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1901-08-28

Senate.

The President took the chair at half-past two p.m., and read prayers.

PETITION

Senator STANFORTHSMITH presented ft petition from nine persons, representing all the oversea steam shipping companies at Fremantle, praying that the Senate will amend the clauses of the Customs Bill placing restrictions on ship's stores on oversea ships.

Petition received, and read.

PAPERS

-Senator DRAKElaid upon the table the following papers -

Naval Defence of the Commonwealth of Australia -

Minute reobtaining opinion of the Admiral commanding.

Letter from the Admiral in reply.

Asiatics imported into Western Australia under the Imported Labour Registry Act.

Unused Postage Stamps repurchased from " Tattersall's."

Ordered to be printed.

ELECTIONS AND QUALIFICATIONS COMMITTEE

Resignation of Senator Fraser

The PRESIDENT

- I have to read to the Senate a letter which I have received : -

Dear Sir, - I beg to resign my seat on the Elections and Qualifications Committee. My medical adviser, Dr. Grant, has ordered me to go away for change of air. I much regret the necessity for taking this step, but it is unavoidable.

Yours truly,

Simon Fraser

Vice-President of the Executive Council

Senator O'CONNOR

. - I move -

That the resignation of Senator Fraser be accepted.

I am sure that I express the feeling of every honorable senator when I say that I exceedingly regret the cause which has led to the resignation of Senator Fraser.

Senator Sir JOSIAH SYMON

- As a member of the committee, I very deeply regret, and I am sure that every member of it very deeply regrets, the resignation of Senator Fraser. He always took a very deep interest in its proceedings, and I think no one has more keenly felt his responsibility and been moved to carryout his duties more thoroughly and in accordance with what he believed to be right.

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Senator Sir JOHN DOWNER

- I deeply regret the unfortunate cause which prevents Senator Fraser from continuing to assist us on the committee. He is too well known and too highly esteemed in this community to require any words as a guarantee for the excellence in which he performs every function.

SenatorSir WILLIAM ZEAL (Victoria). - The illness of Senator Fraser isnot of that alarming nature which the remarks of honorable senators would lead the Senate to believe. He is suffering from the prevailing epidemic, but if these statements go through the country persons will think that he is dying. He has had a very sharp attack of influenza, and he has asked me to apply for leave of absence for him, as he has been advised by his doctor to go away to his station for a few weeks.

Question resolved in the affirmative.

Senator O'CONNOR(New South Wales - Vice-President of the Executive Council). - As it is connected with the disposal of the business of the Senate, I presume that I may move, without notice -

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

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

I have followed exactly the form which was adopted in appointing the committee. It may or may not be necessary to follow that form exactly, but I thought it better to put the appointment of a new member on the same footing as the appointment of the committee.

Senator Sir JOSIAHSYMON (South Australia). - I would suggest to Senator O'Connor whether it would not be better to give notice of the motion for to-morrow. Ordinarily it could not be moved, I think, without suspending standing orders.

The PRESIDENT

- All motions connected with the business of the House are moved without notice. For instance, the motion that the sittings be suspended is always moved without notice.

Senator Sir JOSIAH SYMON

- With great submission, sir, this motion has nothing to do with the business of the House ; it is the partial appointment of a committee. There is no more reason why the motion should be moved without notice than there was that the invitation to you in the first instance to submit your warrant appointing the committee should be moved without notice. The original motion was moved on notice. I am not making the suggestion in any hostile way or with any desire to delay the proceedings, but because the committee is to meet to-morrow, and the resignation of Senator Fraser, which we hear of now for the first time, may have some effect on it.

Senator O'CONNOR(New South Wales - Vice-President of the Executive Council). - The only reason I had for moving the motion now was, since it will be necessary for the warrant to lie upon the table for a certain number of days, to expedite the actual appointment as soon as possible. But if it is the wish of the Senate that I should give notice, I have no objection.

Senator WALKER(New South Wales). If the motion is not agreed to to-day the probability is that the committee will not meet as a full body for a fortnight ; whereas if it is agreed to to-day it may hope to meet as a full body to-morrow week. Thursday is the only day on which, we can meet.

