause, 240, which has been referred to. It relates to the averment of the prosecution being sufficient. This clause is one of the very few clauses, in the Bill that fall away from the high standard of clearness which we have all been glad to observe in this measure-. As far as I can judge, that clause relates to two classes of proceedings, the one civil and the other criminal, because it refers to both prosecutor and plaintiff - although the marginal note is a little misleading. In the case of a civil action, I can quite see the very great advantage of providing - it exists in our Victorian law relating to Customs to a great extent - that the matter complained of, which in

nine cases out of ten is. peculiarly within the knowledge of the defendant, should be dealt with in the way proposed.

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Mr Reid

- Is that not so with reference to anything a man is accused of, such as going into a house for an unlawful purpose ?

Is not that peculiarly within his knowledge ?

Mr ISAACS

- Our law makes a great distinction between civil and criminal proceedings.

Mr REID

- Is-' not a thing that exposes a man to a year's imprisonment very much in the nature of criminal proceedings 1

Mr ISAACS

- So far as the word "plaintiff" is used, no one can be exposed to a year's imprisonment. With regard to civil matters, if the authorities have fair reasons for proceeding - and I cannot conceive that they would proceed without reason - I see no great hardship in placing the onus of proof as- to the value of the goods or the payment of' duty on the defendant. Assuming that the Customs have reasonable grounds for supposing that the duty has not been paid on certain gold watches, how could they exhaust the whole range of gold watches on the Continent in order to prove that certain watches are uncustomed goods? Therefore it is right to put the onus of showing that the duty has- been paid upon the defendant, because he knows where he got the watches, and he ought to be able to bring proof as to the payment of duty. With regard to criminal proceedings I am reluctant to go to anything like that distance, and I think the clause goes a little too far on the criminal side. It certainly states that in no case will the intent to defraud the revenue be presumed ; that has to be proved. And in no case of an indictable offence would the prosecution be relieved of the duty of proving the whole guilt of the defendant. Therefore it is not quite as drastic as may appear at first sight : although at the same time I think the Minister might see his way to make it a little more clear and follow the course he has adopted in the other clauses of separating the criminal from the civil jurisdiction. A question was asked by the right honorable member for East Sydney as to what power we had to impose on a State court the duty of trying offences. I conceive that under section 71 of the Constitution that power exists. Section 71 provides -

The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction.

Under these circumstances it seems to be perfectly competent for this Parliament to invest any State court whatever with power to try. offences and to try causes within the federal jurisdiction. A great many of these clauses are, I cordially agree with other honorable members, rather matters- for consideration in the committee- stage ; but the 257th clause seems to me to loom very large, and to be very much more than a matter of detail, and I cannot help saying that I attach the greatest importance to that clause. I trust- that the Minister, will give it his most careful consideration.

Sir MALCOLM McEACHARN

- I desire, like the two previous, speakers, to congratulate the Minister on having; produced a bill so free -from verbiage.. I feel that this will lead to- our being able,, as laymen, to read the Bill and understand it a great deal better than would otherwise be the case. I have also to congratulate the Minister on having, chosen Dr. Wollaston as Comptroller of Customs. I feel that in him we have a man who has- the esteem and regard of the commercial community - a man who is firm and yet courteous on all occasions, and I am quite sure that the Minister has secured in him a most admirable public servant. I should have been better pleased if we had had before us the regulations under this Bill. I find that there are 17 clauses in which regulations are referred to, and that under those regulations the Minister will have great powers, which I consider should be introduced -into the Bill itself. I would like to ask the Minister whether it is his intention, assuming that a. steamer such as an Orient or P. and O. liner arrives at Fremantle, to- charge duty on the stores that are used between Fremantle, and, say, Sydney 1

Mr Kingston

- Yes.

Sir MALCOLM McEACHARN

- That is what I understood the leader of the Opposition to be desirous of arriving at. I > do not profess to be able to read the legal sections of the Constitution in the same way as do the legal members of the House.

Mr. Reid. - The point mentioned by the honorable member for Melbourne has been since explained to me, and that only ships' stores taken on board at Inter-State ports will be subject to -duty.

Sir MALCOLM McEACHARN

- That is what I understand the Minister to say.

Mr Reid

- Now the Minister is getting away from the point again.

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Mr Kingston

- I never got away from it. I said that clause 121 referred to stores taken on board, and that the intention is to -charge on stores consumed in Australian waters.

Mr Reid

- Whether brought from abroad or not 1

Mr Kingston

- Yes.

Sir MALCOLM McEACHARN

- That makes it clear that steamers coming here from any part of the world, and arriving at, say, Fremantle, and intending to go on to Melbourne or Sydney or anywhere else, so long as it is a port in Australian waters will be charged duty on their stores. I was saying that I did not profess to be able to read the legal sections in the Constitution in the same way as do the honorable and learned members of the House : but I would like to ask the Minister whether he is certain that under section 5 of the Constitution Act - a covering clause - a steamer whose first port of clearance, or whose port of clearance and final port of discharge, is not within the Commonwealth, can be charged duty on the stores used in Australian waters ?

Mr Kingston

- I am. certainly of that opinion.

Mr Reid

- That will have to be thrashed out. '

Sir MALCOLM McEACHARN

- That is a matter to which legal members of the House will have to devote their attention. I am not inclined to take the view that the Minister takes, and I think at any rate that the section is capable of two readings. If the Minister is right, then the feeling of the owners of coastal steamers will be that so long as we are put on the same footing with other steamers coming here we recognise that there are such difficulties in connexion with the duties on this coast that we shall be quite prepared to accept the sacrifice we shall have to make.

Mr Kingston

- All must pay, or all go free !

Sir MALCOLM McEACHARN

- It may be interesting to the House to know that this proposal will cost the coastal steamers a sum of something like £21,000 a year. That is a rough estimate - but I think it may be taken as correct within a thousand or two - of the amount by which the Customs will benefit. This is the amount that those who have hitherto had their stores free will have to pay ; but I would like the Minister to note that a very great portion of this sum will fall upon the seamen, because out of this total of £21,000 I estimate that wines, spirits, and tobacco represent a total of £14,680. Of course this is nothing like the amount which the Minister will receive as revenue, because there will be in addition the duties paid on the stores issued on steamers arriving from foreign parts. Many of the clauses which I had noted have been already dealt with by previous speakers, and I think with them that most of the clauses are matters for discussion in committee rather than on the second reading. I should like, however, to draw the attention of the Minister to clause 192, which says -

Any officer of His Majesty's forces or any officer of Customs or police may seize any forfeited ship or

goods upon land" or water, or any ship or goods which he has reasonable cause to believe are forfeited. Any officer may have such reasonable cause, and if he acts upon it no proceedings can be brought against him. I think, therefore, that some restriction should be placed in the clause. It is too stringent as it stands.

Mr Kingston

- It is very difficult to suggest any better wording.

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Sir MALCOLM McEACHARN

-There is a saving provision in the Victorian Act which I cannot find in the Bill. Section 195 of the Victorian Customs Act of 1890 provides that -

If it shall be made to appear to the satisfaction of the Commissioner that such spirits, opium, tobacco, snuff, or cigars, were on board without the knowledge or privity of the owner or master of such ship or boat, and without any wilful neglect or want of reasonable care on their parts, then and in such case the Commissioner shall deliver up the said ship or boat to the owner or master of the same.

I think that that is a reasonable provision to insert in the Bill, because there are many cases where smuggling is carried on by passengers or crew without the knowledge of the owners or master of a vessel. I intended to refer to clauses 121, 122, and 123, but I regard the explanation which has been given as sufficient. With regard to clause 10S, which provides, in regard to the clearing of ships, that - Before any goods are taken on board a ship for export - (1) The ship shall be entered outwards and the goods shall be entered for export.

I should like to say that such a provision would come hard upon steamers proceeding to New Zealand, because it sometimes happens that they arrive and have to clear the same day. They are the only vessels which would be affected to any extent by the clause. The clause might, -however, be amended so as not to hamper the trade with New Zealand, and I am sure that such an amendment would meet with the acceptance of the Minister. Any other point which I may wish to speak upon I shall leave until the Bill gets into committee, but I desire again to heartily congratulate the Minister upon the measure.

Mr. HIGGINS

(Northern Melbourne). I can see that the Bill will necessarily, from its substance, raise some difficult constitutional points, which I think we had better face at once, and, as soon as we can, allay any fears with regard to its consequences.

(Mouse counted.)

I have looked at clause 257, and it does not contain the solution of the constitutional difficulty which the Minister has to face. I believe in a good deal that has been said by the honorable and learned member for Indi. If his view is right - and I think it is - clause 257 will, have to be put into a separate Bill, because it is a law imposing a duty. If it is retained in the Bill, the measure will be utterly invalid, even though it is passed by both Houses. Section 55 of the Constitution says that -

The laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

The Constitution contains several sections which make the imposition of uniform taxation the crucial moment from which certain events are to date, and it is to be the beginning of free-trade between the States. I am not, however, dealing with the question of uniform taxation, which my honorable and learned friend has dealt with more elaborately. Clause 257 is a law imposing taxation, because if it means anything, it means that from the time this House passes a resolution in ordinary form, instructing the Minister to collect revenue, there is a tax imposed upon a great number of articles which did not exist before. Therefore, unless the clause is put into a separate Bill, all the other elaborate, and in the main excellent, provisions in the Bill will become nugatory and futile, and cannot be enforced. But if we read section 55 of the Constitution Act further, it will be seen that the provisions of clause 257 must be put into two Bills, one relating to the imposition of customs duties and the other relating to the imposition of excise duties, because that section says that -

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only ; but laws imposing duties of customs shall deal with duties of customs only, -and laws imposing duties of excise shall deal with duties of excise only.

Clause 257 says that from the date of the* passing of the resolution by this House both excise and

customs duties are to be collected, which contravenes the provision which I have just read. The Bill also infringes another section of the Constitution. Under sub-section (2) of section 51, we have no power in imposing taxation to discriminate between States or parts of States; but the effect of clause 257 is to make such a discrimination, because the tariff proposed under its provisions may leave as they stand the duties now existing in some of the States and impose higher or lower duties in other States. There is probably no duty on woollens in New South Wales at the present time, whereas in Victoria there is a duty of 30 per cent.

Mr TUDOR

- The Victorian duty is 25 per cent.

Mr HIGGINS

- If the Treasurer in his Budget speech proposed a duty of 20 per cent, on woollens, the effect of clause 257 would be that from the date of the passing of a resolution by the House approving of the collection of that duty, a duty of 20 per cent, would be collected on woollens going into New South Wales, while the duty on woollens going into Victoria would be 25 per cent., and the duty on woollens going into Tasmania still heavier, because there is usually a heavier duty in force in Tasmania, than in any other State.

Mr Piesse

- Not always. The duty on woollens in Tasmania is only 20 per cent.

Mr HIGGINS

- Assuming that the Budget speech is delivered on the 1st August, the Victorian shopkeeper will be handicapped from that date in his competition with the New South Wales shopkeeper, while, the New South Wales manufacturer will have 5 per cent, less protection than the Victorian manufacturer. Of course the Minister may say that clause 257 is not a law imposing taxation. I have been trying to bring myself to that belief, but I cannot, do so. If we enact that from the 1st January next duties shall be imposed at a certain rate, that is a law imposing taxation.

An Honorable Member. - Imposed or collected.

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Mr HIGGINS

- Imposed or collected. Those duties can be collected, and retained if the permanent Tariff does not alter them.

If we say that from the 1st January, 1902, duties shall be imposed at a certain rate, that is a law imposing taxation. If we say that duties shall be collected at a certain rate from the 1st August, 1901, that is a law imposing taxation; and if we say that duties shall be collected from the date of the passing of a resolution by this House, that is a law imposing taxation. If we say that duties shall be collected at a certain rate from the date of a proclamation by the Governor-General in Council, it is not the proclamation which imposes the duties, but the Act which gives power for the collection of duties under that proclamation. Therefore, I cannot see way out of the position that this is a law imposing taxation, although the taxation is not to be collected until a date to be fixed by after events. May I here give some instances with regard to the effect of clause 257? I have given instances as to woollens, and I should now like to refer to kerosene. There is no duty on kerosene in Victoria. It is not an article which can be manufactured or produced in this State, but kerosene has been treated as the poor man's light, used in all houses in the bush, and so forth, and as an article which ought, therefore, not to be taxed. But there is a tax on kerosene in Tasmania.

An Honorable Member. - And in New South Wales.

Mr HIGGINS

- There used to be a tax on kerosene in New South Wales, but it has been taken off, and I believe there is also a tax in South Australia. Now, supposing the Ministry came down with a proposal in the Budget statement for a 15 per cent. duty on kerosene, either ad valorem or at so much per gallon. For the sake of argument, we will say a duty of threepence per gallon is proposed. From the time of the resolution a duty of threepence per gallon, which is not collected now, would be collected in Victoria. Assume now that this proposed tax on kerosene is not adopted in the permanent Tariff. What is the result? Under clause 257 the threepence per gallon duty which had been paid would be returned to the Victorian, but it would not be returned to the Tasmanian. That, I say, is a discrimination between Victorians and Tasmanians, and as such is against the provisions of section 51, sub-section (2), of the Constitution Act, which sets forth that any taxation is to avoid discrimination between State and State.

Mr Kingston

- The honorable and learned member contemplates no Tariff being adopted.

Mr Watson

- If the Tasmanian law be followed the Tasmanians are responsible.

Mr HIGGINS

- I am not referring to that but to the Constitution Act, which says that any taxation we impose must make no discrimination between State and State. By this legislation we are imposing a tax, and are saying in effect that the tax shall remain on the Tasmanians but not on the Victorians.

Mr Thomson

- We revert to the original conditions.

Mr HIGGINS

- Yes, but it is not uniform, and there must be no discrimination. If there be taxation in the Commonwealth it must be uniform throughout the States. There cannot be a duty on kerosene in Tasmania during a time when there is no duty on kerosene in Victoria. I hope I have made the point clear.

Mr Isaacs

- Not by virtue of the Commonwealth Tariff.

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Mr HIGGINS

- Not by virtue of the Commonwealth Tariff, and, therefore, I think my honorable friend was fully justified in calling attention to the danger of passing this particular clause in this particular Bill. I suggest to the Minister that the clause should be reconsidered, and if he then still thinks that it is a solution of the nut which the Constitution creates for us he should bring the clause in as a separate Bill, or rather as two separate Bills - one for customs and one for excise. I now want to pass on to one or two other matters dealt within the Bill. The honorable and learned leader of the Opposition, has referred to the particular stringency of what may be called the "hovering" clause. Of course that clause 214 looks very stringent, providing as it does that certain ships shall be forfeited to His Majesty, among others -

Any ship used in smuggling, or in the unlawful importation, exportation, or conveyance of any goods.

Any ship found within one league of the coast failing to bring to, for boarding upon, being lawfully required to do so.

Any ship hovering within one league of the coast, and not departing within twelve hours after being required to depart by an officer.

That looks a very big thing, but the word "hovering" has a peculiar technical sense of which we need not, I think be afraid. I take it that this "hovering" clause is like the "move on" clause in the police regulations.

Mr Kingston

- Yes.

Mr HIGGINS

- And that it is for the protection of our coasts.

Mr Kingston

- It means ships that are hovering about for the purpose of running goods or smuggling.

Mr HIGGINS

- The "Hovering law" used to be applied in England and in the United States to any ship between headlands, say between Land's End and the south point of "Wales. A ship might be outside the 3 miles limit, but still within the headlands. Very strong powers have to be taken by any Government with regard to ships hovering and hanging about on the coast. This reminds me of one thing, in regard to which I would with all respect make a suggestion. I think it would facilitate the passing of these clauses through committee if the marginal notes showed the sources of the clauses. Most of these clauses are a condensed drafting of old regulations. The clauses are very well drafted, but at the same time, I say that the experience which I have had in this House - and I am sure other honorable members will confirm me - is, that a clause can always be got through more easily if honorable members see that it is not altogether new - that is, if honorable members see that it is based on experience, and is from some other Act. I quite recognise that the Minister is justified in thinking that his clauses are very much better than are any sections in existence for the last two or three centuries in England. I take that for granted, and I think he deserves all the commendation given to him in this respect. But what I want is that there should be

something to show the House that a clause is not completely novel - that it has not originated in the last six months in Melbourne or Adelaide - and that almost -all these provisions are the result of centuries of experience. With regard to clause 121, dealing with ships' stores, what understand from that, combined with the relating clauses, is that an ordinary ship of more than 50 tons burden has to pay Australian duties on Australian goods shipped in Australian ports - that a ship, whether it comes from England or Kamchatka, is to pay the Australian duty on goods which are shipped on board in Australia.

Mr Watson

- Does the honorable and learned member refer to goods or stores ?

Mr HIGGINS

- Of .course, the exception here is stores. The duties are not on stores as such, but on goods - the stores are a more limited portion of that referred to in the bigger term "goods." I have had my understanding of this clause twisted about in the dialogue which has gone on over the table. On the one hand, I thought I understood the clause, until I heard an interjection, and then my understanding of the provision became very different, until I heard another interjection. Of course, clause 121 merely applies to ships' stores, and to ships' stores when the ship is under a certain tonnage, but what I understand - and I should like to be corrected if I am wrong - is that if goods are shipped in Australia, those goods should bear the Australian duty with the small exception which is put here. On the other hand, there is another view which may be taken - and I should like to know if this is the Minister's view - that there is to be a duty charged on all goods which are taken between port and port in Australia, and by, say, a P. and O. vessel.

Mr Kingston

- The idea is to let goods go out of the warehouse free, because they are going to be exported beyond the seas. Goods in other cases are to be consumed in Australia, and a certain charge is made in regard to them. These charges apply in all cases.

Sir Malcolm McEACHARN

- Clause 159 provides for drawbacks.

Mr HIGGINS

- Yes ; I know about the drawbacks. Then clause 121 merely amounts to this, that if a ship, say a P. and O. Ship, takes stores on board in Fremantle, and goes round the coast of Australia, that ship has to pay the Australian duty on those goods.

Mr Thomson

- The ship takes the goods on board duty paid if she gets them- at Fremantle.

Mr HIGGINS

- That is if she gets them at Fremantle, and there is no -drawback.

Sir Malcolm McEACHARN

- The vessel has. to pay on stores which she consumes, but which she did not take on board at Fremantle.

Mr HIGGINS

- Do I understand that a ship has also to pay a duty on stores consumed, which stores she has brought from London, say tea and spirits 1

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Mr Kingston

- Yes.

Mr HIGGINS

- That is a very drastic regulation. I can understand Australian stores paying Australian duties, but I . do" not quite understand British stores paying.

Mr Kingston

- But the stores are entering into Australian consumption.

Mr Watson

- And a ship may be carrying Australian passengers from Fremantle, Adelaide, and Melbourne.