Senator Sir JOSIAHSYMON (South Australia). - I hope that we shall meet tomorrow in any case. Of course, the committee will not be hampered or trammelled in any way.

The PRESIDENT

- The practice is laid down in May, page 235. Certain formal motions which are necessary for the due transaction of business are made without notice before the commencement, or after the close, of public business. There is a long list of those motions which can be moved without notice. It is a matter entirely for Senator O'Connor whether he moves without notice or whether he gives notice.

Senator O'CONNOR

- I give notice for tomorrow.

LEAVE OF ABSENCE.

Resolved (on motion by Senator Barrett) -

That leave of absence be given to Senator James Styles till the 30th of September, in consequence of continued ill-health.

ISSUE OF AMMUNITION.

Senator KEATING

asked the Vice-President of the Executive Council, upon notice -

Upon what terms is the Defence department issuing ammunition to the volunteer forces and country rifle clubs throughout the Commonwealth ?

Are the terms varying or uniform for the several States, and, if varying, in what respects, and for what reasons ?

Senator O'CONNOR

- The answers are as follow : -

The terms upon which ammunition has been issued are those under the regulations that were existing in the several States prior to the transfer of the defences to the Commonwealth.

Those terms are varying, and the whole question as to under what terms ammunition shall be issued throughout the Commonwealth is now under consideration with the view of introducing uniform terms.

DR. MAXWELL'S REPORT

Senator STEWART

- With the concurrence of honorable members, I desire to ask Senator O'Connor, without notice, when we shall have Dr. Maxwell's report in our hands ?

Senator O'CONNOR

- I shall be able to answer the question later on in' the day or to-morrow.

CUSTOMS BILL.

In Committee(consideration resumed from 23rd August, vide p. 4131).

Clause 175 (Agents personally liable);

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Senator Sir FREDERICK SARGOOD

- It will be seen that provision is made in this clause that the owner of goods may comply with the provisions of the measure by means of an agent lawfully authorized. Clause 174 provides that any officer of Customs may require from that agent the production of his authority. Then clause 175 goes on to say - When any person is expressly or impliedly authorized.

I do not know why those words are used instead of the words " legally authorized," though there may be some legal reason of which I am not aware. When a person is authorized by the owner to act as his agent in relation to any goods, such person is to be deemed to be the owner of the goods, and personalty liable for any penalties recoverable as if he were the principal. I do not know why the 'words "passes himself, or acts, or assumes to act as such agent " are used. Surely the Customs should not deal with any one who is not a legally authorized agent. These words are not in the Victorian Act, although the rest of the clause is copied from that Act. If it be necessary to make the agent responsible in some way, that provision should not be mixed up with a clause of this kind, especially as the concluding words of the clause are that -

Nothing herein contained shall be taken to relieve any principal from liability.

While clause 176 makes the principal liable for an agent, he should not be made liable for the action of an irresponsible agent who was never appointed by him. to represent him.

Senator O'CONNOR(New South Wales - Vice-President of the Executive Council). - The object of the clause is to make an agent personally liable. Ordinarily speaking an agent acts for his principal, and is not personally liable, but inasmuch as the object of the clause is to make him personally liable, it makes liable not only the person who is actually authorized, but also the person who assumes to act. Such a person is to be deemed to be the owner of the goods for the purpose of this clause only. Suppose a person is not an agent at all, but represents himself to be an agent, the principal will not be liable, but the person representing himself to be the agent will be liable. The personal liability is to be upon the agent, and he will be punished for holding himself out as an agent. In other words the clause takes a person at his word, and if he holds himself out as an agent, he has to stand by all the consequences. The clause does not impose any liability upon the principal, although it does not take away any of the principal's liability.

Although this provision may not be in exactly the same form as that in other

Customs Acts, I think Senator Sargood will find that there is usually a provision to this effect in such Acts.

Senator Sir Frederick Sargood

- Does not the clause conflict with clause 173?

Senator O'CONNOR

- No. The agent may be lawfully authorized, either expressly impliedly.

Clause agreed to.

Clause 176-

Any declaration authorized by this Act made by any employe or agent of any person shall be held to have been made with the knowledge and consent of such person, so that in any prosecution in respect of any declaration made by any such employe or agent, such person shall be liable only to the pecuniary punishment provided by any Customs Act as if such declaration had been made by himself.

Senator Major GOULD

- If the words - "unless the contrary be proved " are not inserted in this clause, it may make the principal responsible for declarations made by persons who are not authorized to make them. It is rather serious to hold a man responsible for a declaration made without his knowledge or consent, although it may have

been made by his agent. I suggest, therefore, that after the word " held " the words " unless the contrary be proved " be inserted. This would throw the onus of proof that the declaration was made without the knowledge or consent of the principal, upon him. The principal would still be liable unless it was shown that the declaration was made without his knowledge and consent.

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Senator Sir FREDERICK SARGOOD

- The suggestion of Senator Gould to some extent meets the object of the amendment which I have circulated, to strike out the words " employe or." It is dangerous to provide that any employe of a firm can make that firm liable for any declaration he likes to make. It is opening the door to an immense amount of imposition of black-mail. An employe may have a grudge against his employer, and may make a declaration which may penalize his employer. Surely the Government never intended such a thing as that. A firm should be liable for a declaration made by an authorized agent, but surely not for a declaration made by any employe. I therefore move -

That the words " employe or," lines 2 and 6, be omitted.

Senator Major GOULD(New South Wales). - I prefer the amendment I have suggested, because it in no way weakens the authority of the Customs officers. If we strike out the words " employe or " the clause may be weakened.

Senator O'CONNOR

- I think the committee will see that it is necessary that the clause should remain as it is if they reflect what the position really is. In the ordinary transaction of Customs business, for the convenience of the owner of goods, an agent or employe is' allowed, to make declarations and do a variety of things which it would be impossible for the owner of the goods to do himself. Honorable senators who are aware of the multiplicity of detailed transactions that have to be gone through in Customs business know that it would be impossible for any owner of goods in a large way to attend personally to matters at the Custom-house. Therefore, he sends a duly credited agent or employe, or engages an ordinary Customhouse agent to do these things for him. In the course of business the agent or employe1 perhaps makes a certain declaration. It is quite obvious that if after a declaration had been made the owner were to be allowed to escape the consequences of that declaration by showing that it was not authorized, we should be opening the door to a tremendous amount of evasion of Custom-house regulations, and it would be quite impossible to secure the collection of the revenue. When a false declaration was made, the owner would be able to say - " There has been a mistake ; I know nothing about it. I have a thousand affairs to attend to, and this is only one of them, and my agent has made the wrong declaration under a misapprehension." There is no hardship in making the principal Liable for what his agent declares. What has been done is for 'the benefit of the principal, and is done in the ordinary course of business. The clause will have the effect of making owners liable for what is done by the agents they employ to act for them.

Senator Sir FREDERICKSARGOOD (Victoria). - I agree with Senator O'Connor, that if a firm employs an agent it should be responsible for his declaration. But this clause says that an employe may make a declaration, - for which the firm shall be liable. The employe may not have been appointed to make such a declaration at all. I know of cases where employes who have had a grudge against their employers have got them into trouble with the Customs. Under this clause an employe who wishes to pay off a grudge may make a declaration, knowing that the firm will be responsible for anything he says. I do not care to what extent the agent may make the firm responsible if he is duly appointed as an agent. Senator Major GOULD (New South Wales). - My objection to this clause is that the owner is made responsible, not for a declaration made by a duly appointed agent, but for the declaration of any employe. This is a very dangerous provision. Although it makes the employer liable to pecuniary penalties, it has to be remembered that it makes him liable to imprisonment if the fine is not paid. The fine may be enforced by distress or imprisonment. I can see the difficulty with regard to the amendment which I have suggested - that it would leave it open to the person charged to prove that the agent or "employe had not been authorized. I shall, therefore, be quite willing to fall in with the suggestion of Senator Sir Frederick Sargood.

Senator O'Connor

- I will, consent to striking out the words " employe or."