Mr HIGGINS

- That may be; and, after all, the provision is not, perhaps, more stringent than the provisions in America. I remember a little experience of my own in America, which I may mention. I was going into New York harbor, and I took an oath that I had nothing dutiable, except £3 worth of goods. I need not mention what

the goods were. When I was told I would have to pay a 50 per cent, duty, I said - "I have got a through ticket to Australia; I am not going to stay in the United States, and surely I may be allowed to carry this £3 worth of goods through America?" "No," they said "you must pay seven dollars and a half," and they added, because they were humorists, "You will be let off the seven and a half dollars if you will pay the expenses of a Customs officer, in a first-class Pullman car, as far as San Francisco to see you on board."

Mr Kingston

- The assumption they were acting upon was that you were going to consume ' the £3 worth of goods in America ; in that case they would have been entering into American home consumption. .

Mr HIGGINS

- I tried to show the Customs officer that I had not the least intention of consuming that portion of my goods in America, because it so happened that the goods consisted of Brussels lace. At all events I can see that clause 121 will lead to some discussion, if I understand the honorable member for Melbourne, who knows so much about shipping. There is another matter I should like to refer to. I find that there is no schedule here of the Acts or the sections of Acts repealed.

Mr Kingston

- I do not think the word " repeal" is quite the proper word to use in relation to a State Act. We do not repeal State Acts.

Mr HIGGINS

- I am afraid there will be a good deal of trouble and friction, and even litigation, created if we pass this Bill without knowing exactly what local State 'Acts are to be affected.

I need not tell honorable members that there are a number of local Acts in all the States which bear directly upon these very debatable subjects, such as Shipping Acts, Passengers and Navigation Acts, Customs Acts, and even Crimes Acts. It would be a great convenience if the Minister could go through these Acts with his secretary or assistants, and decide which of these sections he intends to be enforced after this Bill comes into operation. ' Speaking with a good deal of experience, I think I may say that there is nothing which creates more litigation, more worry and friction, than the failure of the draftsman to state in the schedule what sections are to remain. However, I have no doubt that the Minister will give us the best in regard to this matter. He knows thoroughly well how litigation can frequently be avoided by the exercise of a little care in detail in that respect.

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Sir JOHN QUICK

- The various constitutional questions involved in this Bill seem to have been very lucidly and elaborately discussed by the three honorable and learned gentlemen who have preceded me, and I do not know that it is absolutely necessary to further labour any of the points that have been so well bandied. But at the same time I would like to avail myself of this opportunity of directing the attention of the Minister in charge of the Bill to two questions involved in the consideration of clause 257. The first question is as to the legalization of the resolution of the House of Representatives, and the second is as to the beginning of absolute free-trade between the States. Now, it has Occurred to me that these questions are perfectly distinct, and I think it would tend to clearness if the Minister will state what is his intention in regard to that clause. We desire to know whether his intention is merely to give legal effect to a resolution of the House of Representatives so that duties may be legally collected between the time of bringing down the Tariff resolutions and the passing of the Act 1 I can understand that, as one intention. Is that his sole intention ? In suggesting this question for consideration it occurred to me that there was another and more important question than that to be considered. More important than the legalization of the resolution of the House of Representatives is the question as to the precise moment of time when, there shall be absolute freedom of trade between the various States. Under <i> section 92 of the Constitution it is provided that on the imposition of uniform duties of customs, trade, commerce, and intercourse among the States shall be absolutely free. That is one of the fundamental principles of our Constitution charter, and what merchants want to know is the time when trade will become absolutely free. We want that moment fixed legally beyond all doubt. I believe there are very few in this House or in this country who are not of that opinion. The opinion is that a certain period of time should be fixed when there shall be absolute freedom of trade, and they want that period to depend, not upon a mere departmental order, but upon a sound, legal, and unchallengeable basis. I ask the Minister to consider whether freedom of trade ought not to begin from

the moment when the resolution embodying the new Tariff is brought into this House ? Can any one deny that that ought to be done. And for this reason - that from that moment, according to the constitutional practice in all British countries, the duties are collected in accordance with the terms of the resolution. The Tariff then becomes a uniform one, we will say, by convention. Supposing that the duties were collected according to the terms of the resolution and were not challenged, we should have a uniform Tariff by convention, although not legally; but what we want is something more than the acceptance of a uniform Tariff by convention or acquiescence. We want it established on a legal, basis. It is asked that from the moment when the Minister proposes his resolution in Committee. of Ways and Means, the revenue shall be protected. I apprehend that the Minister does not bring down this proposal merely for the purpose of validating the resolution, but for a more important object, namely, the establishment of Inter-State free-trade. If he does mean that, then he ought to take steps to give legal effect to what are his intentions. Let us examine this clause and see whether that is intended. It is said that when the Tariff alteration is proposed to the House - when the Minister proposes the adoption of a resolution authorizing the taking of steps for the , protection of the revenue - duties may thereupon be collected as proposed. If the clause ended there everything would be absolutely clear. So far as the intended legislation is concerned, everything would be perfectly clear, because it would be embodied in an Act of Parliament that the officers of Customs should next morning proceed to collect duties in accordance with the terms of the resolution sanctioning such collection submitted to this House on the previous evening. That would be quite sufficient. When once this clause in that form finds its way into an Act of Parliament, that would be sufficient not only to validate the collection of duties as an interim proposal, but also to mark an event which is referred to in section 92 of the Constitution - namely, the establishment of Inter-State free-trade.

Mr Thomson

- Supposing that the Tariff Bill were defeated ?

Sir JOHN QUICK

- We must not contemplate anything of the kind. When once the House goes into Committee of Ways and Means to deal with the Tariff, it must proceed until the battle is fought out. Even if certain disturbances and difficulties occur, this could- be regarded as the interim Tariff, which was to remain in legal operation until it was superseded by an Act in the ordinary form.

Mr Thomson

- Would that clause, a.s the ' honorable member proposes it, make the Tariff an interim one 1

Sir JOHN QUICK

- What we want is an interim Tariff, a provisional Tariff, so as to mark what we are all aiming at - namely, the establishment of Inter-State free-trade.

An Honorable Member. - To legally collect the money.

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Sir JOHN QUICK

- Not only to collect the money, but to mark an event which is mentioned in section 92 of the Constitution - namely, that on the imposition of a uniform Tariff the trade between the States is to become absolutely free. That interim Tariff can remain in operation until it is succeeded by the full Tariff, which will be carried successfully by one Ministry or another. I think there ought to be no doubt about this. Is it the intention of the Minister, in submitting this clause, not merely to legalize the resolution of the House of Representatives, but to mark the event to which I have already referred - namely, the establishment of Inter-State free-trade ? If he aims at thus marking the beginning of Australian free-trade, then it is of supreme importance that the matter should be placed beyond all doubt. It seems to me that there is a great deal of force in the contention of the honorable and learned member for Indi, that a Tariff collected on the .authority of a resolution sanctioned by law would be the imposition of a uniform -Tariff within the meaning of section 92 of the Constitution. It may be that in the drafting of this clause certain phrases have been used which will have results which were not contemplated. I join in suggesting that the Minister should very carefully consider the arguments which he has heard, and take such steps as may be necessary - either in this clause in this Bill or in another Bill, as has been suggested by the honorable and learned member for Northern Melbourne, if he thinks that there are constitutional difficulties thus avoiding any doubtful course. If there is any constitutional doubt involved it will be better to deal with the matter in a separate Bill. Whatever is done should be done clearly, and I hope that the Minister will endeavour to

give effect to the proposition that trade and intercourse between the various States should be absolutely free from the moment that the first Tariff resolution has been adopted by this House.

Mr Kingston

- From the moment that we pass a protecting resolution ?

Sir JOHN QUICK

- From the moment the House adopts a protecting resolution.

An Honorable Member. - Would the Senate have to pass it ?

Sir JOHN QUICK

- This validating clause would pass the Senate .and give legal sanction to the resolution. That is how it acquires the force of law.

Mr Thomson

- That is not proposed here.

Mr Kingston

- Would the honorable and learned member's idea be that the resolution is to hold good for all time - that is, until another Act was passed ?

Sir JOHN QUICK

- It would hold good until superseded by the Act which is to follow.

Mr Reid

- But there may never be an Act, and we shall, therefore, be governed by a resolution.

Sir JOHN QUICK

- Until the Act is passed, certainly.

Mr Reid

- I am afraid that some people may object to that form of Tariff legislation. It is a very convenient way of doing it, no doubt.

Sir JOHN QUICK

- I would like to know what the right honorable member, who professes to be so very anxious for the establishment of free-trade, would do.

Mr Reid

- We do not want to talk about professing to be anxious, because Inter-State free-trade is bound to come under the 'Constitution. We are not anxious because we have given it to you in advance.

Sir JOHN QUICK

- I should like the right honorable member to assist us in preparing a scheme which will give us InterState free-trade at the earliest possible moment.

Mr Reid

- I am heartily with the honorable and learned member in that.

Sir JOHN QUICK

- The right honorable member seems to be labouring under some -doubt in regard to this matter. He seems to think that the passing of a validating resolution will occupy too long a time. But the House will have to sit, when once it enters upon the consideration of the Tariff, until its ' labours are completed. It is of no use contemplating prorogation before the Tariff becomes law. We must sit on until the matter has been fought out. We want to secure Inter-State free-trade from the earliest possible moment, and that moment is when the resolution is brought down formulating the Tariff proposals. Protectionists, as well as free-traders, are desirous that Inter-State free-trade should be established as early as possible.

Mr Reid

- The honorable and learned member is sane to the 'extent of .50 per cent, at any rate.

Sir JOHN QUICK

- I am sure we may rely on a very favorable consideration of the points which have been raised at the hands of the Minister in charge of this Bill. The only other important clause to which the leader of the Opposition has invited attention - and we are under an obligation to him for initiating this discussion - is clause 121 which has reference to ships' stores. I confess that, in the second-reading speech of the Minister for Trade and Customs, I did not exactly follow the meaning which he intended to convey by this clause. I am not quite sure that the clause in its present shape does .attempt to give effect to what the honorable 'member has in mind.

Mr Deakin

- He does not say that it does. He announced intentions in that relation that went far beyond that particular clause.

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Sir JOHN QUICK

- This clause is a very simple one, for it says that the prescribed allowance of stores may be shipped free of duty on board any ship of not less than 50 tons gross registered tonnage entered outward for parts beyond the seas. That clause would certainly not apply to a ship leaving Melbourne for Sydney, nor could it apply to a ship leaving Fremantle for Melbourne, or to any vessel leaving one State port for another State port. 'It would only apply to a ship leaving Melbourne for New Zealand or Fiji, or for some other part of the outside world, and it could not apply therefore to a ship trading from port to port within the Commonwealth. The clause has a very limited effect, and it does not purport to deal with ships arriving at Fremantle from London in the way that it was put by the honorable and learned member for East Sydney. At the same time, as I read this clause, a P. and G. steamer arriving at Fremantle from London immediately it came within the three-mile territorial limit would, in just the same way its an Inter-State boat, be within the jurisdiction of the Commonwealth. Immediately upon arrival in a Commonwealth port, the vessel would become liable to two sets of laws - the State laws as far as they would be applicable, and the federal laws ;as far as they would be in operation within the three-mile limit of the Commonwealth. Consequently these P. and O. boats, or any other foreign boat, would, within the territorial waters, be liable to the revenue laws, and would not be allowed to consume goods brought from foreign parts without paying duty. I know of nothing in this Bill that would allow them to do so. On the other hand, they would have to seal up their .goods under the supervision of the Customs officer, who would take care that all the stores imported from abroad were placed under lock and key. For the purposes of the Act, the imported stores would become bonded stores. A P. and O. boat would not be able to bring stores within the waters of the Commonwealth, and allow passengers and the crew to consume them, without paying duty on such goods as were dutiable.

Mr Thomson

- She can now under the ' State laws.

Sir JOHN QUICK

- I am not sure about that. Immediately a boat came within State waters she would be liable to State revenue laws, just in the same way as an ordinary local ship would be, and she could not consume dutiable goods without paying the duty payable within the State limits. Then she would be abl to buy local stores, or to ship stores free of duty if they were ' intended to be used beyond the seas. But it seems to me that as regards goods, wares, and merchandise consumed on board a foreign ship within territorial waters, duties will have to be paid. Supposing a foreign ship started on a voyage for parts beyond the seas outside Australia, then she would be able, under clause 121, to take .any stores free of duty so long as they were to be consumed on board on the high seas beyond territorial waters. So far as section 5 of the Constitution is concerned, I do not think that it throws very much light on the question. Clause 5 is only intended to give extra territorial effect to the laws of the Commonwealth with regard to British ships trading between various ports of the 'Commonwealth on 'One continuous voyage. ' It is true that even if Australian ships go a thousand miles beyond the Commonwealth, the laws of the Commonwealth will still be enforced regarding them, so long as the voyage begins and ends within the Commonwealth. Section 5 will not apply to a P. and O.-or an Orient liner coming from London. They will only be liable to the laws of the Commonwealth so long as they are actually within the three mile limit, and while they are beyond the three-mile limit, and therefore on the high seas, they again become liable only to the laws of the country from which they come.

Mr Thomson

- - They can remove the seals placed on their stores then.

Sir JOHN QUICK

- Yes, immediately they get beyond the three-mile limit they can remove the seals placed on their stores, and begin to consume such stores without the payment of any duty.

An Honorable Member. - What about the ships that do -not touch at Albany 1

Sir JOHN QUICK

- If they do not call at the ports of the Commonwealth they will not be liable to the laws of the Commonwealth, because it is only when they call at the Commonwealth ports that they come within our jurisdiction.

Mr REID

- - As the honorable member for Melbourne said, if there is any validity in tins attempt to levy duty upon their stores, these ocean steamers will buy all their stores in London, and then they cannot -be touched. An Honorable Member. - They do that now.

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Sir JOHN QUICK

- I quite agree with the view that a P. and O. liner coming to Australia is only subject to Australian laws whilst she is within the" territorial limit, and that immediately she goes to sea again and is on the high seas, she can open the stores that she brought from London. I do not think this clause will affect those ships in the slightest degree. There are other clauses in the Bill which are of minor importance, and I need not refer to them as they will doubtless be well threshed out. I have therefore confined myself to the two clauses to which I have referred, and which I consider of the greatest importance.

Mr McCAY

- I do not intend to detain the committee more than a few minutes, and I shall therefore direct my remarks to the two clauses which have been specially discussed. I have the misfortune to differ to a" large extent in my interpretation of these clauses from some of the honorable gentlemen who have already spoken. The attack made upon clause 257 may or may not be justified, and it is with the greatest diffidence - in view of the undoubted skill and knowledge of the gentlemen who have attacked it - that I venture to think that the attitude they have taken is an incorrect one. It seems to me that there is no imposition, of duties by clause 257, because that clause says that on the House of Representatives adopting the resolution, the Minister may take any necessary steps for the protection of the revenue, and that revenue duties may thereupon be collected as proposed, at any increased rate, or on any goods previously free, but so that any excess collected above" any amount imposed by Parliament during the session shall be refunded. To my mind, the concluding words of the clause offer ground for what seems to me a very strong argument against the interpretation placed upon the clause during the debate. Though I admit that the arguments of the honorable and learned member for Indi are strong, yet they do not conclude the question, as the honorable member himself will doubtless be prepared to grant. And I admit frankly that my arguments do not establish the question one way or the other.

Mr Reid

- As to an amount that was not in excess of the previous rate, and would not be refunded, would the honorable member say that that duty had not been imposed ?

Mr McCAY

- I will put it in the: way. A duty - putting it in ordinary English - is the payment by a subject to the Crown for the carrying on of the management of the country, and in its essence it means that the subject pays something that he does not get back again.

Mr Reid

- That is exactly what he will do under this clause.

Mr McCAY

- Duty is something which the subject pays and does not get back again, and which he has no claim to get back again. Now, in these cases, these sums that are collected - I do not know that the word " duties " is a fortunate word to use - are paid tentatively by the importer in order that he may be allowed - I am referring chiefly to Customs, as the Excise question is of minor importance in any case - to bring in his goods. If at the end of the session Parliament has not passed a law imposing these duties the money will be returned, but it seems to me that the person when he pays the money only pays it as a sort of security for being allowed to bring goods in - a security that when the law is passed - and in that respect it will be a retrospective law - duty will be paid on all goods he has imported. This would have the same effect as if the importers entered into a bargain that duty would be paid on all goods imported from the moment of the passing of the resolution by the House of Representatives up to the time of the imposition of the uniform duties by a law passed in both Houses, and1 retrospective in its operation.

Mr Isaacs

- Making a certain payment, for an uncertain return.

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Mr McCAY

- It seems to me that the clause really means that. It is -simply a. convenient way of securing that the law, which will be retrospective in its operation by dating back to the passing of a resolution by the House of Representatives, will be obeyed in its retrospective as well as its prospective effect. I do not think the fact of some duties not being returned affects the question. It means that the contract is carried out pending the imposition of uniform duties - not under the authority of the resolution, not under the action of the Minister in protecting the revenue, but under the operation of the Act. It is by the authority of this measure that the duties will be retained after a uniform Tariff has been imposed. If Parliament passed a law enacting that no

Chinaman should enter the Commonwealth without depositing the sum of .£100 with the Collector of Customs, unless within the same session, or by the end of the session, following his arrival it enacted that the money should be returned to him, would that be the imposition of a duty ? I do not think that it would. It seems to me that the duties collected under resolution will be in exactly the same position. Just as in the instance which I have given, although the deposit of £100 by the Chinaman might be a condition precedent to his entering the Commonwealth, it would not be a duty, so the moneys collected under the authority of- a resolution passed in pursuance of the provisions of this clause would not be a duty, although to their payment would be attached the condition precedent that when Parliament had passed a uniform Tariff, they would, if the duties in the Tariff were the same as the duties charged under the resolution, be appropriated to the revenue of the Commonwealth. Whether that view be right or wrong, it is certainly a tenable one.

Mr Isaacs

- If duties are not uniform, have we, under the Constitution, power to impose them ?

Mr McCAY

- If a charge is not a duty at all, it does not matter whether 'it is uniform or not. In my reading of the clause, the duties levied under the resolution would not be duties within the meaning of the Constitution.

Mr Isaacs

- They are called duties.

Mr McCAY

-That is perfectly true, but I do not think they are duties within the meaning of the Constitution. Act, and will not become duties until the uniform Tariff is actually passed. That, it seems to me, must have been the view taken by the Cabinet, because, so far as I can see, it is only upon that ground that the clause is tenable. Therefore, I am fortified in my opinion by the views of the notable lawyers who are members of the Cabinet.

Mr CONROY

- But on the honorable and learned member's own showing, would not the measure, being retrospective in its effect, make these charges become duties 1

Mr McCAY

- I do not think so. The money is to be held by the Customs department, pending the imposition of a uniform Tariff. When a uniform Tariff is imposed it is to be retrospective in its effects, but the charges become duties only on the passing of the Tariff. At the same time, it is questionable whether it is wise -to pass the clause as it stands in the Bill. It is perfectly clear that there is great difference of opinion as to its meaning. If the clause means what the honorable and learned members for Indi, Northern Melbourne, and Bendigo consider it to mean, it will be a most unfortunate thing to retain it in the Bill. Therefore, if there is a course as to the constitutionality of which both laymen and lawyers can agree, that is the course which we should follow. We are on the horns of this dilemma : either we must accept the construction of the clause which I have just given, and take the risk of the Cabinet being wrong, and the honorable and learned member for Indi and the other honorable and learned members who have taken the same view being right, or we must adopt a course which some of the members of. the Opposition appear to be unwilling to adopt. We must either take the course proposed in this clause, or we must allow the proposals of the Government to be the Tariff until Parliament has determined what the Tariff shall be.

It is of no use to say, " We will not have the Bill as it stands, and we will not take the other course." Those are the only courses open to us to take.

Mr Reid

- There is a third course.

Mr McCAY

- There is a third course. The Tariff proposals might be brought down to this House and debated here for months, so that every one would know exactly what duties were to be imposed long before they were collected.

Mr Reid

- That is not the third course to which I refer.

Mr Kingston

- To what course does the right honorable and learned member refer 1

Mr Reid

- To the course that is taken now in some of the States.

Mr Kingston

- The right honorable and learned member suggests that the proposed duties should be collected without statutory authority 1

Mr Reid

- Yes. If that were done the courts would not interfere.

Mr McCAY

- I do not think it is possible to adopt that course, seeing that we have a written constitution.

Mr Reid

- By the time any legal proceedings could be terminated, the whole difficulty could be got over.

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Mr McCAY

- I do not think that the recognition of the constitutional aspect which was taken in the Sydney case which has been referred, to would be likely to be taken by a court possessing federal jurisdiction: in these matters. Of course* we should have- the protection afforded by the fact that, until federal courts are established, there will be no tribunal to which the importer could go for' his remedy. We have a sort of brute force strength of position, but I. do not think that that is an advantage which we* should, like to use.

Mr A McLEAN

- If there are- no federal courts, how will the Government enforce these duties ?

Mr McCAY

- By preventing people from taking goods out of the warehouses until the duties have been paid ; though it is of' no use to consider those possibilities now. Our object should be to determine the course which will appear to-us to be undoubtedly safe. The safety of the course proposed in the Bill is disputed, though, when all is said and done, if we want to be quite sure, we must trust the Ministry to play fair. We should not expect them to bring down a uniform Tariff, and then immediately induce the Governor-General to prorogue Parliament. If they did that they might last until the next session, but they would then disappear as quickly as some other Ministries have done.

Mr Reid. - It is not a case of that sort that we are thinking of. There might be a prolonged difficulty of another kind between two competent authorities.

Mr McCAY

- Then we must let the uniform Tariff be collected in the meanwhile.

Mr Reid

- If that is done, the Ministry will win whatever happens because their Tariff is working all the time.

Mr McCAY

- The Tariff dispute between the Houses must come to an end some time or another, and ultimately Parliament will determine what the Tariff is to be. When the Tariff is imposed, I trust that we- shall have no more Tariff debates for many years to come.

Mr Reid

- Then the honorable and learned member anticipates that it will be settled in accordance with his own wishes.

Mr McCAY

- We must anticipate a reasonable course of events, and it seems to me that the two courses which I have, mentioned are the only practicable ones. If we are not going to declare, in the Bill, as I think we can, that the Tariff proposed by the Government shall be- the Tariff until Parliament enacts another - which will be done immediately or afterwards - we shall have to take the risks of the course which is proposed in the Bill, and which has been questioned by the honorable and learned member for Indi and by others. Whether the interim Tariff be approved by this or that side of the House, or whether, as is quite possible, it meets with a great deal of disapproval on both sides, of the House, if that course is pursued we shall not only escape the constitutional difficulty, but shall at once obtain the benefits of Inter-State free-trade.

Mr Isaacs

- The resolution might be made to limit the collection of duties to the current session of Parliament.

Mr McCAY

- We are not tied to the present verbiage of the clause. What we have to do is to determine which of two distinct methods of procedure we shall follow. Once we have decided upon the method of procedure, we can easily adapt the clause to it.

Mr Higgins

- If the session ended before a uniform Tariff had been passed, would the old State duties revive ?

Mr Isaacs

- The State duties could not revive.

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Mr McCAY

- If the collection of these duties is an imposition of duties the State duties could not revive. I do not feel that there is much force in the point that has been raised by the honorable and learned member for Northern Melbourne as to the course proposed by this clause being the imposition of duties which are not uniform. I doubt in any case whether a continuance of State duties could be held to be the imposition of duties by the Commonwealth. However, the question stands or falls with the main issue whether the proposed collections under the clause are duties, and in any case whether we ought to allow the clause to stand as it is. I suggest to the Minister and to the leader of the Opposition that it is urgently desirable that we should pass a clause as to whose constitutional effect there will be no serious difference of opinion. If, with the adoption of a clause in that form, we can secure immediately Inter-State free-trade, we shall earn the gratitude of the people of the Commonwealth, for so promptly enabling them to get what they regard as the chief benefit of the union. The only other clause to which I desire to refer is clause 121, or rather I wish to refer to the discussion which has raged around it. The clause excepts certain goods from the payment of duty, and the discussion was as to the imposition of duties upon goods coming into Australian waters, but not actually landed upon our shores. That is a matter of policy well worth considering, and I am of opinion that such duties should be charged, but the Government takes power to charge, them under the general clauses of the Bill and not under clause 121, which merely exempts certain people taking goods out of bonded warehouses from having to pay the duties on them when they take them out. I doubt the wisdom of the proposal of the honorable and learned member for Northern Melbourne that a schedule of the State Acts repealed by this measure should be embodied in it. We can repeal no State laws, except such as the Constitution gives us power to repeal, and a schedule of repealed Acts would be merely an expression of our opinion that the Acts therein mentioned were repealed by the passing of the measure. It would be merely an expression of opinion, and would not bind any court, any body, or party to a suit. It would be merely an expression of opinion likely enough to be wrong in some respects. It would be necessary to look into all the Acts and study them carefully in order to see what Acts and sections of Acts were really repealed ; and the information supplied would be more likely to be a misleading than a safe guide. It is better to leave the repeal to the operation of the Constitution, and not endeavour to put in the Bill, what, after all, would be only an index and a guide post, and not operative as a law in the ordinary sense.

Mr HIGGINS

- It has been done in the Defence Bill.

Mr McCAY

- It is quite true that this has been done in the Defence Bill, but I do not think that, therefore, the course is a right one. We have been putting placards in our Bills - sometimes in a clause and sometimes in a schedule. I disapprove of the practice of putting placards in laws passed by this Parliament taking from the Constitution or from implications of the Constitution. It is much safer to leave the Constitution as far as possible to operate according to its own words, instead of endeavouring to interpret those words in our laws, seeing that our interpretation cannot affect the fact, whatever it may be, of what the Constitution really means.

Mr THOMSON

- If I understand the honorable and learned member for Bendigo aright - I had not the pleasure of hearing the speeches of other honorable and learned members who preceded him - he stated that if clause 257 ended at the word "proposed " it would be a sufficient clause, which would enable the Ministry to collect duties without any necessity to refund subsequently, if the Tariff Bill were not carried into law. But I put this question to the honorable and learned member - what would happen if: the Tariff Bill did not become law? I was under the impression from his speech that the adoption of the resolution would impose a Tariff, and that consequently Inter-State free-trade would begin with that imposition. The difficulty I see in connexion with the matter, presuming the Tariff Bill is not carried, is the condition of affairs after its rejection. I do not know whether we could collect the old duties as existing in the various States. I suppose not.

Mr HARPER

- Not if it be held to be an imposition under the statute.

Mr THOMSON

- I do not think we could collect the old duties. The honorable and learned member for Bendigo said we should not contemplate that the Tariff Bill might be defeated. But we ought to contemplate that which is within the range of possibility, and I ask whether, if the Bill were thrown out, we should be without customs duties altogether? If any customs duties were collected after the Bill was thrown out, the Ministry at any rate would have sacrificed the Inter-State duties, and would never get back the revenue lost by those duties not being enforced. If I understand the honorable and learned member correctly, I do not think his proposal would at all meet the circumstances. Then there is another proposal that the passing of a resolution, as I understand, by both Houses-

Mr PIESSE

- No.

Mr THOMSON

- Then, that a proposal passed through this House alone shall impose a Tariff?

Mr PIESSE

- By virtue of this Bill if it becomes an Act.

Mr THOMSON

- Yes; by virtue of this Bill if it become an Act, the passing of a resolution by one House shall make the Tariff law.

Mr HIGGINS

- That is the proposal in this clause, but we say it is not workable.

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Mr THOMSON

- There is a proposal here, to which I will allude directly, for the refunding of any overplus paid - that is the difference between the Tariff ultimately adopted and the duties imposed by the resolution. But can it be considered that a resolution of one House will legally impose duties in accordance with the Constitution?

Mr Piesse

- If the law says so.

Mr THOMSON

- That view may possibly be correct. As I understand the argument, it means that when both Houses pass this Bill, then the resolution of a single House can impose a Tariff?

Mr Piesse

- Parliament validates the resolution in advance of passing it.

Mr THOMSON

- That may be possible, I admit. But I want to know if there is any anticipation that both Houses of this Parliament are likely to agree to a proposal that the Ministry shall come down with any Tariff it likes, and that that shall be the Tariff until another Tariff takes its place.

Mr Kingston

- That idea has much to recommend it to this side of the House.

Mr THOMSON

- To that side of the House, no doubt it has.

Mr Reid

- And to this House, as against the other House, perhaps.

Mr THOMSON

- I can quite understand that a Ministry might under these conditions impose the most protective Tariff that any member of the House could hope for - a Tariff that might exist for a given time, say twelve months, before it was either accepted or rejected. By that time such interests would have grown up, and such industries would have been affected in one direction or another-

Mr Piesse

- The resolution should limit the time of the Tariff.

Mr THOMSON

- Then what happens at the end of that time ? I quite admit there are a great many serious difficulties, and I am only trying to probe the suggestions that have been made. Sup- posing there is a limitation of time.

Mr Piesse

- : To the end of the session.

Mr THOMSON

- Supposing the Bill is not passed at the end of the session, what happens ?

Mr Isaacs

- We cannot suppose that; we must sit on until the Bill is passed.

Mr THOMSON

- What is the meaning of the limitation "to the end of the session" ?

Mr Higgins

- Until we pass the Tariff.

Mr THOMSON

- Suppose the Tariff is not rejected before the end of the session.

Is the limitation that if the Bill is not passed at the end of the session it ceases to be law ? If so, what happens when it ceases to become law ?

Mr Piesse

- It stands as law until the end of the session.

Mr THOMSON

- But supposing, owing to political circumstances-

Mr Piesse

- The honorable member cannot suppose those.

Mr THOMSON

- We can easily suppose political circumstances. Suppose nothing eventuates by the end of the session - suppose there is such a stonewall in one House or the other that business cannot proceed-

Mr Isaacs

- That is, supposing Parliament does not do its duty.

Mr THOMSON

- Parliament may postpone doing its duty, as Parliaments do every day. We have even postponed doing our duty since we have been in this Parliament.

Mr Isaacs

- What is the honorable member's alternative?

Mr THOMSON

- I am now dealing with the proposal from the point of view of the Government side of the House. There are other alternatives and difficulties, I admit, in connexion with most of them. I am not dealing in a hostile

spirit with the suggestions made ; and I would be happy to adopt them, unless they gave undue power to the Ministry, if I saw clearly that they would get us out of the difficulty. But I do not think they would get us out of the difficulty. There is this difference between a mere interim Tariff, such as is collected in some of the States, and the course now proposed : that under the interim Tariff, if duties were charged in excess of the Tariff subsequently adopted, there would be a refund, and business would not be disturbed, because we should come back to the conditions that would exist under the new Tariff, without any intermediate conditions which might seriously disturb commerce, business, and manufacture, if it were regarded as permanent, and no refunds were made of any duties found to be excessive, obstructive, or destructive.

Mr Kingston

- I did not quite grasp the honorable member's suggestion.

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Mr THOMSON

- The Minister has not got my suggestion yet. I am sure that if the Ministry will apply to the Opposition for help under the circumstances, we will put our heads together, and try to relieve them of their difficulty.

Mr Kingston

- Here is our proposal ; I show us something better.

Mr THOMSON

- There is another. peculiar point in this clause. It apparently contemplates - so the leader of the Opposition points out to me - an enormous and very general Tariff. The clause only provides that - Duties may thereupon be collected as proposed at any increased rate or on any goods previously free. That is the proposal, and the clause certainly is not imposing a Tariff. It does not say that duties are collectable where a lesser duty, is fixed than exists in any one of the States. The clause is evidently not imposing a Tariff, but is imposing only part of a Tariff - that is, where duties are increased. Perhaps the Ministry have let out a secret on this occasion, and we have to recognise that there are to be no decreases, but only increases of duties, and also duties imposed on goods not now dutiable.

Mr Kingston

- Take hope.

Mr THOMSON

- I cannot accept that as its meaning ; but otherwise the clause is not an imposition of a Tariff, but simply an imposition of increases.

Mr Higgins

- If we impose part of a Tariff, can that be said to be the imposition of a Tariff.

Mr THOMSON

- I will not enter into a legal argument with the honorable and learned member for Northern Melbourne.

Mr Higgins

- It is not a legal argument.

Mr THOMSON

- I cannot put my opinion against the honorable and learned member's in a legal matter.

Mr Higgins

- The honorable member is far more delicate in his arguments than is any legal member here.

Mr Mahon

- The honorable and learned member for Northern Melbourne asks whether a part is equal to the whole.

Mr THOMSON

- I say that while this clause may impose part of a Tariff, it apparently does not impose the whole Tariff. It does not impose more than increases of duties.

Mr Isaacs

- The honorable member will see that the clause assumes that the rest will be collected under the State Tariffs.

Mr THOMSON

- I do not think that would be so.

Mr Isaacs

- I do not think it would, but the clause assumes that.

Mr THOMSON

- That maybe, but it is, I think, a wrong assumption. There are other matters in the Bill, but I will not go into them at present. I agree with the honorable and learned member for Corinella that clause 121 does not at all deal with the question of duties on stores used on the coast of Australia.

Mr Reid

- Does the Minister agree with that?

Mr Kingston

- Yes.

Mr THOMSON

- If the Minister can collect duty on stores used by steamers running between the ports of Australia, then he must collect it not under this clause but under the provisions of the Act. I see some difficulty in the proposal of the Minister to collect duties on foreign-going vessels whilst they are off the Australian coast, unless they are going to be allowed to break the seals immediately they get outside of the three miles limit. In fact, nothing can prevent them from doing so. But even to prevent these vessels from using their stores when they are within the three miles limit it would be necessary to have an officer on board.

Otherwise who is to decide whether they are within or without the limit?

Mr Watson

- The Minister does not take the three miles limit.

Mr Reid

- He takes all he can get, and is prepared to take a lot more than he will get.

Mr THOMSON

- These stores are free until they come within the three miles limit. They are brought from England or elsewhere.

Mr Watson

- But the Minister regards as ships' stores anything used between Fremantle and any other Australian port.

Mr THOMSON

- I question his power to do so under the Constitution. But I am heartily at one with the proposal that all steamers trading off the shores of the Commonwealth - that is going from port to port and carrying passengers or goods - should be put on the same footing. Either they should pay duty on their stores or they should not, and anything that it is not possible to do with a British steamer, should not be attempted with regard to an Australian steamer.

Mr Kingston

- The over-sea ships compete for the Australian trade.

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Mr Reid

- But an over-sea ship does not get its stuff out of an Australian bond ; it gets it in London, or some other place.

Mr. Kingston. - It brings it here in competition with our ships.

Mr Reid

- No; it is never landed. The duty is payable only when the goods are landed.

Mr THOMSON

- I wish also to indorse the remarks which have been made regarding the great liability which there is - when a Bill is being framed largely by Custom-house officers - of endeavouring to obtain and to maintain powers which are too drastic and severe. In the past it has been very necessary to have extreme powers in Customs Acts. That necessity is decreasing every day, because we now have means for checking smuggling, which did not exist formerly. We have telephones, telegraphs, and so on, and we have our officers at all ports. There are not, in many ways, the inducements to smuggling that previously existed.

Mr Kingston

- And the ships are too big as a rule to run the risk.

Mr THOMSON

- Therefore, the powers which are now necessary need not be so severe as they were under the old conditions.

Mr Kingston

- They have been reduced a good deal.

Mr THOMSON

- I give the Minister credit for that. I must add to the compliments which have been paid him, for the way in which the Bill has been drawn. It contains exceedingly clear and condensed provisions. I am sure that the Minister has tried to look at the matter not merely from the view of the Custom-house officials, but also from the view of the general public. I compliment him upon having taken steps to get the opinions of those who have constant connexion with the Customhouse, but who are not Custom-house officials. Still there are some provisions which I think are dangerous and severe. One of these has reference to the penalties which may be imposed. In clause 220 there are various offences set out. Some of those offences have no relation whatever to the value of the goods in connexion with which they may occur. For instance the clause says that -

No person shall make in any declaration or document produced to any officer any statement which is untrue in any particular, or produce or deliver to any officer any declaration or document containing any such statement. That has no relationship whatever to the value of the goods. It might occur in connexion with goods which are worth £1, or in connexion with goods which are worth £50,000. Yet the penalty is stated at the foot of the clause to be £100.

Mr Kingston

- It might be £5.

Mr THOMSON

- It would be perfectly right if the penalty might be £5, but under some circumstances it could not possibly be £5, it could not be £100, but would have to be a much higher amount. That is not a desirable power to give. In fact the Bill enforces immense penalties where there may be no need for them. In proof of that I would refer the Minister to clause 229.

Mr Kingston

- That refers to the minimum penalty.

Mr THOMSON

- Clause 229 says-

The minimum penalty for any offence against this Act shall be one-twentieth of the prescribed maximum. If we refer to clause 226 we shall get the maximum. That clause reads -

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.

I quite admit that it is highly desirable to have such a maximum, and if there is any offence, that is, an admitted evasion of the Customs, that there should be power to impose a very high maximum penalty, but the minimum can only be one-twentieth of the maximum penalty. What does that mean? An entry may be passed for goods which are worth, say £10,000 - a not infrequent occurrence-

Mr Kingston

- There is always the power of the Executive, though.

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Mr THOMSON

- But if we put these penalties into an Act we never know whether they will be imposed or not. If we are going to leave it to the Executive we can omit a great portion of this. Bill, or indeed of any other Bill. We know that errors will occur. They are bound to occur in the enormous number of transactions which mercantile houses have in connexion with the Customs department. They will occur sometimes without the least guilty intention. I quite agree that it is desirable to provide some punishment even for error,, but if the department is satisfied that any breach of the Act has been committed in error, surely that fact should be considered! in relation to the penalty to be imposed. Why, we constantly find even Ministers coming down to the House with errors in their Bills. They tell honorable members that these errors are oversights of the draftsman. Surely there is quite as good reason for a mercantile firm to say that a breach of the Act has been committed through the error of a clerk.

Mr Kingston

- Just think of the penalty that we have to face, if necessary.