Senator Sir JOSIAH SYMON

- If Senator Sir Frederick Sargood is satisfied with his amendment, I am not disposed to 'take exception to it, but I think the clause ought to read "the ' agent," instead of " any agent." An agent may make a declaration without authority. He may be sent to do a particular business with the Customs, and may, thinking he is serving his firm, make a declaration that is contrary to fact, for which, as the clause stands, the principal would be responsible. If the clause read "the agent," it would mean the properly authorized agent. If the word "any" remains, principals will be open to serious injustice.

Senator O'CONNOR

- I cannot consent to the alteration suggested by Senator Sir Josiah Symon. The agent is described in clause 173. A firm may have two or three agents. "Any agent" means that only a legally authorized agent may make his principal liable.

Senator Major Gould

- An agent for that particular purpose, and not for any purpose.

Senator O'CONNOR

- He may be an agent for the purpose of Customs business, or a special agent for a particular purpose.

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Senator Major Gould

- Assuming that he is an agent for a particular purpose, and he goes beyond that purpose in making a declaration, is the principal liable ?

Senator O'CONNOR

- The ordinary law of principal and agent applies to this case as to any other. If a man is an agent, appointed for particular duties or a particular purpose, and goes outside his employment with regard to such action, he is not an agent. The use of the words " any agent " perfectly safeguards the employer, because it must be shown that the person making the declaration is an agent, and he must, of course, be an agent authorized expressly or impliedly. I want to protect the Customs against the possibility of confusion arising from the use of the words " the agent," under which it might be argued that there could be only one agent lawfully authorized. I have consented to an amendment omitting the words " employe or," because they are implied by reference to clause 173, but I cannot go any further than that.

Senator Sir JOSIAH SYMON (South Australia). - I am now satisfied that, whatever view Senator Sargood takes, the word "any" ought to be struck out, and the word "the" inserted. Senator O'Connor has made that quite clear. Clause 173 enables the owners of the goods to appoint an agent, and to comply with the provisions of the Bill the agent must be lawfully authorized in pursuance of that clause. An owner has no power to appoint an agent except by virtue of that clause. Clause 174 requires that the agent must be appointed by written authority, because the Customs officer may require from the agent his written authority, showing that he is the specific agent of the owner of the goods. I have always understood that Customs agents are appointed by writing, so that their authority shall be recognised.

Senator Sir William Zeal

- Suppose there are two agents ?

Senator Sir JOSIAH SYMON

- I will refer to that in a moment. Clause 175 refers to the liability of persons appointed as agents for any infringements of the law they may make in the name of the principal. They are to be liable just as if they were the principals themselves. Then clause 176 is necessary for the protection of the Customs, to make sure that the principal is also liable. But he ought to be liable only for the act of an agent so lawfully authorized, that is to say, " the agent." Then I am asked, what are we to do in the case of two or three agents if we use the words "the agent." We have just dealt with an Acts Interpretation Bill, under which words used in the singular are to be interpreted to apply equally in , the plural, and that will get over that difficulty altogether.

Senator Sir William Zeal

- Then I cannot see any objection to the use of the word "any."

Senator Sir, JOSIAH SYMON

- Because it is "the agent" only who should be liable. It may be two or three agents, or only one ; but if we say " the agent " we shall be referring to the agents indicated by by clauses 173, 174, and 175, and shall have homogenous and uniform legislation upon the subject. It is clear to me that there must have been

some other object in the use of the word "employee," and we want only to refer to the agent defined by the previous clauses.