Mr THOMSON

- The Ministry are never penalized ; why, in spite of all their errors, I am complimenting them. But I will just put the illustration that I was about to put a few minutes ago. Let us suppose that the goods for which the entry is passed are worth i' 10,000. Now the offence has no relation to the value of the goods at all. Many of the .offences under clause 220 cannot be fixed by any statement of the value of the goods. AVe might have a maximum referring to the value of the goods, but the exact penalty cannot be fixed by that value.

Mr Kingston

- But that is the maximum.

Mr THOMSON

- I am not objecting to the maximum, but to the minimum. If these goods are worth £10,000, the maximum penalty .would be £30,000. I am not even objecting to that high maximum, but I am merely pointing out that the minimum is one-twentieth of the prescribed maximum, so that a penalty of £1,500 would be imposed for an offence for which, apparently, £100 is considered by the Minister to be about the average maximum penalty. That is the position. AVe should not allow anything of that sort.

Mr Kingston

- On the other hand, £100 might be a very small penalty for a £30,000 job.

Mr THOMSON

- I am allowing the Minister the maximum ; but I am objecting to the Bill providing that not less than the minimum penalty shall be inflicted. The word "shall" must mean "shall."

Mr Kingston

- It was struck out.

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Mr THOMSON

- It was struck out because it was said that it does mean shall. In a case such as I have just cited the minimum penalty to be imposed would be £1,500. There are great powers given in this Bill for the framing of regulations. These regulations are of the utmost importance, and I think that the Minister should endeavour to let us have them with the Bill. It is not under Bills that the powers of the Customs authorities are often exercised, but it is under regulations such as are contemplated under the present measure, and while; of course, we need effective regulations - and I would never, in any case, favour such as would promote fraud, because

I think it is one of the greatest injustices to' the community that opportunities should be given for fraud - still the regulations might so hamper trade, and be so unnecessarily injurious, that it would be well to have a copy of them before us while we are considering the Bill.

Mr. CONROY

(Werriwa).- It seems to me that in connexion with clause 257 the whole difficulty turns on the interpretation of section 92 of the Constitution Act. That section states that on the. imposition of uniform duties, trade, commerce, or intercourse among the States shall be absolutely free, and what Ministers have been trying to do has been to find out really what the true meaning of the word " imposition " is in that section of the Constitution Act. They do not seem to be able to determine that point even among themselves, and I am bound to say that even outside of the Ministry, and among the honorable members in what I may call the constitutional corner, there also seems to be a somewhat similar difficulty. However, I think that a lot of the difficulty we meet with in this House will be readily solved by the Senate, because it does not appear to me that the Senate would for one moment allow a clause to be passed that would give this House power to decide at what moment the Tariff should be adopted. If the Senate does pass clause 257 in its present form, it is very clear that by a mere resolution of this House, certain duties would be collectable. As has been pointed out, it is stated that any excess collected above any amount imposed by Parliament during the session, whether at an increased rate or in the form of duty on goods previously free, shall be refunded. Does that really mean' that the highest rate on any particular article in any one of the States is to be the rate adopted, and that there shall be no such tiling as a reduction in the Commonwealth Tariff on any of the duties imposed by any particular State? Does it mean that the Minister for Customs may go through the whole of the Acts of the various States, and look up the highest duties that are chargeable on any good*, and adopt those rates, saying that he will not go below those, but that he may increase them. It is possible that in five States a certain article may be admitted free, whilst in the sixth State there may be a duty levied on it. Yet in clause 257 there is nothing to prevent the

duty being levied according to the highest Tariff, even though a lower Tariff were adopted by the Commonwealth in the end. A good deal has been said about this clause, but as I believe that the Senate will probably deal with it very fully we need not trouble ourselves very much about it here. If the clause were permitted to pass in its present form, it would amount to an arrogation to this House of power that does not belong to us under the Constitution, and, therefore, I feel sure that the Senate will not allow it to pass as it now appears. A good deal has been said as to the manner in which the Bill has been drafted, and with a great part of that I agree. At all events, of the three Bills that have been before us, with the exception of, perhaps, the Audit Bill, which I did not go into, this seems to be the only one that has been at all carefully drawn up, and whilst I do not approve of some of the provisions, I am desirous of giving full credit for the way in which the Bill has been put before us.

Mr HUME COOK

- They are improving.

Mr CONROY

- Yes, very probably they have learned something from the remarks which the honorable member himself has made. It is very clear that some of the provisions of the Bill are much too drastic. There are the provisions in clause 220, to which the honorable member for North Sydney called attention. He pointed out that there is a penalty of £100 prescribed for making a false entry, and there is also a heavy penalty for attempting to evade the payment of any duty. The article upon which duty would be payable might be worth only £5, or a lady might smuggle in some article which was worth only £1. I presume that in such a case it would not be fair to inflict the full penalty that is provided for here.

Mr Kingston

- The fine would be £10 for that.

Mr CONROY

- I do not see any provision for anything of the kind. It seems to me that perhaps even the wife of one of our legislators might bring in an article worth 15s. or £1, or even less, and yet we have made a person committing such a trivial offence subject to a penalty of £100.

Mr Kingston

- Is the honorable and learned member a justice of the peace ?

Mr CONROY

- No, I am not.

Mr Kingston

- If the honorable member were he might have an opportunity of saying whether the fine should be £100 or not.

Mr CONROY

- It seems to me that the penalty is fixed, and that there is no means of reducing it.

Mr Kingston

- Yes, there is. It is provided in clause 229 that the minimum penalty for any offence shall be one-twentieth of the prescribed maximum.

Mr CONROY

- I understand that the Minister holds that the provision in clause 229 would meet a case such as I have described, but I should like to know if this matter has been thoroughly considered, because I do not think the clause would do so.

Mr Higgins

- Has the honorable and learned member thought what would be the penalty for infringing clause 122 by taking refreshment upon some ship in the Bay?

Mr CONROY

- That would come under clause 224, by which it is provided that for offences for which no other penalty is provided the penalty shall be not more than £10.

Mr Higgins

- That would be paying rather dearly for a whisky !

Mr CONROY

- So that we can fairly say that there is a minimum penalty in that case of £1 only, which would make the drink fairly dear. In clauses 239 and 240 it is provided that in every Customs prosecution, except for an

indictable offence, 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.

Mr Kingston

- So he would be adverse to the prosecution.

Mr CONROY

- Still I do not see why the authorities should compel a defendant to come in and give evidence for them.

Mr Kingston

- We want him to tell the truth.

Mr CONROY

- There are plenty of cases in which a man would not wish to give evidence.

Mr Kingston

- That is exactly the reason why we should have the power to compel him.

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Mr CONROY

- I hope that the day for that kind of thing has gone by, and that we shall not try to force a man into the box and make him commit perjury. It may be right to compel him to give up whatever he has, and make him pay whatever penalty he has incurred through his wrong-doing, but we should not force a man to commit perjury. Under clause 240 it is provided that the averment of the prosecutor or plaintiff contained in the information shall be deemed to be proved - no matter what the defendant may say - in the absence of proof to the contrary. So that while in the one case the statement of a Customs officer is to be regarded as legal proof, the defendant may be compelled to go to England or elsewhere before he can find any answer that will be acceptable. He would be placed in such a position that his evidence would not be legal evidence, and could not be recorded, and under these circumstances what would a man's statement be worth? He would be met by proof on the one side, and he might not be able to bring anything to controvert what was stated against him, without, perhaps, sending a commission to England. He would be able to make a statement, but that would not be regarded as proof.

Mr Kingston

- He is competent to give evidence.

Mr Reid

- Yes, he is competent to give evidence for the Government.

Mr CONROY

- The clause simply states that the averment of the prosecution shall be deemed to be proof in the absence of proof to the contrary, and I would ask the Minister if he seriously means that. Does he really seriously mean that any statement of the prosecutor whatever shall be deemed to be proved; that because something is handed over to a clerk, who draws up a declaration in any form he pleases, every word is to be accepted as true?

Mr Higgins

- This does not apply to indictable offences.

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Mr CONROY

- It is quite true that when the offence is an indictable one it is not included in this clause, but in the hundred and one matters that come up before the Customs officers it is very clear that a power of this kind is far too drastic to give, it is a power that would be more in keeping with the old times under the old mercantile system, when it was thought very wrong for men to trade at all. We cannot be said to be living in those days now, because there are men sitting on the benches in the House who glory in the fact that they are engaged in trade, and who rejoice at the prospect of a uniform Tariff being brought into operation, because it will remove the restrictions between the States. Under section 121 I might point out what the effect will be in connexion with ships if the Commonwealth collects duties on stores consumed by ships which trade between the various ports of the Commonwealth, and yet go outside territorial waters. The effect might be very serious indeed, because if the provisions of the clause can be applied to oceangoing steamers - I am not quite sure that they can - the result will be that all the ports at the far end of this continent such as Perth and Albany will not be called at at all, because the extra cost of the goods to be consumed on these boats might be so great that they would pass those ports, and come

straight on to Sydney. As far as Queensland is concerned, it might be that the oceangoing steam-ships trading from eastern ports and now touching at Cairns, and having their head-quarters in Sydney or Melbourne, would not touch at the northern ports at all. I think that under this section a very much greater power is being given to Ministers for- the time being than they ought to have, and as it is believed that this is a matter of regulation, and that the powers of Ministers could be enforced under regulation, they might be exercised in such a drastic manner as to seriously affect the smaller ports. It is very clear that the influence would be in the larger ports, and they would not mind stamping out the people in the smaller ports, but that is not the intention or the spirit with which this Act ought to have been framed. We are here to frame legislation for the whole of Australia, and if a proposal is likely to injuriously affect any small corner of the continent it ought not to be adopted. I hope that the Government will take into consideration the drastic nature of the two clauses to which I have referred, and see if their provisions cannot be modified. '

Mr. HARPER

(Mernda). - I am sorry that, owing to my absence in the early part of this sitting I lost the opportunity of hearing the remarks which have been made about clause 257. Before dealing with that clause, however, I think it due to the Government and to the Minister in charge of the Bill, to say that in my opinion the measure is admirably drawn, and seems to cover the ground which such a Bill as this should cover with clearness and conciseness. If it is passed, it will be a great improvement upon many of the Customs Acts with which I am acquainted, though, of course, it contains provisions which we shall have to alter in committee. The honorable member for North Sydney made a point in regard to the clause which provides for the infliction of penalties. The Minister, in trying to make the penalties imposed by the Bill consistent and automatic in operation - a very desirable thing to do - has no doubt overlooked the fact that in every case the penalty should be proportioned to the offence. There are hosts of small infractions of the Customs law which, though unintentional, the authorities cannot pass by, and it would be well for the Minister, before we come to dealing with the penalty clause, to consider that class of offences, with a view to providing lesser penalties for minor inaccuracies and mistakes, which will inevitably "occur and which are not intentional, though the result of carelessness, and, it may be, of culpable carelessness. The Bill as a whole is one which the House will be able to adopt. I have given clause 257 considerable attention. I have for some time past foreseen great difficulty in the position in which we are placed by the Constitution Act in providing for a uniform Tariff, and I referred to the matter when I spoke on the Address in Reply to the Governor-General's opening speech. The first difficulty which has to be met is that which has had to be met by the State Parliaments in the past, in fixing a new Tariff, or imposing additional duties - the difficulty of protecting the revenue by collecting the duties from the moment of their announcement by the Government. In the States the revenue has generally been protected by a resolution of the Lower House, but the collection of duties under such a resolution has been admittedly illegal, or at any rate, has gone pretty far in the direction of illegality, and the method is a cumbrous one. The procedure provided for in the Bill - and I believe it is the adoption of a suggestion made by the honorable and learned member for Bendigo - to some extent meets the case, but only to a very small degree. If the clause in the Bill is carried, the Government will be authorized, upon the passing of a resolution by this House, to protect the revenue by collecting proposed duties immediately they announce their Tariff. That procedure will prevent any merchant or importer from attempting to get the best of the Government before the Tariff is adopted by Parliament. Such attempts in any case could succeed only if the discussion upon the proposed Tariff were a very long one, and they could not succeed at all under the provisions in the clause to which I refer.

Mr CONROY

- The debate upon the Tariff is likely to be a long one.

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Mr HARPER

- In that case, the provisions to which I refer may be desirable. Having thought the matter over, I see in all directions difficulties connected with this clause. From what I have heard of the suggestions made by some of the legal members of the House, I am inclined to think that if those suggestions were adopted, we should find ourselves in a sea of unknown difficulties. It seems to me clear that we are shut up to one of two courses ; of which one is a course which I think is almost too much to hope for - that the Tariff should be determined upon almost immediately, to enable the new order of things to begin, and to give

time for the formulation of a permanent and stable Tariff. If it were possible to adopt that course, all the difficulties which otherwise appear likely to ensue would be avoided, and trade would be free from the hindrances in which it will be involved if any other course is adopted. I fear from what I have heard and what I know, that it is too much to expect that that course will be adopted, and I have come to the conclusion that the only other course to adopt is the old method of protecting the revenue by a resolution of this House, passed in accordance with the provisions of this clause, or even independently of the clause. It will then be absolutely necessary, in my opinion, to continue to collect the State Tariffs in all cases where the State duties are in excess of those proposed to be imposed by the Federal Tariff". In all cases where articles are subject to higher duties under the State Tariffs than it is proposed to impose upon them by the Federal Tariff, we must collect the State duties in addition to the federal duties, until the uniform Tariff is settled upon. I do not see that the announcement of a proposed Federal Tariff can be held to be the imposition of the uniform Tariff provided for under section 90 of the Constitution. Act. It is inconceivable that we should consider the Tariff actually imposed before it has been finally ratified and the rates fixed by Act of Parliament. Therefore, we cannot have Inter-State freetrade until the Federal Tariff has been finally determined upon, because of other sections of the Constitution which must be taken into consideration. There is, for instance, the provision with regard to goods imported into any of the States prior to the imposition of the uniform Tariff, which are subject to varying duties in the different States. By a clause in the Bill these goods are to be prevented from entering another State without paying the federal duty. That is to say, if an article is admitted duty free into New South Wales, and a duty of 2d. a pound is imposed upon it by the Federal Tariff, a duty of 2d. a pound must be paid upon it if it is removed from New South Wales to Victoria. How will that provision be affected by the clause which I am considering? If we enact that the announcement of the proposed Tariff by the Government is to be taken to be the imposition of a uniform Tariff, these goods cannot be removed from one State to another unless they pay the additional duties provided for in the Federal Tariff. But if, on the other hand, the announcement of the proposed federal duties is not to be taken to be the imposition of the uniform Tariff, are these goods which have been imported prior to the declaration of the Tariff, and which are presumably movable in the interval before the Tariff is finally settled, to be subject to the Federal Tariff? I suppose they will have to be, though I do not know that that is provided for in the clause as it stands. It will be necessary to see that the duties on these goods are collected and retained until such time as the Tariff is settled.

Mr Conroy

- Then the two years will date from the time when the Tariff is agreed to by both Houses ?

Mr HARPER

- That is how I read the Constitution. I am taking into account the contingency of its being considered that the imposition of the Tariff must date from the time of its declaration by the Government and the passing of a resolution by this House. It seems to me that a vast number of complications will arise, and as the only way out of them - however laborious and difficult it may be - we are bound to collect the Federal Tariff from the moment it is declared, and to continue to collect the State duties in all cases where they exceed the federal duties, retaining the money on deposit until such time as the Federal Tariff is finally settled. Therefore, InterState trade cannot be free until the Federal Tariff is finally ratified by Act of Parliament. We cannot attempt to have InterState free-trade immediately the Tariff is declared, because goods will be removed from one State to another, and it will be uncertain what duties should be levied upon them. Under such a state of things, the business complications would be appalling. If we introduce Inter-State free-trade upon the declaration of the Tariff, the difficulties created will be enormous, and I believe will have a very detrimental effect upon the trade of the States during the time that the Tariff is under consideration.

Mr Isaacs

- The question whether we should make the Act retrospective is a very serious one.

Mr HARPER

- I do not know how far we can do that. Honorable members, in dealing with this question, should remember that upon their actions depend to a large extent the business arrangements of the States for a very considerable period. If the debate on the Tariff be unduly prolonged, business will be paralyzed. It will be impossible to ship goods from Sydney to Melbourne unless the federal duties are paid upon them,

although they may have come into Sydney duty free. Then if that federal duty as proposed should not be adopted finally by the House the money would have to be refunded. Who would get that money?

Mr Conroy

- By the Audit. Act it would go into the consolidated revenue, I think.

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Mr HARPER

- Would it be the man who shipped the goods or the man who received the goods? If we follow out the ramifications of the effect of these clauses it seems to me that we shall find that business between the States would be almost at a stand-still until the Tariff was finally settled by the adoption of an Act of Parliament. I think that all the attempts which have been alluded to by some of our legal friends to get over the difficulty by enacting that the Tariff, immediately it is declared, is to be the practical imposition of the Federal Tariff, are impracticable. I agree with the honorable member for North Sydney that we must look to the contingency that the Tariff Bill might not be adopted, and if the declaration of the Tariff by the Government is to be held to be under the Federal Act, the imposition of the Tariff upon which the right of every State to legislate for itself on -Tariff matters is to cease, we are brought to the position that should the Tariff Bill fail we shall be without a Tariff altogether. I think we must face the difficulty in this way : we must collect the federal duties, and we must allow the various States' duties also to be collected on deposit - that is, in all cases in which the duties exceed those sought to be imposed by the Federal Government. We cannot have intercolonial Inter-State free-trade until the Bill is finally passed and adopted. I think that by the time we come to deal with the clauses in committee, it is possible that the Government may see their way out of this labyrinth. So far as I am individually concerned, I have been puzzled as to the exact meaning of the word " imposition of a Tariff" from the very inception of the Bill. Although ,I have given very great attention to the matter, I do not see my way through the difficulties without very grave trouble indeed ; but I believe the simplest way, short of doing what I believe to 'be the impossible, . would be to get both sides of the House and the Senate to agree to pass a Bill forthwith, which might be held to be an interim Bill. If that could be done it would be the simplest way out of the difficulty, but I regard it as impracticable. The only other way is to face the difficulties of the position, and collect both the Federal Tariff and the States' Tariffs in all cases where the latter exceed the Federal Tariff, and to postpone Inter-State free-trade until such time as a Tariff Bill has been finally adopted by Parliament.

Mr. PIESSE

(Tasmania). - I do not know that we have had any more important question before this House than the one that has been discussed this afternoon. It is a discussion to which I am sure we all looked, to learn what views those who have been appointed to represent the electors of Australia held, on this very important question as to when the Tariff should be considered to be imposed. I think some of the honorable members who have addressed the House more recently in the discussion would have been helped considerably if they had heard the speeches delivered early in the afternoon, when some of the legal difficulties of the case were put very clearly, especially by the honorable and learned member for Indi. There would have been a. greater hesitation in the expressions of opinion in some directions if honorable members had¹ heard also the honorable and learned member for Northern Melbourne on the subject. That leads me to the point, first of all, that if there be opportunities under this clause,, as now proposed, to assail the Bill, as honorable members have shown it may be assailed, I think we shall be led to consider whether we should not take a course which will prevent any law which we may pass as now proposed being assailed, thus tending to great confusion in all commercial relations. There was a suggestion made which the honorable member for North Sydney, to some extent, dealt with in his address in the latter part of this afternoon. When I refer to him, I am sure he will quite understand that no one who listened to him, at any rate on this side of the House, considered that he was attacking in any hostile spirit a. proposal made from this side. I do not. know whether the honorable member has yet given the Minister the benefit of his suggestion of a way out of the difficulty, but I think we might appeal to that honorable member, and to all honorable members, wherever they may sit, and point out that this is a question on which we ought to sink all party feeling, and to endeavour to bring our best judgments to bear on the settlement of the difficulty. One solution which was suggested was that the resolution which would be validated by the provision under discussion would, when brought in, itself specify that the Tariff would

extend to the end of the existing session of Parliament. What would be the position

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That would at once put all the Tariff laws of the various States out of existence, and we should have only the customs law upon the resolution validated by the Bill we are now considering. It would place Parliament in the position that it would either have to sit until it had passed another Tariff, or to put itself in the position of having no customs law at all, and, therefore, no custom's taxation to be collected.

Although it may be a difficult position, and although it is a solution which we should not, perhaps, choose if there were any other, still, I think it would place Parliament in the position of being compelled to deal with the Tariff before it finally closed its labours of this session.

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Mr Kingston

- Suppose the Houses do not agree ?

Mr CONROY

- Suppose the other House did not agree with us?

Mr. PIESSE. - I cannot conceive that either House of this Parliament would go on sitting continuously, or, to take the other alternative, would disband and leave us without the means of collecting any customs taxation.

Mr Kingston

- Parliament could not disband.

Mr PIESSE

- Well, whatever might happen, the Minister has put the question. What is the other horn of the dilemma on which he places himself ? Although this may not be the best solution, unless there is another one offered it seems to me the only practicable solution of the position in which we find ourselves. At any rate, whatever may be said as to the proposal to table a resolution and collect the duties, and afterwards return those duties, I should like to point out that that is a very bad course if we can possibly avoid it. It means putting the profits to a very considerable extent into the traders' pockets - the profits on the duties paid by the consumers during the period of collection. I would rather face the question, and let those duties be absolute duties until the time comes when Parliament ultimately agrees to the Tariff that is to be the permanent Tariff. The honorable and learned member for Indi has given us very strong reasons for taking this point into consideration, namely, that the collection of the duties as proposed would be equivalent to the imposition of duties. If that be so, it then becomes a question whether under the Constitution we can impose a Tariff which is in a sense only a part of what will be collected, and which will, to some extent, be differential.

Mr Harper

- That would be an imposition by one House, and would it be legal ?

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Mr PIESSE

- I beg the honorable member's pardon. The clause we are considering validates beforehand, and in anticipation of the passing of a resolution. It gives the sanction of Parliament to a resolution which may be afterwards carried, in the same way as other Acts of Parliament validate in anticipation a proclamation which is made to bring the Act into effect. I was just on the point of dealing with the differential aspect of this subject. I think the very words which are used in the clause might give rise to an argument that this was a differential rate. The words are, "and any increased rate or on goods previously free." Those words take into contemplation an existing rate, and to some extent legalize the continuance of that rate. The whole Tariff will have to be dealt with as a Tariff, and the duties which will be brought in under the resolution will be part of the Tariff. By implication, we are referring to another portion of the Tariff, namely, the existing rates, which are not increased, and I think it might be said we are thereby bringing ourselves into conflict with the provision of the Constitution which says there shall be no difference made in taxation as between State and State. Whether such can be said or not, I think it is such a serious matter that we would do well to see whether we can solve the question. I think the least objectionable mode of solving it would be to agree to a Tariff tentatively, but a permanent Tariff so long as it lasted, and a Tariff which should last only until the end of the session, Parliament of course dealing with the question effectively before it ceased its labours.

Mr. KINGSTON

(South Australia Minister for Trade and Customs), in reply. - I am sure the Government have every reason to be pleased with the reception with which the Bill has met at the hands of honorable members. For my own part, I desire to acknowledge most gratefully the very kind remarks which were made as to the mode of its preparation. It is our desire to make the Bill a credit to the Legislature, and we have already welcomed assistance from various quarters. Now we come to the chief source of wise legislation, Parliament, and we are much indebted to the keen criticism to which this measure has been subjected. I would like to take the opportunity of saying that when I was mentioning those who had had much concern in the preparation of this measure, I forgot to mention the name of the draftsman, who chiefly gave the benefit of his services to the Collector of Customs, namely,

Mr. Cassell,

the assistant Parliamentary draftsman of the Commonwealth. That there are difficulties in connexion with some of these clauses it would be idle for us to deny. The chief criticism has been levelled against clause 257, and it seems to the Government that it ought to be our chief duty to make the position as plain as it can be made at the earliest possible moment. What we are seeking to do by this clause is to clothe with legislative recognition a long established constitutional practice. This is a practice which I venture to consider has been adopted for many - well, almost as long as we can recollect, and which is taken from the British practice obtaining in the United Kingdom, and has followed us here to Australia. It is absolutely necessary for the protection of the revenue, and in the interests of the community, that when a new Tariff is proposed, as soon as it is announced there shall be power to collect the increased duties, lest the object of the legislation should be defeated by the introduction of goods before the collection commenced. Is there any reason why we should not adopt a practice of that sort here? Surely not. What was necessary in one State will be all the more necessary in six States. It seems to me that there is additional necessity for providing for this in the clearest possible terms. There might be doubts raised as to whether or not a practice which could be applied with simplicity in the affairs of one State could be equally applied to the affairs of the Commonwealth, dealing with the fiscal systems of six States. Further, when our legislation as regards the relations of the States and the Commonwealth is so much the creature of special enactment and particular provision, I think that if we can, with similar clearness, provide what shall be the course under the circumstances which will shortly arise, it will be better if we can legally make a provision of the character referred to. The constitutional practice, of course, has a great deal to recommend it, but constitutional practice, when clothed with parliamentary recognition within the four corners of a statute, is even better, and provides at least for the removal of doubts that otherwise might be found to exist. So I think that honorable members will probably agree with me when I say that there is no reason, if we can avoid departing from the constitutional practice, why we should depart from it; and if it is possible to declare it, and provide for its enforcement within the four corners of the Act itself, all the better. What reason is given why we should not do what is suggested? I think honorable members, looking at the clause itself, will have no difficulty in coming to the conclusion that all that is sought to be there provided for is the collection of the higher duty temporarily, pending the permanent imposition of a Customs

Tariff - the collection of the higher duty, whether it is found in one State or in the other, or whether it is found in the State Tariff or in the Tariff which is proposed on behalf of the Federation. It is simply a declaration removing beyond the possibility of challenge the right of the Government to follow the course which has been established, I might say, from all time to do what is necessary to prevent the revenue from being robbed. Are we going to do it? Are we going to make provision as best we can, or are we going to throw the doors open?

Mr Isaacs

- Nobody has suggested that.

Mr KINGSTON

- The honorable and learned member for Indi says that no one suggests that. Well, as long as we can get what we require by any better means shall only be too glad to adopt those means. But what I say is this: we are proposing what is usual, and I have listened with the greatest amount of attention and respect-

Mr Reid

-What is usual where?

Mr KINGSTON

- What is usual in all British communities - to collect the higher duties when an alteration in the Tariff is proposed. I have listened to the various suggestions, and really there is not one of them which is seriously put forward as a substitute which is likely to be adopted. Someone has said that we ought to agree to a Tariff. It has fallen from a variety of quarters - and a delightful arrangement it would be. But here we are contemplating a Tariff, about which we are threatened with all sorts of differences; although I hope those differences will not be found to exist. Really it would be a most pleasant thing if any Tariff which the Government introduced could be accepted holus-bolus by this House even for one session. I should be delighted. Nothing would please me better.

Mr Reid

- Say a couple of sessions.

Mr KINGSTON

- Why stop at that? I believe really that the result will be that the Tariff which we bring down will be accepted. Still it may take a little time and a little argument to persuade its acceptance by some honorable members on the other side of the House. But during that time, even if we want the Tariff adopted for only a session, what is going to happen as regards the passing of goods ?

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Mr Conroy

- If the right honorable gentleman has any difficulty about the matter we will deal with it.

Mr KINGSTON

- The honorable and learned member for Werriwa will no doubt take his opportunity when it comes, but we do not propose at this moment to give it to him unnecessarily. What commercial members of this House will more readily realize, though at the same time we all recognise it, is this : that . no substitute beyond adhesion to the ordinary constitutional practice can be presented with any hope of acceptance by this House or any other -'branch of the Legislature. What are we doing ? We are simply proposing to adhere to the well-beaten track. I see the honorable and learned member for India shake his head, f believe that the course which I refer to as. the old constitutional practice is legal. I know that if we pass the clause as we have it here it will remove all doubt upon the subject. Does the honorable and learned member for Indi suggest that that practice is illegal '(

Mr Isaacs

- If it is not a uniform Tariff it certainly is illegal.

Mr. KINGSTON.- But is the constitutional practice of collecting duties according to the higher scale legal, or is it not ?

Mr Isaacs

- In one sense it is not legal, and the courts have held that it is not.

Mr KINGSTON

- I venture to consider that it is constitutionally authorized and legal, but I also put it that if a Bill of this sort is accepted by both Houses of the Legislature that will undoubtedly place it beyond the region of doubt. The honorable and learned member for indi practically puts it, " Do this which is doubtful in its legality, or which is illegal, and' I do not object." But I venture to think that it is an infinitely preferable position for the Government, believing the thing to be illegal, to remove the room for doubt, and then do as others have done before.

Mr Isaacs

- Can. the right honorable gentleman show one single instance where it has been done before ?

Mr KINGSTON

- Of course as regards the special circumstances of this being the Tariff of a federation which deals with half a dozen, different States, .1. may not be able to show a similar instance. But the principle laid down that we can collect the higher duties in the interests of the revenue is one which it is impossible to attack.

Mr CONROY

- Does the right honorable gentleman propose to collect the State duties as well 1

Mr KINGSTON

- We propose to collect whatever duties are the higher.

Mr CONROY

- Between the States as well?

Mr KINGSTON

- I will come to that a little further on. But the honorable and learned member for Indi says that this is an imposition of uniform duties of Customs and that therefore inter-State free-trade comes in.

Mr Isaacs

- I say that it is either an imposition of uniform duties or that it is invalid.

Mr KINGSTON

- First as regards the imposition of uniform duties, I may say that it is not an imposition of uniform duties at all. It is a collection of duties which are absolutely wanting in uniformity, and which will differ in the different States according to the rate of duty.

Mr Isaacs

- Can the right honorable gentleman show anything in the Constitution which authorizes that ?

Mr KINGSTON

- I can show that it is a simple collection at amounts in anticipation of parliamentary sanction, and to suggest that a Parliament which has powers of the large character to be found within the four corners of the Constitution as regards taxation, and particularly as regards customs duties and all things incidental thereto, is not to have the power, through its Executive, of doing that which is absolutely necessary for the protection of the revenue in the interim, is to suggest that an Act of that sort has been carelessly prepared, and is practically a disgrace to those who prepared it, when, as a matter of fact, we know that it is not. It has occupied the best attention of some of the best minds of Australia, and to suggest that the Federal Parliament and Executive, though we have large powers in this connexion to which I have referred, are shorn of the power of preventing the revenue from dwindling away during the period of our debates, which must necessarily be lengthy, is to contend for a position which is startling, and which, so far as I have examined the Constitution, there is no ground whatever for maintaining.

Mr HIGGINS

- We only hope that the right honorable gentleman is right.

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Mr KINGSTON

- I hope so, and ' I believe so. If a position of this sort had been put to the Federal Convention, of which the honorable and learned member for Northern Melbourne was, like many other friends whom I see around me, a distinguished member, and if that body had been told that it was passing the Bill in such a shape that the Federal Parliament could not do what the States could do in connexion with Tariff proposals, the suggestion would have been laughed out of the Convention.

Mr Higgins

- The right honorable gentleman cannot follow the beaten track if a post and rail fence has been put across it.

Mr O'Malley

- We can knock the fence down.

Mr KINGSTON

- It would be strange indeed if a temporary obstruction of that character were to stop the march of the legislative machine on the highway of commercial progress. Uniform duties, indeed ! With all the consequences which follow the temporary collection pending legislative and permanent imposition ! How can they be uniform duties when they are altogether wanting in uniformity, and when they are not imposed by us in the case of some of the States, but by the States themselves--

Mr Isaacs

- If the 'Government choose to do it by an Executive act they can do it now.

Mr KINGSTON

- The honorable and learned member for Indi says - " Do it by an Executive act." Would he do it 1 Would, he do an illegal, unconstitutional, and improper act ?

Mr Isaacs

- That is what the right honorable gentleman recommends. They do it in England.

Mr KINGSTON

- I know that the honorable and learned member would not be averse to taking any responsibility which

properly attached to the collection of duties. Would he hesitate to undertake the collection of the higher duties for the protection of the revenue on the introduction of the Tariff. Surely not. I say that what the honorable member would not hesitate to do we are quite justified in informing the House that we propose to do, and in asking for the special legislative authority which it seems to us should be properly conferred - for the particular authorization in a matter of this kind.

Mr Piesse

- Is the Minister sure of his ground 1

Mr KINGSTON

- I am as sure as can be. I would say this to the honorable and learned member at once, that I recognise - we all recognise - that it is a good thing to thresh out these things on the second reading, and I am deeply obliged to honorable members for their suggestions. We are working for the common good, and this is not a party question. I think that on questions affecting the revenue we should be prepared to sink any party feeling, because we must do something in this direction for the benefit of the Commonwealth as a whole. We are asking only that we may be able to do what others have done before us. I was going to say this, that while I am thus discussing some of the positions that have been put before me - and I recognise that the point is of such importance that it is not going to be decided on second reading - I deprecate the duplication of the discussion. Still, I think it is well that we should do something, and we will deal with it, as honorable members can also deal with it, in committee; and I have no doubt that the conclusion at which we shall arrive will be amply justified. Now, so much for that little matter. There is one other question that has been raised, and that is the subject of ships' stores. I do not mind telling honorable members, what probably they knew before, that my professional education did not include any very great learning on the subject of ships' stores. There is one thing, however, which is a distinct advantage, and that is, when one does not know all about a thing, to recognise that one does not.

Mr Reid

- Is the Minister going to do that 1

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Mr KINGSTON

- I am going to teach the right honorable and learned gentleman first. It has been a labour of love during the time that I have been attempting to discharge the duties of Minister for Trade and Customs to endeavour to make myself acquainted, through the kind assistance, not only of the officers of the department, but of others having knowledge of mercantile matters, with the questions with which my department has particularly to deal. With regard to this question of ships' stores, it seems to me that the position is perfectly plain, and that the leader of the Opposition stumbled somewhat over clause 121. That clause is simply intended to provide that stores can be cleared out of bond for the use of ships, without the payment of duty according to prescribed rates, when a ship is entered outwards for ports beyond the seas. The position to-day is that as regards ships trading within the limits of a State, they can get no stores without the payment of duty because they are entered within the State, and the reason for that is that the stores are intended practically for home consumption. Now the old rule was that if a ship went outside the State, and was entered outwards, the stores were obtainable free of duty, because that was not a case of home consumption. They did not charge for stores required by vessels for consumption between South Australia and Victoria, because those States were not in the same - and I am indebted to an honorable member for the expression - fiscal area. Now the Commonwealth will be one fiscal area, and the question is as to the right of ships to obtain stores for consumption within our fiscal area. Here is the position: that unless we provide for the uniform treatment of our own ships and foreign ships, the result will be that the foreign ships will have a distinct advantage over the local traders. It has been stated that if we prevent ships from obtaining their stores free of duty, it will affect sailors and other persons employed.

Sir Malcolm McEACHARN

- It will cost them 6s. a month.

Mr KINGSTON

- Well, it not infrequently happens that arguments of that sort are advanced which on careful analysis are not so fully sustained as one would, at first sight be inclined to suppose.

Sir Malcolm McEACHARN

- I can prove what I say. '

Mr KINGSTON

- The position, broadly stated, is, that if we are going to allow oceangoing ships free stores for home consumption in Australian waters, and deny the privilege to our local traders, an advantage will be conferred on the ocean-going ships, to the disadvantage of the local traders ; and it seems to me that we ought not to give that advantage if we can possibly avoid it. It is our object to prevent that as much as we possibly can. People may talk as they like about the stores being used only for the crew and passengers. I have heard a good deal on this subject from my officers, and I have been informed that allowances are dealt out upon the ships in harbor to such an extent that they are practically floating hotels.

Mr O'Malley

- Quite true.

Mr KINGSTON

- These ships are practically floating hotels, dispensing goods for the benefit of all who come on board on terms with which the local licensed trader finds it impossible to comply, and trenching on trade which properly belongs to traders on shore.

Sir Malcolm McEacharn

- That is not correct.

Mr KINGSTON

- I have my information on this subject from my officers.

Sir Malcolm McEacharn

- Why does not the Minister stop it, then ?

Mr KINGSTON

- I am going to.

Honorable Members. - Hear, hear.

Mr KINGSTON

- I say that these ships are trenching on the trade which properly belongs to the local men, and trenching upon it in a way which cannot be justified. It may prove a difficult and troublesome subject to deal with.

Mr Reid

- Does the Minister mean to say that the State Customs laws during all these years have never applied themselves to a question of this sort ?

Mr KINGSTON

- I do not say that. It is a thing it is very difficult to detect.

Mr Reid

- The Minister should not pose as a man who puts his armour off in a matter of this sort.

Mr KINGSTON

- I have not taken it off ; I am only just going to put it on. I am speaking now from information which has been supplied to me regarding facts of which I have no personal knowledge.

Mr Thomson

- It is against the law now if it is done.

Sir Malcolm McEacharn

- It is easy enough to make such accusations, but the Minister should know first.

Mr KINGSTON

- All I can say is this : that before I came down- to the House I was naturally discussing this question of stores with men who knew a great deal more about it than I did, and the information that I have given to the House was placed before me by these gentlemen. I learnt further that not only are these dutiable goods dispensed on board ships in port, but that there is petty smuggling going on in connexion with these stores, to such a degree that we would very much like to check it. However, we will deal with that further when we go into committee.

Mr Reid

- We should like to visit some of these places and judge for ourselves.

Mr KINGSTON

- I hope it is not a case of "I have been there and fain would go" with the right honorable and learned gentleman. I would like to refer to one or two other matters before we address ourselves to the details of

this Bill in committee. Some honorable member suggested that we should put the regulations in the Bill.

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Mr Reid

- There is one point that I desire to impress upon the Minister : I am entirely with the right right honorable gentleman in everything he had said up to now. The one point I want to ask him is, if he claims authority to seal up and prevent the use of dutiable articles taken on board in another country--

Mr SPEAKER

- Order : the honorable member has already spoken.

Mr Reid

- May I ask, Mr. Speaker, that you will allow me to finish the sentence.

Mr SPEAKER

- Honorable members know that interjections are quite out of order, and while I do not take any notice of very short ones, I could not ignore a remark that was partly a repetition of a speech already made.