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Senator DOBSON

- I find myself unable to accept any of the amendments suggested by honorable senators opposite, or even the amendment which has been consented to by Senator O'Connor. If the clause is amended in any way in the first two lines it might as well be struck out altogether. It cannot be said too often with respect to these clauses that the honest trader has nothing whatever to fear from them. They are simply put in for the purpose of enabling the Collector of Customs to catch the man who perpetually or occasionally lapses from grace, and tries to "do" the Custom-house. If any of the amendments suggested are accepted, it may be opening the door to defrauding the Customs, which clause 176 is meant to shut. From my limited experience, some 37 years ago, in a merchant's office, I have been rather astonished at the remarks of Senator Sargood. How are these entries passed? When a merchant opens letters with the invoices in them, he hands the invoices out to a clerk or employee, who certainly would not be an agent authorized in writing under clause 173 or 174. He would be a Custom-house clerk attending to the business of passing entries. This clerk would pass the entries, and this clause says that the owner of the goods shall be held liable for what the clerk does. Suppose the owner of the goods got two invoices - a bogus invoice and a real invoice, he would hardly put upon the clerk the indignity of committing an absolute fraud on the Customs. The owner would commit the fraud by keeping back the true invoice, and handing the bogus invoice to the clerk, and the clerk would pass that bogus invoice perfectly innocently. This clause is framed to make the owner liable in such a case. I was astonished to hear Senator Sargood say that he knew of a case in which a clerk out of spite to the owner did some unauthorized thing. He must have got some information or some invoice from the office, for he could not have done the thing out of his head. Whatever the clerk did in such a case the owner should be liable for. What the clause is designed to do is to give the collector of Customs accurate evidence, and if any one is liable for accurate or inaccurate evidence issuing from an office it must be the owner of the goods.

Senator Sir FREDERICKSARGOOD (Victoria). - The honorable and learned senator has referred to his experience of 37 years ago. I have had considerable experience more recently, and for seventeen years I was chairman of our trade committee, and in close contact with the Commissioner for Customs. During that time the principal duty of our committee was to assist the Customs department in preventing roguery. For the whole of those years I enjoyed the utmost confidence of the commissioner, and there were very few matters that were not confidentially submitted to me when a difficulty arose. I have always recognised it as a first duty of honest merchants to assist the Customs; but difficulties should not be thrown in their way, and undue risks should not be placed upon them. The Custom-house should only deal with recognised lawfully authorized persons, either in the employ of merchants or duly licensed Customs-house agents who are employed by small firms who cannot afford to keep an officer for that special work. Other merchants, according to the amount of business they have to do, employ one or two of their own employees, not merely throughout the year, but when a press of business comes on at the commencement of a season. They are authorized in writing, and their authority, I believe, is registered by the Customs. I have before me the declaration of our shipping clerk, in which he says -

I, do hereby declare that I am the agent duly authorized of Sargood, Butler, Nichol and Ewen.

He does not say "I am merely an employee."

Senator O'Connor

- We have done with that. I have agreed to accept the honorable senator's amendment.

Senator Sir FREDERICK SARGOOD

- Then the question is as to the use of the word "any" or the word "the"; and I should have thought that the word "the" would have covered "any" but that is a purely legal matter upon which I, as a layman, am not competent to offer an opinion. I understood Senator O'Connor to say that in his opinion the words "any" and "the" have practically the same meaning.

Senator O'Connor

- I do not think they have, and that is why the amendment is being pressed.

Senator Sir FREDERICK SARGOOD

- If the use of the word "any" is intended to catch the agent if there are more than two, I am entirely with

the honorable and learned senator in charge of the Bill. I consider that if I have two shipping clerks duly authorized I should be responsible for them, and I am content to take that risk.

Senator EWING

- I think there is very little in the discussion. " Any agent " means any agent authorized as aforesaid, and I feel confident that no court, construing the Bill, would ever say that " any agent " in this clause meant any other class of agent -than that referred to in clause 173. What difference does it make to the Minister to use the words " the agent " when they will have the same force as "any agent?" If two or more are employed, the Acts Interpretation Bill, as has been pointed out, will enable us to catch all of them.

Senator O'Connor

- Does the honorable and learned senator think that " any " and " the " are exactly the same?

Senator EWING

- The use of the word " the " makes the clause perfectly clear. I have very little doubt, as a lawyer, that " any " used in this clause would be construed to mean, any agent appointed " under the previous clause, and to use the word " the " would, in my opinion, put the clause in a more satisfactory way.

Amendment, by leave, withdrawn.

Senator CLEMONS

- I , move -

That the word "any," line 2, be omitted, with a view to insert in lieu thereof the word " the."