Mr KINGSTON

- I am sorry to deny the right honorable gentleman any information. He is always desirous of it, and I do not know of any one who wants more. I may say that as soon as we get our Customs officer on board ship, wherever that ship comes from, we shall be able to do what is necessary to give effect to the Government intentions on the lines I have ventured to suggest.

Mr CONROY - Will the Customs officer go from Albany to Adelaide ?

Mr KINGSTON

- He will not go unless he is told. I was dealing with the question of regulations, and referring to the fact that some one had suggested - I forget which honorable member it was - that they should be in the Bill.

Mr Reid

- I was going to do so, but I was cut short.

Mr KINGSTON

- Regarding the regulations, I think that honorable members have a right, at the earliest possible moment, to have those regulations in front of them. And I may say that they are more than rough drafted, they need only final revision, and they shall be brought down as soon as possible. With regard to the framing of regulations, power is given to this House in reference to the controlling of them to an extent which I think is as large, if not larger, than has been provided for in any previous Bill. With regard to matters of this kind, I think the time of this House can be much better occupied with greater questions than with those comparatively petty questions of detail which are ordinarily dealt with by regulation. We have a lot to do, and my idea is that matters of detail might properly be made the subject of regulation, and need not be put in the Bill, for the reason that it might be necessary to alter the regulations shortly afterwards.

Mr Thomson

- I did not suggest that the regulations should be in the Bill.

Mr KINGSTON

- I am much obliged, to the honorable member, and I do not hesitate to say that we shall be able to carry out the substance of what he desires and bring down regulations without a moment's unnecessary delay.

Sir Malcolm McEACHARN

- Shall we have the regulations during the discussion of the Bill ?

Mr REID

- Next session.

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Mr KINGSTON

- No, there is no question of putting off. We want to do the work and do it well. We are more likely to achieve that object by directing the attention of honorable members at present to matters of principle rather than to matters of petty detail, which are generally settled by framing regulations. A good deal has been said about the penalties, and no doubt these are startling when they are collected together and can be seen at a glance. At the same time I think I am right in saying that we have in many instances reduced the penalties considerably, though there is a good deal of force in the objection taken by the honorable member for North Sydney in regard to the minimum penalty in the case to which he referred. But as regards that and similar matters we do not want anything unfair. We simply want power to enforce

the law for the benefit of the honest trader, and for the prevention of competition to which he ought not to be subjected. I am sure that will be the wish of honorable members generally, and the Government will do what they can to that end. The honorable member for Melbourne called attention to clause 195 of the Victorian Customs Act, providing that if it appears to the satisfaction of the Customs authorities that spirits, opium, tobacco, or cigars are on board a vessel without the knowledge of the owner, and without wilful neglect, the commissioner shall deliver the ship or boat to the owner or the master. The honorable member for Melbourne found fault because there is no provision of that sort in the Bill. I would like to point out, however, that the provision in the Victorian Act is engrafted on a section, which declares that a boat shall be forfeited if there be found on board any , vessel of a certain size, capable of containing liquids or packages of opium or tobacco' of a certain size, and it would be simply monstrous to think of forfeiting a boat under such circumstances. We have no provision in the Bill as to the forfeiture of a boat under such conditions, and so a proviso of that kind is not necessary. I have in my hand a copy of the Victorian Act, and the New South Wales Act is very little different, though I am sorry I have not a loose copy of the latter.. I find that the provisions as regards the forfeiture of a ship are to be confined--

Sir Malcolm McEacharn

- . - Look at clause 214.

Mr KINGSTON

- That refers to a ship in the case of smuggling, and under such circumstances there might, perhaps, be forfeiture.

Sir Malcolm McEacharn

- That -is the first sub-clause.

Mr KINGSTON

- I venture to think that we shall be able to reduce the stringency of the penalties.

Mr Reid

- By these provisions an Australian fleet could be obtained in no time.

Mr KINGSTON

- I venture to think it will be possible to reduce the stringency of these provisions even still more.

Mr Reid

- I should think so.

Mr KINGSTON

- Any suggestions made by honorable members, which will not have the effect of crippling the Bill, but which will make it more reasonable, while equally effective, will be welcomed. I do not know that it is necessary to say anything further at this particular moment. No doubt the Bill will be in committee almost immediately, and I trust we shall be able to make satisfactory progress.

Question resolved in the affirmative.

Bill read a second time.

In Committee :

Clause 1 agreed to.

Clause 2 -

This Act shall commence on a day to be fixed by proclamation.

Mr CONROY

- Do the Government intend to give honorable members any idea when the proclamation is likely to be made ?

Mr Kingston

- Very soon.

Mr CONROY

- Will the Minister also say that at the same time the proclamation is made, or perhaps the evening before, the Tariff Bill will be brought in ?

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Mr KINGSTON

- I regret I am not in a position to give that assurance

Clause agreed to.

Clause 3 agreed to

Clause 4 -

In this Act except where otherwise clearly intended - "Answer questions" mean 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. "By authority" means by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used. "Carriage" includes vehicles and conveyances of all kinds. "Collector" includes the Comptroller and any Collector of Customs for the State, and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used. "Comptroller" means the Comptroller-General of Customs. "Customs Acts" include this Act and all laws and regulations relating to Customs in force within the Commonwealth or any part of the Commonwealth. "Days" do not include Sundays or holidays. "Documents" include books. "Drawback" includes bounty or allowance. "Dutiable goods" include all goods in respect of which any duty of Customs is payable. "Gazette notice" means a notice signed by the Minister and published in the Gazette. "Goods" include all kinds of movable personal property. "Goods under drawback" include all goods in respect of which any claim for drawback has been made. "Justice" means any Justice of the Peace having jurisdiction in the place. "Master" means the person in charge or command of any ship except a pilot or Government officer. "Officer" includes all persons employed in, the service of the Customs. "Owner" in respect of goods includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, consignee, exporter, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods. "Owner" in respect of a ship includes every person acting as agent for the owner, or to receive freight or other charges payable in respect of the ship. "Parts beyond the seas" mean any country outside of Australia. "1 Package" includes every means by which goods for carriage may be cased covered enclosed contained or packed. "Port" means any proclaimed port. "Prescribed" means prescribed by this Act. "Produce documents" 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. "Ship" includes every description of vessel used in navigation not propelled by oars only. "Smuggling" means any importation or introduction or attempted importation or introduction of goods without proper entry or with intent to defraud the revenue. "The Customs" means the Department of Trade and Customs. "This Act" includes all regulations made thereunder. "Warehouse" means a warehouse licensed for the purposes of this Act. "Wharf" means a wharf appointed for the purposes of this Act. "Wharf owner" includes any owner or occupier of any wharf.

Mr McCAY

-The honorable and learned member for Indi, earlier this evening, drew attention to the fact that "prescribed" includes prescribed by the Act, which includes regulations, and that those regulations might create Offences. The honorable and learned member raised the question of the desirability or otherwise of leaving with the Minister the power to create criminal or quasi criminal offences. . Clause 2.24, which is the general penalty clause, provides that any person guilty by act or omission, or by any contravention or evasion of the Act for which no other penalty is provided, shall be liable to a penalty of not more than £10.

Mr ISAACS

- In the first line of clause 4 there is a word which is printed clearly, though its meaning is not clear. I do not know if there is a precedent for this, but it is a departure from the usual form of expression.

Mr Deakin

- In Victoria.

Mr ISAACS

- Where is it else?

Mr Deakin

- South Australia.

Mr ISAACS

- The clause says "in this Act, except where otherwise clearly intended," the following words shall have the meanings set forth. Suppose a court came to the conclusion, after a prolonged argument, that the intention of the Act is in a certain direction, but that it is not clear, what would be the result? According to the interpretation clause, the words are not to have the meaning unless the meaning is "clear," and to my

mind the Bill introduces a form of expression which is open to doubt, and with which I am not familiar.
Mr REID

- There may be some such language in some Act in South Australia, but I doubt whether my friend can show the same language in any other Act in any other part of the British dominions. A question might easily arise in legal proceedings, because the interpretation clause forms what may be called the vertebra of the whole Act, and a court would be put in this extraordinary position - that if it did not come to the conclusion that the meaning attached to the words in this clause was the clearly intended meaning it would be compelled to hold that no such meaning could possibly be attached to such words, and that is limiting the value of the interpretation clause. Perhaps the Minister has some marvellous way of showing that this is a revelation of Divine wisdom, and I am quite agreeable to know that it is.

Mr KINGSTON

- This is most amusing. These particular words have the sacredness of South Australian precedent, but, apart from that, honorable members are putting the position that unless words are clear, some other meaning must be intended. It is nothing of the sort; it is absolutely the reverse, as the leader of the Opposition and the honorable and learned member for Indi will say. What we say is, that wherever there is a doubt or another meaning is not clearly intended, this is our meaning. We do not want the court to be refining away unless they can pledge their judicial reputations that we do not mean this. This is what we mean, and the court has to administer the Act accordingly.

Sir MALCOLM McEACHARN

- I would suggest that confusion might arise through the term "owner" being applied both in respect of goods and in respect of ships. It would be much better if the second term were made to read "shipowner."

Mr Kingston

- I will look into the matter more closely; but I think "owner" is generally used in connexion with ships. If I find there is any room for doubt-

Sir MALCOLM

McEACHARN. There is no doubt about the word, but it creates confusion throughout the Bill.

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Mr Kingston

- It would be rather cumbersome to use the word "ship-owner" right throughout the Bill. I will, however, look into the matter, and give the honorable member, if he likes, an opportunity of taking the sense of the House.

Sir MALCOLM McEACHARN

- I will leave it to the Minister.

Mr CONROY

- The definition of "answer questions" might not have been so very important had it not been for the very severe penalty clauses in the Bill, namely, clauses 224, 229, 239, and 242. When a man comes before the officers of the department he is bound to answer. He has to go into the box and give evidence against himself, even if he does not wish to give evidence at all. If we retain this first sub-clause, even if we strike out the other clause later on, we will still be giving a power to the collector which he ought not to have, because there would still be the liability to a penalty under clause 224. Therefore, if we strike out the harsher provisions altogether, we still leave any man open to a penalty under that clause. I think the best plan that can be followed is for the Minister to withdraw this sub-clause and to allow us to deal with each clause as it arises, otherwise it might have a force which may not be intended.

Mr Deakin

- If the honorable and learned member for Werriwa will call attention to these clauses when we reach them we can return to this and make any alteration that may be required.

Mr CONROY

- Clause 242 provides that -

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 courts.

If we allow this first part of the interpretation clause to stand, and the penalty clause is still retained, I think that people will be liable under this very part itself, unless we strike out the whole of the subsequent clauses in relation to the penalty, and I do not think that would be advisable, in view of what the Minister

has already stated.

Mr Kingston

- I can assure the honorable and learned member that we will not forget to consider it.

Mr. REID

(East Sydney).- Towards the end of this interpretation clause I think that my right honorable friend is taking a course which certainly needs reconsideration. The effect of giving to the words " this Act " a meaning sufficiently wide to include all regulations thereunder is rather a strong one. As a rule " this Act " is an expression which refers to the Act and to the Act only. But the effect of making an interpretation of the words "this Act" to include all regulations which may be made, practically puts the Ministry in a position to exercise a power which it seems to me may enable them to pass regulations which are not strictly within the legislation.

Mr Deakin

- The regulations come before Parliament.

Mr REID

- They come before Parliament, but in a most clumsy way. In order to deal with those regulations it is necessary for Parliament to stop the course of public business and for both Houses to pass a resolution. It is a very extreme course that has to be taken. The disapproval of this House would mean nothing so far as the Act is concerned. Therefore the statement of the Attorney-General is scarcely an answer to the remarks I made. Parliament never objects to giving power to the Executive to frame regulations to carry out an. Act which has been passed, so long as those regulations are consistent with that Act. But to my mind it is quite a novel provision that the Executive should have power to make regulations irrespective of whether those regulations are consistent with the Act or not.

Sir Malcolm McEacharn. That

is why I wanted the regulations.

Mr REID

- I begin to see now why the honorable member for Melbourne was so anxious about the matter. In the Audit Bill the very proper expression is used, "if consistent with the provisions of this Act." That attaches to the Executive a disability - the absence of power to make a regulation inconsistent with the will of the legislative body. But this Bill is framed upon absolutely different lines.

Mr Deakin

- Look at clause 255. It says -

The Minister may make regulations prescribing all matters which by this Act are required or permitted to be prescribed.

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Mr REID

- In clause 255 there is something far more than that. I looked at the provision before I ventured to intrude myself upon the notice of the committee. That clause provides that the Minister may make regulations for the. conduct of any business relating to the Customs - whether it is referred to in this Act or not, and whether the regulations are consistent with this Act or not. If the Minister will make it clear that the regulations are not to be inconsistent with the Act I shall be satisfied.

Mr Kingston

- I will do so.

Mr THOMSON

- I should like to draw the attention of the Minister to the definition of the word "smuggling." This interpretation clause says- " Smuggling" means any importation or introduction or attempted importation or introduction of goods without proper entry or with intent to defraud the revenue.

Considering the extreme penalties that are imposed for smuggling, and the reflection that is cast by such a description upon the offender, I think that the definition requires amendment. One of the penalties imposed is that a ship used in smuggling shall be forfeited.

Mr Kingston

- But the committee have to approve of that first.

Mr THOMSON

- I must consider the Bill as it is. If there is a mere error in entry which may constitute an improper entry,

and which is acknowledged to be a mere error, why should it be described as smuggling ? "Would it not be well to omit the word " or " after the word "entry" ? There is no need to retain the words " with intent to defraud the revenue " if they are intended to be implied in every case ; the first part of the clause is ample. An offender is liable to the penalty even for error. I suggest to the Minister that he should consider this matter, and, at some future time, inform the committee whether he will adopt my suggestion, or why he will not adopt it.

Mr Deakin

- The Minister for Trade and Customs and I will look into the matter together.

Mr Thomson

- And will the Minister inform the committee? Mr. Deakin. -Yes.

Sir JOHN QUICK

- I do not agree with the suggestion of the last speaker that these words should be omitted. I would invite the attention of the committee to the meaning of the word "importation." Importation, I apprehend, means the bringing of goods within the ports or harbors of the Commonwealth.

Mr Thomson

- Literally it means bringing into a port.

Sir JOHN QUICK

- Let us take the case of an Orient liner or a P. and O. steamer. Those vessels come into the port. but not for the purpose of discharging all their cargo. Nor can it be said that all they bring into port is imported for the purpose of coming within the reach of our revenue law. The mere act of bringing goods into a port ought not to be considered an act of smuggling. An entry is only made in respect of goods which are to be completely imported by being intermingled with the property of the State, so that I think this clause ought to remain as it stands. There are two divisible acts. An Orient liner brings a large quantity of goods within the jurisdiction of the federal authorities. Strictly speaking, that would be an importation, yet it is not to be deemed smuggling, because an entry is not made. Therefore, it would not be an offence coming within the meaning of the word " smuggling," because it is not importation with intent to defraud. Of course, the definition of smuggling in the clause covers the importing of goods without a proper entry being made, and the importing of goods with intent to defraud.

Mr Reid

- It means the landing of goods.

Sir JOHN QUICK

- Not necessarily the landing of goods. The importation is complete the moment the goods come within the Commonwealth .

Mr Reid

- But a man cannot pass an entry while a steamer is outside the Heads. He cannot pass an entry till the manifest reaches the Custom-house.

Sir JOHN QUICK

- That would be an importation, but still it would not be a fraudulent act.

Mr Reid

- But this interpretation makes what the honorable and learned member refers to equally punishable with the most glaring case of smuggling, where men are detected landing on the coast and there is a sanguinary engagement.

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Sir JOHN QUICK

- To my mind the definition of the word "smuggling" is a proper one and ought to remain as it is. The word "or" ought to remain, and the word "and" should not be inserted.

Sir MALCOLM

MCEACHARN (Melbourne). - I think that the honorable member for North Sydney is perfectly correct, but perhaps that is due to my density not allowing me to follow the legal argument. It appears to me that if a steamer came here with a cargo, and part of that cargo were not claimed by the consignee, the master would be unable to pass a proper entry in regard to it, and consequently he would be classed as a smuggler under this clause. It often happens that goods are landed in regard to which it is impossible to pass a proper entry. i

Mr. REID

(East Sydney).- This may be a matter which does not strike many honorable members as at all serious. They do not own ships, and I do not either, and, therefore, it may seem to some of us to be of no consequence. Still we are legislating in regard to the rightful interests of people who have millions of money invested in ships, and surely this interpretation, which does not make it a mere matter of discretion for the Executive, but by law compels them in certain cases to forfeit a ship - worth, perhaps, £200,000 - to the Crown, is a most important one. Surely there must be some intent to evade or defraud the revenue before such a monstrous penalty should be exacted ? The element of fraud should come in in some way. This interpretation, however, places an innocent act, where there is no attempt to defraud the revenue, on exactly the same plane of punishment as a wilful act. Is there any sense in such a proposal ?

Mr Higgins

- Is not that an objection to clause 214, and not an objection to this clause ?

Mr REID

- No. I have suggested that the interpretation clause should stand over until the Bill has been finished, and then we should know whether it was necessary to talk on ' it. My right honorable friend prefers, however, the less convenient procedure, and instead of our dealing with the clause now, we must deal with it as it interprets the Bill as it stands. That is the inconvenience of taking an interpretation clause before our work is over.

Mr Higgins

- We are to use the words first, and find the meaning afterwards.

Mr REID

- That is the theory of taking an interpretation clause first. I think it would have been more sensible to have taken this clause after we had finally settled the scope of the Bill. We have to deal with the matter in the light of the subsequent provisions of the Bill as they stand now. I would point out to the committee that the smuggling in respect to which the owners and captain of a ship may be made liable may be absolutely in reference to some two or three articles belonging to some unknown person in a cargo of 5,000 tons, yet in such a case the whole ship is to be forfeited.

No one supposes that the Executive would give effect to such a provision, but this provides the round-about course of forfeiting the ship, and then the Governor-General in Council steps in, and, contrary to the law, avoids the forfeiture, after it has taken effect by operation of law. The very idea of smuggling is to get goods passed in without paying the proper revenue. We cannot divorce that meaning from the word "smuggling." A person may, by inadvertence, take delivery of 50 cases as containing some article which is on the free list, when, in point of fact, those cases contain something else which is not on the free list, but which is subject to a high rate of duty. The London shipper may ship them fraudulently, but the owners of the ship might be absolutely ignorant of the contents. They take the description of the contents of packages as the shipper describes them. A shipper in London could ship 50 cases said to contain drapery when, in point of fact, they might contain whisky, or any other highly dutiable article.

Mr Higgins

- The ship would not be responsible in that case. 'Mr. REID. - Yes, it would be responsible as the clause stands. I could quite understand a man believing that such a thing is not intended, but clause 214 provides that any ship used in smuggling shall be forfeited to His Majesty. In this case, the ship would be so used by this person in London.

Mr Harper

- Intentionally used?

Mr REID

- That is the word we wish to insert. If my honorable friend's suggestion were put in, and the intent to cheat the Customs were an element in the forfeiture, that would meet the case. I am sure my right honorable friend would not say that where there was no intent to defraud, a ship should be forfeited, but the words used are so wide that that could happen.

Sir Malcolm McEacharn

- I think it is a mistake in the Bill.

Mr REID

- It is either a mistake or a deliberately intended proposal. In either case, it is our duty to look into it.

Mr Deakin

- We promise to consider the whole definition.

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Mr REID

- I am perfectly satisfied when my honorable and learned friend says that. I am sure he will give us an opportunity of dealing with this. provision.

Mr Deakin

- Yes.

Mr REID

- That being so, I do not want to take up the time of the committee on the clause.

Mr. ISAACS

(Indi).- We have been told by the Minister that, unless it is otherwise clearly intended, the provisions in the interpretation clause- must be taken in their literal meaning. If ' that is so, then if any goods are brought" into Australia under an entry which by some mischance, however honest, by some technicality, however minute, prevents- that entry being, a proper one - I do not know what "proper" means-, there is no definition of it - that is smuggling. I think that is too severe. I will go with the Minister as far as he wishes in repressing anything intentionally wrong, and in inflicting a penalty even for technical errors where it is necessary to protect the revenue. I do not believe, however, in designating with a criminal name something which is not a criminal act. I would suggest to the Minister, if he desires, to pass this clause first, and as I agree that we should settle our terminology before we deal with the Bill, that he should undertake to recommit it.

Mr Kingston

- -An opportunity for the further consideration of the clause will undoubtedly be given.

Mr ISAACS

- If the clause is to be recommitted, we can proceed to deal with subsequent clauses, and if they are found to contain penalties too severe for the definition of "smuggling" as set out in this drastic interpretation clause, we shall have an opportunity of altering, its terminology.

Mr. THOMSON

(North Sydney). - I simply wish to add a word or two in relation to what has been said since I last spoke. One of my objections is- to the term "smuggling," which describes an admitted crime, being applied to what may not be a crime at all. The Minister in charge of the Bill can easily arrive at all he wants by, at the most, putting in another interpretation for the passing of entries by mistake or for improper importation. If he desires, he may put in something describing that offence, but to apply the term " smuggling" to an unintentional offence is like applying the term " murder " to the act of a man who has caused the death of another without any such intention.

Mr KINGSTON

- People look at smuggling in a variety of ways. I think it is a- highly reprehensible thing, but there are many outside the House who hardly feel so strongly about it, to defraud the Customs, in relation to small matters. If they are made to recognise that this is a very serious offence, it will be all the better. As regards the clause dealing with the forfeiture of ships, I should mention that after I moved the second reading of this Bill a remark was made by an honorable member as to the limitation of the powers of forfeiture contained in recent Imperial legislation. I have been able to trace that provision, and I find that a limitation is placed on the value of ships which can be forfeited. I am inclined to think we shall do well to engraft the same principle on the legislation which is contained here. I regret that I did not refer to the matter on the second reading, but I may say now that it is our intention to deal with it.

Mr. CONROY

(Werriwa). - I simply desire to call the attention of the Minister to clause 242.

Mr Deakin

- I have noted it.

Honorable Members. - Oh !

Mr CONROY

- Inside -this chamber I look for the protection of the Chair, and that I- trust will be given to me. Outside the chamber I can deal with these matters myself! I have put up this evening with interruptions from some

of the honorable members on the Ministerial side, which is not a credit to them.

Mr MAHON

- I should like to ask the Minister a question in regard to the definition of "parts beyond the seas." The definition of that term given in the clause is that it means any country outside of Australia. There is the remote possibility that the Northern Territory may not be taken over by the Commonwealth, and if it were resumed by the Imperial Government this definition would be rather awkward. I would suggest that it should be altered to "any country beyond the Commonwealth."

Mr Deakin

- The Northern Territory is safe.

Mr Kingston

- It is included in the Commonwealth.

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Mr Deakin

- And it cannot be taken out of the Commonwealth without an amendment of the Constitution Act.

Clause agreed to.

Clause 5 -

The penalties referred to at the foot of sections indicate that any contravention of the section whether by act or omission shall be an offence against this Act punishable upon conviction by a penalty not exceeding (except as hereinafter provided) the penalty mentioned.

Mr. HIGGINS

(Northern Melbourne). This is a very useful covering clause which applies to all penalties, and I should like to ask the Minister in charge of the Bill to take a note of a suggestion which I desire to make. I do not propose to move an amendment, but it is at this point that we could provide a useful clause enacting what are the State Acts that no longer apply to the Customs of Australia. In the Defence Act which was introduced the other evening there is a clause which provides that -

The State Acts specified in the 1st schedule to this Act shall not apply to the defence force.

In the schedule a list is given of almost all the Acts of the different States which relate to the defence forces, and it is very useful to know that these Acts no longer are in operation. The more we endeavour to simplify this Act, so that a man may know that the whole of the law so far as the Customs are concerned, is contained within its ambit, the better it will be. I would therefore ask the Minister for Customs to consider whether he should not introduce in this Bill a clause similar to that which appears in the Defence Bill. I have had in the course of my experience to study not only the Customs Acts of the various States, but also the Acts relating to Customs indirectly, and I have found them a very confused and chaotic mass. It would be very distressing to a man who was looking for a plain sailing chart in the Commonwealth Customs Act to find that he must also read the Customs Acts of the various States. I have no doubt that under sections 108 and 109 of the Constitution Act it is competent for the Commonwealth to enact, as it is going to enact in the Defence Bill, that such portions of existing State Acts as refer to the same subject as the Commonwealth Act shall cease to operate.

Mr Kingston

- I will look into it.

Sir JOHN QUICK

- In reference to the last suggestion, if my honorable and learned friend's ideas could be carried out, it would be very convenient indeed, but I would suggest for consideration the question as to how we could, in dealing with these Acts, decide that certain State laws are to be repealed. We have no power of repeal.

Mr Higgins

- The word "repeal" is not the word used; but we might say that certain State Acts specified in the schedule would not apply.

Sir JOHN QUICK

- That is a course of action which would be open to criticism. We have no specific power of repeal, but this Parliament can pass laws within the purview of its jurisdiction, and then when it has passed such laws, section 109 comes into operation, in so far as it provides that wherever the law of a State is inconsistent with the law of the Commonwealth, the latter shall prevail, and the former shall to that extent be invalid. It will be for the courts hereafter to decide to what extent the federal law is inconsistent -with

the State law, and a very great deal of consideration and discussion will be required before we can decide what laws have been repealed.

Mr Higgins

- Does the honorable and learned member say that this Parliament cannot declare that a certain section of the regulations, of Customs are not to apply to importations into the Commonwealth ?

Sir JOHN QUICK

- The question of importation, so far as fiscal laws are concerned, may be regulated by section 90, which says that certain State laws shall cease to have effect. But I say that in legislation generally in regard to Customs we cannot select certain State laws and say that they are thereby repealed or rendered invalid. We can, however, pass a law which by implication will repeal those Acts. But at the same time it may be very hard to say to what extent the repugnance or inconsistency may exist. That will be for the courts to consider; and I say that we cannot safely or conveniently, or perhaps even constitutionally, put in a schedule of repealed Acts.

Clause agreed to.

Clause 6 agreed to.

Clause 7 (Comptroller-General).

Mr CONROY

- I think it is almost a pity that we had not a Collector of Customs who could have assisted in framing a Bill that would have fallen lightly on the people.

Mr Kingston

- I can assure the honorable member that no man has had greater experience or done more work than Dr. Wollaston.

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Mr CONROY

- But I would like to point out that the Comptroller-General has been accustomed to deal with one of the worst systems of taxation in the States, and it would have been better if it had been possible to have had a man with experience in connexion with the lighter systems of taxation.

Clause agreed to.

Clause 8 (State Collector).

Mr REID

- I see that it is very properly provided in this clause that there shall still be a Collector of Customs in each of the different States, but I wish to point out the enormous difficulties that will surround the Minister, who I see takes power to determine all questions that may arise. There are other clauses which will enable him to relieve himself of the necessity of directly determining these matters, but still the Minister makes himself the sole authority within his own discretion to determine all questions that may arise in the different Custom-houses of Australia, even though he be established in the permanent capital of the Federation. I hope that the Minister will keep in view the advantage of leaving the determination in the first instance in the hands of the State Collectors of Customs. It would relieve the Minister of an enormous amount of personal trouble if he gave the collectors the power of determination, subject to his review. It would bring the cases before him in a much more manageable shape if some subordinate authority were first to go over them and come to a conclusion upon them.

Mr Kingston

- That is the practice which is being adopted now.

Mr REID

- Yes. But the Act places the determination in the hands of the Minister.

Mr Kingston

- The right honorable gentleman will find very few cases in which the Minister is compelled to act.

Mr REID

- That may be so, and it will be impossible for the responsible Minister to do other than look over the determinations of the inferior authority. I have no doubt there are clauses which give the Minister the power of delegation to the collectors, but he wants something more than that, because if the Minister delegates his power of determination, the power exercised by the delegate will be exercised finally. I do not want to go as far as that. I think it is right that the Minister should delegate his power, but that it should

be done under conditions that would retain to him the controlling power.

Mr Deakin

- That is provided for. It is provided that the delegation shall not affect the power of the Minister to review any decision afterwards.

Mr REID

- Under what clause is that?

Mr Deakin

- Under clause 11.

Mr REID

- That will meet the case. That clause will practically leave the controlling power in the hands of the Minister, whilst he will be at liberty to enable the State collector to exercise the power of investigation, and come to a decision.

Clause agreed to.

Clause 9 (Delegation by Minister).

Mr ISAACS

- This clause strikes me as a very wide one indeed. Does the Minister not think that some limitation should be placed in the clause as to the class of persons on whom this delegation may be conferred? At present there is absolutely no limit, and it may be given to any person in the service or out of the service, to a Minister of the Crown, or a person in Parliament or out of Parliament. Further, this delegation may include the power to make regulations. That is a tremendous power, and I would like to know if there is any precedent for it anywhere.

Mr Reid

- The Minister is building up a despotism for himself.

Mr KINGSTON

- I take it that we are creating our own precedents, but, so far, we have not had much opportunity of doing so. This clause gives power to the Minister to delegate his authority to other persons, but although the power is a wide one, he is not likely to exercise it recklessly, as he -will be held responsible to Parliament for anything he may do.

Sir MALCOLM McEACHARN

- I think this is a matter that the Minister should give consideration to, but I do not think it is right that these enormous powers should be given to any one, irrespective of who he may be.

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Mr Kingston

- Parliament has always the Minister in its hands. Sir MALCOLM McEACHARN. - It may be that the present Minister will not always be where he is now, and in case some one not like the present Minister should take his position, I think we ought to have some check on Ministerial acts.

Clause agreed to.

Clause 10 agreed to.

Clause 11 -

Every delegation, whether by the Minister or Comptroller, shall be revocable at will, and no delegation shall prevent the exercise of any power by the Minister or Comptroller.

Mr REID

- I do not know whether it would not be safer to adopt the same method of revocation as that prescribed for delegation ; that is to say, that the revocation should be in writing. If the revocation were by mere word of mouth some question might arise as to when it was done or as to whether it was done at all, and considering the important matters that are involved, I think that we should provide that the revocation should be done in writing, and that it should be precise both as to the fact and the time of revocation. Supposing that it came to the knowledge of the Minister that a certain officer at Perth had been acting improperly, and it became necessary to revoke his delegation at once, the giving of instructions for sending a telegram would be equivalent to a revocation in writing. I move -

That the words " in writing" be inserted after the word "revocable," line 2.

Amendment agreed to.

Mr. REID

(East Sydney).- There is another point which seems important. There is a provision that no delegation can prevent the exercise of any power by the Minister or comptroller. I must come back to the point I raised at first, because I see there may be a great deal of dissatisfaction and trouble unless the Bill clearly shows a power on the part of the Minister to review the exercise of the power he has delegated to a local collector. The delegation practically makes the local collector the Minister. The local collector may arrive at a determination which the Minister is dissatisfied with, and the latter may re-open the matter and arrive at a contrary decision. I do not say the Minister should not have the power to do that, because his responsibility always remains, but the fact that there is a power of reversing the determination of the delegate should appear on the face of the Bill.

Mr Kingston

- It is here.

Mr REID

- I admit it is there in legal language, but if the local collector is to act for the Minister as a judge to find and determine, it is very much better that the Minister's power to upset his determination should be in the nature of an appeal. Supposing there is a general authority given by the Minister, making the collector at Melbourne or Sydney the determining power for a certain class of business, there should be something on the face of the Bill to show a method of appeal. Any review should be more in the nature of an appeal than in the nature of an arbitrary act on the part of a Minister. The Minister's finding is final, so that the Crown really has two strings to its bow. A person may succeed before the delegate, but the Minister may not like the decision, and may set it aside, so that the ' person who gets the benefit of the determination in the first instance is left at the mercy of the Minister, without any appeal or rehearing. I admit this is a difficult matter, but there will be great dissatisfaction if these powers are to be exercised by a State collector, and are exercised in such a way that the Minister can set them aside without any method of rehearing. However, I do not wish to place any trouble in the way of the progress of the Bill.

Clause agreed to.

Clause 12 -

All persons acting in the service of the Customs at the commencement of this Act shall be deemed to have been duly appointed.

Mr. HIGGINS

(Northern Melbourne).How will this clause affect the public servants of the different States ? I have some concrete instances in my mind, and I should like to know whether the clause makes temporary Customs officers permanent officer?

Mr Kingston

- No.

Mr HIGGINS

- What is the object of the clause ?

Mr Kingston

- It means that any appointment, whatever it is, is lawful.

Mr HIGGINS

- I have in my mind's eye the case of a young man in the Customs department, who has been a temporary officer for eleven years.

Mr Kingston

- I can be responsible for only six months of that period.

Mr HIGGINS

- That young man, though his age is 25 or 26, and he has a beard, is still treated as a boy and paid boy's wages, while he does a man's work.

Mr Kingston

- He seems to have the gift of perennial youth.

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Mr HIGGINS

- And also of perennial representation to his member. What is the good of the clause if it does not mean that this young man, who is undoubtedly in the employ of the Customs, is to be a permanent officer ? Do the words in this instance mean anything except that which appears in the definition clause as to

regulations being part of the Bill ? Is a person working in the Customs department at the commencement of any regulations to be deemed duly appointed ?

Mr Reid

- The regulations referred to are the regulations under the Bill, and not under any Act of a State.

Mr HIGGINS

- Quite so ; but I do not know the meaning of the clause, unless it means a man is to be in the permanent service with all the privileges of a fully appointed official. But it would be an awkward thing if any one who got a day's work for some emergency in the Customs should be deemed a permanent officer, because he was appointed in advance of some regulations.

Mr KINGSTON

- In regard to the first point, I cannot hold out any great hopes of an early transformation of the honorable and learned member's friend from a temporary grub into a permanent civil service butterfly.

Mr Higgins

- Is he to be entitled to £110 per year?

Mr KINGSTON

- That will depend on the construction of the Public Service Bill, to which the honorable and learned member has devoted so much attention. As to the words "at the commencement of this Act," what is clearly intended ? Something is to happen from the commencement of the Act. When is the Act to commence ?

Mr Reid

- Who can tell.

Mr KINGSTON

- I can.

Mr Reid

- No, the Minister cannot, because it has to be settled by the Governor by proclamation.

Mr KINGSTON

- That is certain what is able to be rendered certain. The Act is to commence on a day to be fixed by proclamation.

Mr Higgins

- Will the regulations appear in the Gazette?

Mr KINGSTON

- Not if they are not existing.

Mr ISAACS

- I do not know what was clearly intended by the Minister in his explanation, but I feel very much puzzled as to the meaning of the clause. At first I thought that all persons acting in relation to the Customs service should be deemed to be duly appointed - that no one should question their right to act in a capacity in which they assumed to act.

Mr Kingston

- That is the point.

Mr ISAACS

- But my belief has been considerably shaken by the words " at the commencement of this Act." If what I thought was the intention, those words ought to be left out, because we should not limit the presumption of law to persons acting at the commencement of the Act. If the clause means anything more it must mean to give a permanent or definite appointment to persons acting at the time. I think that the words "at the commencement of this Act," if they are meant merely to create an irrebuttable presumption that persons assuming to act were properly appointed, should come out.

Mr KINGSTON

- I did not think it worth while to go so far as that. We do not want to have to go into any question as to how any appointment was made. We take the officers over, and we do not want to be troubled with any investigation as to how they were appointed.

Mr Reid

- The Minister does not want to be troubled with the question as to whether they are temporary or permanent hands.

Mr KINGSTON

- We say that those who were acting when the service was transferred are to be taken as lawfully appointed, whether permanent or temporary.

Mr Higgins

- It had better be made clear.

Mr KINGSTON

- I do not think it can be made clearer. In another part of the Bill we make it clear that wharfs and other structures established at the commencement of the Act are to be deemed lawfully established. We give validity to the state of things which existed when we took over the department.

Mr Isaacs

- The clause does not say that the officers are lawfully appointed to their particular grades, positions, or salaries.

Mr KINGSTON

- The clause says that the officers are lawfully in the service of the Customs. AVE do not want to be troubled with the question of salaries or anything more. But we want to understand that we start fair with our service and our establishments generally, and that the validity of appointments as they existed when the Act came into operation is not unnecessarily to be inquired into.

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Mr Higgins

- If the words " lawfully in the service of the Customs " were substituted it would be better.

Mr CONROY

- On the Minister's explanation the clause is unnecessary, because it has been settled under section 84 of the Constitution Act that when a department of the State becomes transferred to the Commonwealth all officers of the department shall become subject to the control of the Executive Government of the Commonwealth. The section goes on to provide for officers who are not retained in the service of the Commonwealth, and there is a further provision as to pensions, gratuities, and so on, but under the Public Service Bill all officers are to have their existing and accruing rights. That being the case, -I think the clause is unnecessary.

Mr REID

- Most of the observations on this clause are wide of the mark, because the expression " this Act " does not mean this Act. By the interpretation clause it means any regulation which at any time has been made or is capable of being made. It is a delightfully elastic expression.

Clause agreed to.

Clauses 13 and 14 agreed to.

Clause 15 -

The Governor-General may by proclamation - (a) Appoint boarding stations for the boarding of ships by officers. (6) Establish ports and fix their limits, Appoint wharfs within ports and fix their limits.

Mr HUME COOK

- I desire to call attention to sub-clause (i>), which provides that the Governor-General may, amongst other things, establish ports and fix their limits. I can understand the necessity for fixing the limits of ports, but to establish ports may be to name certain places and not to name others. For example, the Governor-General may name Warrnambool as a port, and exclude Port Fairy. That would lead to a very great injustice being done to a large number of people who had been in the habit of using the latter port. I simply draw attention to this matter for the sake of getting information.

Mr Kingston

- This is only the usual power to establish ports, and there is a preservation of existing ports. It is an absolutely necessary provision.

Clause agreed to.

Clause 16 -

Ports and wharfs may be established or appointed for specified limited purposes or without any such limitation.

Mr REID

- This Bill is not quite so clear about the establishment of wharfs as it is about that of ports. I suppose that it refers equally to wharfs which have been long established ?