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Senator Sir WILLIAM ZEAL

- I do not see why. we should accept any of these amendments, as the clause has been carefully drawn, and is a reasonable one. It seems to me that the committee too frequently lends itself to protect people who do wrong. This Bill is to protect the revenue, and for the collection of the revenue, and it must not be forgotten that if an agent goes to the Custom-house and make a false declaration, and represents himself as the agent of a man for whom he is not the agent, he will render himself liable to prosecution for perjury ; the law officers will have a proper hold upon him and can punish him. I support the Government proposal.

Senator MACFARLANE(Tasmania).I support the amendment, for the reason that it is not only merchants but other individuals who may be interested. An individual may import goods on which there are ad valorem duties, and may employ one or two Customs agents. If he employs two, both may pass entries, and in the case of one there may be an undervaluation. Is the principal to be liable for that undervaluation, though the other entry passed may be correct? If we have the words " any agent " it will include more than one, and if we have the words " the agent," it will include only the authorized person.

Senator O'CONNOR

- I must oppose the amendment. The clause provides that where any declaration authorized by the Bill is made by any agent of any person, the principal shall be held responsible for the declaration of that agent. Why should he not be ? If I appoint an agent to make a declaration for me, why should I not be responsible for that agent?

Senator Clemons

- We do not object to that.

Senator O'CONNOR

- No; but what honorable senators want is that there should be responsibility only in the case of an agent appointed in a particular way' under clause 173. It ought not to be limited in that way. If the Custom-house, for its own purposes, choose to allow the owner to act under clause 173, an agency is created in that way. But if in some other way, perhaps not complying with that clause, a principal, chooses to send a person to make a declaration for him, so as to get the benefit of it, why should he not be responsible for it also? I cannot understand the object in trying to protect a man from the act of his own agent. I consented to the omission of the word "employee" because there might be some doubt whether it might not mean any employee, whether authorized or not ; but now that it is quite clear that the person who makes the declaration . must be the agent - that is, the person authorized - what does it matter whether he is authorized under clause 173 or in any other way?

Amendment negatived.

Amendment (by Sir Frederick Sargood) agreed to -

That the words "employe or," lines 2 and 8, be omitted
Clause, as amended, agreed to.

Clause 179 (Examine all goods).

Sir FREDERICK SARGOOD

- The clause says - " Any officer may open packages." The invariable practice is that the packages should be opened in the presence of the owner or his agent, and I suppose Senator O'Connor will have no objection to the insertion of the words "in the presence of the owner " after the word "may."

Senator O'CONNOR

- There may be cases in which you cannot find the owner. There may be cases in which he does not claim the goods. There may be cases of prohibited goods, in respect of which he does not want to make himself liable, and he does not send an agent to make himself liable. What is the Custom-house to do in those circumstances ? Is it not to open the goods ? Under ordinary circumstances I admit that the owner or the agent is present, and we may be well assured that the Customs authorities will take care that the owner or the agent is always there when the goods are opened. That is the ordinary practice, and I want this power to provide for an extraordinary case.

Clause agreed to.

Clause 180 (Power to board and search ships).

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Senator PULSFORD

- I wish to draw the attention of the committee to the use of the word " officer " in the clause without any limitation or statement as to his position. Under the interpretation clause the word " officer" includes all persons employed in the service of the Customs. Therefore, any Customs employe, male or female, can do anything which it is put in the power of any officer to do under this clause. I make these remarks in order that the committee may see its way later on to have a proper definition of the term " officer."

Senator Major GOULD (New South Wales). - If Senator Pulsford will refer to the clause he will see that the collector may station an officer on board any ship. The probability is that he "will be any person in the employ of the Customs, as provided by the interpretation clause. There is no necessity to put a man of any great authority in that position. If there is any doubt as to whether an officer should have power to board and search any ship it had better be dealt with at once. I am not prepared to submit an amendment ; but the word " officer " in the interpretation clause will not be capable of a very restricted meaning.

Clause agreed to.

Clause 184-

No fastening, lock, mark, or seal placed by an officer upon any goods or upon any door, hatchway opening or place upon any ship shall be opened, altered, broken or erased, except by authority, whilst the goods upon which the fastening lock, mark, or seal is placed, or which are intended to be secured thereby shall remain subject to the control of the Customs and if any ship shall arrive in any port with any such fastening, lock, mark, or seal open, altered, broken, or erased, except as aforesaid the master shall be guilty of an offence against this Act.

Penalty : £50

Senator CLEMONS

- This clause was to a certain extent discussed when we were considering clauses 122, 123, and 124. On clause 122 I pointed out that this clause was in its effect intertwined with those clauses : and I said that in my opinion it would fail to secure the object which is aimed at. I took it at the time that Senator O'Connor was not with me, and I would again draw his attention to the wording of the clause and its probable operation.

Senator O'CONNOR

- On looking into the clause since the question of ships' stores was debated, I was not satisfied that it is in such a form as will put beyond all question the power we want to exercise. It is very desirable that we should have our powers very clearly defined, especially in this matter. I therefore move -

That the clause be amended by the omission of the words "and if any ship shall arrive in any port with any such fastening, lock, mark, or seal open, altered, broken, or erased, except as aforesaid, the master shall be guilty of an offence against this Act."

I do not think the clause makes it sufficiently clear that we have the power to deal with the case of a

foreign or British ship that comes into port with her seals broken. It appears to me that the clause as it stands deals more particularly with locks and fastenings broken while under the control of the Customs authorities. It is necessary that that provision 'should be there, as it is to deal with those cases, and I intend to circulate a new clause which will deal specifically with the case of a foreign or British ship which sails between different ports round Australia.

Senator Sir JOSIAH SYMON

- I shall support the amendment. The new clause will raise the whole question, and I think it is an exceedingly convenient and wise course that Senator O'Connor has adopted. As clauses 122, 123, and 124 are not specifically directed against the real question which is in the contemplation of the policy of the Government, the new clause will raise a clear and distinct issue. I support the amendment because it will have the effect of confining the clause to goods which continue entirely under the control of the Customs authorities.

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Senator Major GOULD

- It appears to one that this is a convenient way of dealing with the clause. On a previous occasion I contended that the Government were attempting to go beyond what we thought they had a right to do. When the new clause is submitted, the sense of the committee can be obtained without any honorable senator feeling himself prejudiced on the subject.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 188-

If any officer of Customs or of police shall have reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the control of the Customs secreted about him the following consequences shall ensue : -

The officer may detain and search the suspected person.

Senator PULSFORD (New South Wales). - Unless the officer of his own will decides to detain and search him the suspected person may go, and consequently there are no consequences to ensue. The clause says that if the officer has reasonable cause to suspect he shall do something ; but the sub-clause gives him power to do nothing. I propose to move to omit the words " may detain and," with a view to insert the words " shall detain and question, and may."

Senator Major GOULD (New South Wales). - The clause evidently intends to give the officer the right to use his own discretion ; but, if it is amended as Senator Pulsford desires, he will have no discretion to exercise, but will be bound to do a thing which may be wrong. I think the better plan will be to omit the words " the following consequences shall ensue."

Senator PULSFORD

- I think that the amendment which Senator Gould suggests not only meets the case, but is better than the one I just proposed to move. I therefore adopt it, and move -

That the words " the following consequences shall ensue " be omitted.

Senator O'CONNOR

- I would ask the honorable senator not to press this amendment. It is absolutely a verbal amendment and nothing more.

Senator Major Gould

- Is there any objection to omitting the words?

Senator O'CONNOR

- Yes, undoubtedly; because by omitting them we alter the phrasing of the clause.

Senator Millen

- But suppose we alter it for the better?

Senator O'CONNOR

- . [do not know that that is so. Any honorable senator who has had any experience in drafting Bills will bear me out in this : That there is no drafting possible that some one can not find fault with. If we make alterations in the drafting we may be putting the Bill into a different form, but we do not make it any better. What reason is there for striking out words merely for the purpose of altering the drafting, when the alteration may not have any further effect 1

Senator PULSFORD(New South Wales). - It seems to me that if an honorable senator takes the trouble to point out an obvious blot in a clause it should not be said that he is interrupting business, or in any way doing anything contrary to the public interest. The suggested amendment would effect an improvement in the drafting of the Bill, and would remove an obvious blot; but it really does not matter to me, and so far as I am concerned I would make a present of the clause to the honorable and learned senator.