Mr Kingston

- They are specially preserved.

Mr REID

- So that the clause refers only to new wharfs ?

Mr Kingston

- Yes.

Mr REID

- Whilst I am dealing with this question of wharfs, may I express the hope that the Minister who is charged with requiring equality of trade throughout the Commonwealth will, when these clauses come into operation, study the matter of wharfage charges, because it seems to me clearly within the power of the Commonwealth to preserve equality of trade against the whole world. I admit that the subject does not come under the Bill, and I only take advantage of this clause, which refers to wharfs, to express the hope that the Minister will see that that loop-hole for inequality is stopped.

Mr Kingston

- The right honorable member means that we ought to see that we do not transfer the fight from the Customs-house to the wharfs ?

Mr REID

- Exactly.

Mr Thomson

- Does the right honorable member mean in the way of wharfage rates ?

Mr REID

- Yes. Supposing that a cargo of potatoes comes from Tasmania, I believe that the policy here is to charge a wharfage rate, whereas, if it comes from Warrnambool, no rate is charged. Wherever such a state of tilings exists it will have to be stopped. That will be one of the benefits of federal union. Otherwise, we shall be carrying out on the wharfs what we are determined to prevent on the highways of commerce.

Clause agreed to.

Clauses 17 and 18 agreed to.

Clause 19 -

Every wharf-owner shall provide to the satisfaction of the collector suitable office accommodation on his wharf for the exclusive use of the officer employed at the wharf. Penalty £20.

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Sir MALCOLM McEACHARN

- I think that there should be some definition of the word " suitable " in this clause. Could the collector demand that a residence should be erected upon a wharf ? Some people have very wide ideas of what office accommodation means.

Mr KINGSTON

-What the honorable member suggests would be very unreasonable, and I ask him to construe the term employed in a fair way. We cannot define it specially. We say " suitable office accommodation," which does not mean that a man shall erect a palace, but yet that he shall erect something a little better than a tent. I am sure that the honorable member's business habits would preclude the possibility of his having any difficulty in deciding what the clause means, and he can rely upon similar consideration being given to it by the Customs-house officials.

Mr MAUGER

- I wish to ask the Minister what position Custom - house agents occupy in connexion with this clause?

Mr KINGSTON

- They are dealt with a long way further on.

Clause agreed to.

Clauses 20 to 22 agreed to.

Clause 23 -

The licence for any carriage or lighter may be revoked by the collector if the licensee shall be guilty of any

fraud or misconduct, or shall fail to comply with this Act.

Mr REID

- Is it intended that an investigation on such a matter as is provided for in this clause shall come under an ordinary general expression? Is it not intended that the collector, shall be the final authority to determine a matter of this sort? Unless it is so provided in the words of the clause, it would really seem that there should be some process of proof, or, at any rate, that the issue might be raised that the decision of the collector was wrong, and that the person whose licence was taken away had not been guilty of any fraud or misconduct. This might involve litigation. I suggest, therefore, that the collector should be the final authority, and that if in his opinion the licensee has been guilty of any fraudulent conduct, his licence should be revoked. If the collector comes to the conclusion that the licensee has been guilty of fraud or misconduct, does not the Minister intend that that should be sufficient ?

Mr KINGSTON

- Of course, it would be a bit hard to take away a man's licence if he had not been guilty of misconduct. If the right honorable member will allow the clause to pass in its present form, I will look at it further.

Mr McCAY

- I suppose that the words " the collector " have the same meaning as "collector" in the interpretation clause. The latter term includes nearly all the Custom-house officers. It would be very dangerous to make this power to revoke licences a general power of any Customs officer.

Clause agreed to.

Clause 24 agreed to.

Clause 25 -

Declarations under this Act may be made before the Minister, or any collector, or any justice, and also before any person authorized in that behalf by the Minister or comptroller.

Mr Isaacs

- Can the Minister direct me to that part of the Bill which refers to declarations ? I do not think that they are defined.

Mr KINGSTON

- They are not defined, but they are referred to in sub-clause (b) of clause 147, and in other clauses, too, I think.

Mr McCAY

- I would like to ask whether this clause means that declarations may be taken by any officer of Customs ?

Mr Deakin

- If authorized.

Mr McCAY

- It does not say that. The provision specifically authorizes all Customhouse officers, and then all other officers. I suggest that it should be more clearly defined who is to take these declarations.

Mr ISAACS

- I think that subclause (b) of clause 147 hardly harmonizes with this provision. This clause says that declarations may be made before the Minister or any collector or any justice, and also before any person authorized by the Minister or comptroller. But sub-clause (b) of clause 147 says -

The value shall be verified at the time of entry by the production of the genuine invoice, and by a declaration signed by the owner in the presence of the collector.

Mr Kingston

- We will take that out. Mr. CONROY (Werriwa);- The clause before the committee says that declarations may be made before the Minister or any collector or justice, and also before any person authorized by the Minister or comptroller. We must not forget, however, that clause 240 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.

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Mr Isaacs

- That is a different thing altogether.

Clause agreed to.

Clause 26 agreed to.

Clause 27 -

If the Governor-General shall so direct by proclamation any State Act relating to the inspection or testing of imported goods may be executed and enforced by the Customs.

Sir JOHN QUICK

- I draw attention to this clause with a view to getting some idea as to its exact significance. In the first place, I would ask if it is advisable to legislate by reference in this matter? I think that a law so important as that of inspection ought to be a law passed by the Parliament of the Commonwealth, and not one about which the Parliament at present knows nothing, namely, a law which may be in force in any particular State. It is giving the Governor-General in Council power to legislate-

Mr Deakin

- The States have power to legislate. It is a valuable check in the interests of the Commonwealth that such inspection laws should be carried out subject to the control of the Commonwealth and of its officers, so as not to interfere in any way with freedom of trade.

Sir JOHN QUICK

- At present the States retain as a right, under section 112 of the Commonwealth Act, the power to make and enforce their own inspection laws, but these inspection laws must be peculiarly applicable to the States in reference to sanitary considerations, and so on ; they will not be laws in reference to trade and commerce. The States have no power to pass laws even of an inspectional character in regard to trade and commerce.

Mr Watson

- Is not the object of the clause to allow the machinery of the Customs office to be lent to the States?

Sir JOHN QUICK

- It may be so ; but I am objecting to this form of legislation. I consider that inspectional laws of a federal character ought to be passed by the Federal Parliament. This clause, however, proposes to utilize State inspection laws for federal purposes.

Mr Deakin

- No ; it proposes to enable federal servants to discharge State duties if a State wishes it.

Sir JOHN QUICK

- That is hardly the meaning. The clause provides that -

If the Governor-General shall so direct by proclamation any State Act relating to the inspection or testing of imported goods may be executed and enforced by the Customs.

That is to say, the work is to be done by a federal officer. Is it to be done for federal purposes?

Mr Deakin

- No.

Sir JOHN QUICK

- For the purpose of ascertaining the value of goods, packages may be broken open if necessary by the federal officers. Wide powers of that kind ought to be taken by federal law.

Mr Deakin

- It is simply a conditional power. A State passes certain laws, which it is authorized to pass for the purpose of inspection which will be principally in regard to sanitary matters. Instead of casting upon it the obligation of appointing a staff of officers to do the work, which might be accomplished daily in a few minutes, the clause enables federal officers to undertake it. The State asks that the work may be done, and we do it. The clause is not intended to have the effect which the honorable and learned member attaches to it.

Sir JOHN QUICK

- It is open to the observation that it means that we are to utilize State laws for federal purposes. Are we to have different inspection laws in different States?

Mr Deakin

- State laws need not be uniform ; federal laws must be uniform.

Sir JOHN QUICK

- I object to the clause altogether.

Mr ISAACS

- I think that the object of the clause as explained by the Attorney-General is a very useful one, and if it can be done with harmonious relations between the Commonwealth and the States, it ought to be very welcome. It will save enormous expense, and it will avoid double trouble and annoyance to the trading public. I think, however, that the clause as it stands may lead to some objection. I would suggest the insertion of words, showing that this is to be done, " with the consent of the States."

Mr Deakin

- We have no power to do the work unless at their request.

Mr ISAACS

- As the clause at present stands, it gives power to the Governor-General to direct by proclamation that any State Act relating to the inspection or testing of imported goods may be executed and enforced by the Customs.

Mr McCay

- Subject to the Constitution Act.

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Mr ISAACS

- I am very doubtful whether, even by the consent of the States, there is the absolute power to do this. Section 112 of the Constitution Act leaves the execution of the State law to the State. It allows the Commonwealth to annul these laws: but I do not think it contemplates this particular effort of legislative authority at all. I have no objection to the clause, provided that the words I have named are inserted. The clause may be misunderstood, and because of that misunderstanding it may be resented. As it is necessarily contemplated that the States shall give their consent, I think it is wise to insert a provision to that effect

Mr REID

- I think there is another difficulty. The State Customs legislation remains in force after this Bill has been passed, unless it is inconsistent with the ^ provisions of this measure.

Mr Isaacs

- Inspection laws.

Mr REID

- Yes, the Customs inspection laws, so that a Commonwealth Officer can use any provisions of the Customs inspection laws of the State which are not inconsistent with the provisions of an Act of the Commonwealth. The only practical difficulty in regard to this clause is that it is rather vague as to whether the operation of a State Act may not by this Commonwealth proclamation extend to other States. I do not think it would, but the addition of a few words would make it perfectly clear.. The clause provides that "if the Governor-General shall so direct by proclamation " - that is the active power - Any State Act relating to the inspection or testing of imported goods may be executed and enforced by the Customs.

The Customs have a Commonwealth range, so that these words are just a little vague. Although I like the brevity of the clause, I would suggest that, in order to secure greater clearness, we should add the words " in that State." The effect of that would be to make it perfectly clear that we are not taking a general power to use, for example, a Victorian law in Western Australia.

Mr Kingston

- I do not think there is sufficient doubt to render the addition of those words necessary. The more I look at it, the more I like the clause as it stands.

Mr Isaacs

- That is not unnatural.

Mr REID

- We must remember that this is the right honorable and learned gentleman's first.

Mr Kingston

- I think it better to adhere to the clause as it is.

Clause agreed to.

Clause 28-

The working days and hours of the Customs shall be as prescribed and except when working , overtime is permitted by the collector cargo shall only be received loaded or worked on or discharged from any ship

on working days and during working hours. Penalty: £50.

Mr MAUGER

- I suppose there is no means by which this provision could be made more definite. I take it that the clearing of ships is in the hands of the Customs department, and while it has been generally understood that they should not be cleared on Sunday, there has been a great deal of unnecessary Sunday work in Victoria lately. One very large sailing ship recently had a company of men to adjust her compasses on a Sunday, and I am told that there was really no occasion for the work to be done on that day.

Sir Malcolm McEacharn

- But the men would get double pay for it.

Mr MAUGER

- Even with double pay, unnecessary Sunday work should not be encouraged. -I have been told by pilots and others interested that the practice of Sunday work is growing, and I desire to know whether there are no means of making the clause more definite.

Mr Kingston

- The working days and hours will be provided for in the regulations, which will be brought down at once.

Mr MAUGER

- And we shall have an opportunity of seeing them-1?

Mr Kingston

- Of course. Honorable members are bound to see them.

Mr Reid

- -We are bound to see them when it is too late to touch them.

Mr Kingston

- The House will have the fullest right to see them.

Clause agreed to.

Clause 29 agreed to.

Clause 30-

Goods shall be subject to the control of the Customs as follows : -

As to all goods imported- from the time of actual importation until delivery for home consumption or until exportation to parts beyond the seas whichever shall first happen. (&) As to all goods under drawback - from the time of the claim for drawback until exportation into parts beyond the seas.

As to all goods subject to any export duty - from the time when the same are brought to any port or place for exportation until the payment of the duty.

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Mr McCAY

- The debate which took place on an earlier clause has suggested to me that it might be desirable to define in some way when importation has taken place - whether it has taken place when the goods arrive within the territorial limit, or when the ship comes to the wharf, or when the goods are landed. There are difficulties in the way, but great trouble will arise if we do not define the exact time- of importation. The clause provides that goods shall be subject to the control of Customs,- as to all goods imported, from the time of actual importation. What is the time of actual importation ?

Mr Harper

- What would the honorable and learned member suggest?

Mr McCAY

- I would not suggest anything ; I am. not responsible for the interpretation clause. I also desire- to draw the attention of the Minister in charge of the Bill to the fact that in paragraph (a), the words "exportation to parts beyond the seas " are used, while in paragraph (b) the words " exportation into parts beyond the seas" occur. Is it meant by that that goods on. foreign-going ships are subject to the control of the Customs from, the moment they- leave an Australian port until they reach their destination at some other port ? The exportation is apparently not completed until the vessel arrives at her port of destination. That is an assumption of authority on the high seas that I very much question our power to take.

Mr REID

- 'The meaning is that' the moment a ship leaves Australia for a foreign port the exportation is complete. This clause seems to me for all practical purposes to define correctly enough the jurisdiction of the

Customs authorities over the goods, but the definition which the Government themselves have put on the clause seems to entirely conflict with any jurisdiction on their part over any goods which are not imported, which are not landed, and are not on the ship's manifest as goods to be landed. Goods are subject to our control only when "they are in a ship and intended to be landed within the Commonwealth. The stores which ships bring with them from ports beyond the Commonwealth are not brought here to be landed. They are not on the manifest of the cargo, and as the clause very properly provides, they are not subject to the control of the Customs. That is entirely inconsistent with- any notion of having control over goods in foreign ships, which are not to be landed within the Commonwealth, because of course if there were any attempt to land goods not on the manifest, that would be what we call smuggling, and would- be subject to the very severe penalties which are prescribed. Therefore, although I am thoroughly in accord with the policy of the Government in connexion with these ships' stores, I feel that there is a question involved which may become one affecting the position of the Bill altogether, if what- seems to me to be the proper view of the matter is- not- recognised. It -may be a very proper thing that we should have power given, to us by the Commonwealth Act to deal with goods on foreign ships that are not to be landed in Australia, but I think our powers do not extend as far as the Government would have us suppose. If the goods- are not intended to be landed here, they are not under the jurisdiction of the Commonwealth, except for the purposes of preventing them from being surreptitiously landed. If goods are shipped not to be landed, and are honestly kept on the ship, they are- absolutely beyond the power of the Commonwealth. Our power of levying duty on goods only arises when those goods are- landed or consumed within the limits of the Commonwealth.

Mr Higgins

- -That is the right honorable gentleman's definition of actual importation.

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Mr REID

- I do not attempt a definition " where it is not otherwise clearly intended"; but I wish this point to be taken notice of* because it is a very serious matter. The Minister knows how jealous the high authorities of the Empire are of any attempt to exercise control over matters that- are not within our jurisdiction, and affecting the great shipping companies of the world, who have opportunities of representing their views in a very influential manner. My desire is not to quarrel with the policy or the intentions of the Government, but I think it would be a misfortune if in our endeavour to carry out desirable legislation we went beyond our authority, and brought about delay in the passing of the Bill or litigation such as might be involved later on. I have had some little experience in the administration of Customs laws, and I hope I have made my views quite clear. My point is, that when a vessel brings ships' stores into the Commonwealth from ports beyond the seas, so long as those stores remain on the ship, and are not intended to be landed, and are not included in any manifest as goods to be landed in the Commonwealth, but are goods to be consumed at sea, or to be consumed after the vessel has left the Commonwealth, such goods are absolutely beyond our jurisdiction, and, therefore, we cannot put our seal on them, say, at Perth, with a power to keep that seal on them all the time the ship is out at sea.

Mr Kingston

- The right honorable gentleman admits that we can seal them 1

Mr REID

- The Commonwealth has absolute power within its jurisdiction to protect the Customs revenue. No one will grudge them that power, and as far as harbor excesses are concerned, I would be very sorry to doubt the power of the Government. I say that when ships are lying in our harbors, the consumption of dutiable goods is a matter that the Commonwealth can deal with, but if any attempt is made to go beyond that, and seal down goods when they are outside the limits of the Commonwealth, and prevent their consumption there, we shall be going beyond our power. There is full power to prevent the abuse of our Customs laws, but no power to interfere with the goods I have described when a vessel is outside the limits of the Commonwealth. If the Minister will consent to consider this question, I am perfectly satisfied that we shall come to a conclusion that will enable us to avoid one of the dangers that might otherwise threaten the Bill. If we show any disposition to go beyond our powers, there are a number of influential people who will be only too ready to pull us up.

Mr ISAACS

- I do not know now the difference between " importation " and " actual importation," and I do not think there is any necessity for the word " actual."

Mr Kingston

- Perhaps there is a good deal in favour of striking that word out.

Amendments (by Mr. Kingston) agreed to-

That the word "actual," line 4, be omitted. That the word "into." line 9, be omitted, with a view to insert in lieu thereof the word "to."

Clause, as amended, agreed to.

Clause 3.1 agreed to.

Clause 32 (Custom control of goods).

Mr. REID

(East Sydney).- This is another of the clauses that will have to be considered in connexion with the matter that we have been speaking of, because it raises the question of ships' stores again. Supposing stores such as I have referred to were sealed on a vessel leaving Fremantle and bound for Sydney, this clause would raise the point as to whether the ship's officers would have the power to take away the seal in order to enable them to use the goods during the time they were beyond the jurisdiction of the Commonwealth.

Mr Conroy

- I see the penalty here is fixed at £100, and I would like to know what would be the lowest penalty 1

Mr Kingston

- The minimum would be £5.

Mr Conroy

- Does not the Minister think that would be rather high 1

Mr Kingston

- The honorable member for North Sydney has a proposal to make later on which will meet the case.

Clause agreed to.

Clause 33 -

The Customs shall not be liable for any loss or damage, occasioned to any goods subject to the control of the Customs, except by the wilful neglect or wanton act of some officer.

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Mr REID

- I would like to draw the attention of the committee to the marvellous transformation that occurs when a private individual has suffered through some neglect of a public officer. We have had a number of allusions to what will happen to a private individual if he comes within the reach of a person in authority ; but here is a clause under which the authorities are not satisfied to compel an individual, whose goods have been lost or damaged through the neglect of a public officer, to prove the neglect of the officer, but require him to go further and prove that the neglect was wilful. That is how a tribunal of Customs officials protect themselves and the Crown. If a man's goods have been damaged or lost through the neglect of a public officer in whose custody they are, surely that man ought to recover compensation without having to prove something more than mere neglect. If mere neglect is all that is wanted, the word "wilful "is unnecessary, and so is the word " wanton." Of course I admit that an officer, in destroying a man's goods, might be carrying out the policy of the country for the time being, and in that sense he might require protection ; but apart from that, I think it is beneath the dignity of a high State, when a poor wretch has lost his property through some neglect or act of a responsible officer, to place unnecessary obstacles in the way of recovering redress. I commend this to the generous feelings of the Minister, and suggest the omission of the words "wilful" and "wanton," leaving the clause to read " by the neglect or act."

Mr KINGSTON

- There is a good deal in what the right honorable and learned member for East Sydney says, and I will consider the matter.

Progress reported.

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22:33:00

House adjourned at 10.33 p.m.