Senator Major GOULD

- I see no objection to the withdrawal of the amendment if the "Vice-President of the Executive Council is so anxious to stick to the wording of the Bill, but I would point out that the clause says that if any officer of Customs shall have reasonable cause to suspect, certain consequences shall ensue, and then goes on to say that instead of the consequences following, the officer "may" detain and search the suspect. It seems to me to be utterly absurd in framing a Bill which is being put forth as an effort of the Parliament of the Commonwealth of Australia that we should allow a clause worded as this is to pass. However, it is only a question of a verbal alteration. The result will be the same, so far as the purpose of the clause is concerned, whether the amendment is agreed to or not. I shall not, therefore, press the amendment.

Amendment withdrawn.

Clause agreed to.

Clause 190-

Any Judge of the High Court of Australia or any Judge of the Supreme Court of any State having jurisdiction in the State where the application is made may grant a writ of assistance upon application made to him for that purpose by a Minister of State for the Commonwealth or by the Comptroller or a State collector, and such writ, unless superseded, shall be in force so long as any person named therein remains an officer of Customs, whether in the same capacity or not.

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Senator O'CONNOR

- This clause provides that any Judge of the High Court of Australia, or any Judge of any State having jurisdiction in the State in which the application is made, " may grant a writ of assistance." A writ of assistance is a well known phrase in Customs Acts. Such a writ is an order made by a Judge, giving power generally to some particular officer to enter any house or place and search for goods, and take certain action with regard to them. But inasmuch as a writ of assistance is not one of those familiar writs which are known to the common law and mentioned in all law books, it seems to me to be better to put the form of the writ in the schedule. I therefore move -

That after the word "assistance," line 4, the words " in the form of Schedule III hereto " be inserted.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 192-

Any officer having with him a writ of assistance or a Customs warrant, may, at any time in the day or night, enter into any house, premises, or place, and may break open the same and any chests, trunks, or packages in which goods may be, or are supposed to be.

Senator O'CONNOR.- There has been a verbal omission from this clause which must be remedied. No power is given to search, although power is given to enter. I move -

That after the word "into," line 3, the following words be inserted - "and search."

Amendment agreed to.

Clause consequentially amended and agreed to.

Clause 195 (Power to seize goods).

Senator PULSFORD

-I should like to ask the Vice-President of the Executive Council if this clause refers to a ship liable to forfeiture ? It says " any forfeited ship."

Senator O'CONNOR

- The honorable senator will see that under clause 219 a ship becomes forfeited for a variety of causes. A ship used in smuggling, for instance, may be forfeited. When the things happen that are indicated in that clause, the ship becomes forfeited. Then the clause before the committee provides that any officer may seize any forfeited ship or any goods which he has reasonable cause to believe are forfeited. That is to say, if the Offence which forfeits a ship or goods has been clearly committed, the officer may seize them

as forfeited goods. If he has a reasonable cause to suspect that the offence has been committed, he seizes the goods. If there were not this power, the power of forfeiture would be of no use, since there is not much use in being able to forfeit a ship unless there is also power to prevent her from sailing away.

Senator MILLEN

- I have no objection whatever to the first part of the clause, but it seems to me that to permit an officer to seize a ship which it is reasonable to believe may be forfeited, is going a bit too far. The forfeiture of a ship is an action to be taken after certain preliminaries have been observed. It is not a question of suspicion, but of facts. There is no reason why we should empower an officer to seize a ship merely because he has reason to suspect that "something has been done. The fact should be capable of demonstration. I submit that the last part of the clause might very well come out, unless there is a reason, which I cannot divine, why it should remain.

Senator O'CONNOR

- Unless this power is given to seize on reasonable suspicion that a forfeiture has been incurred, the power to prevent the carrying away of goods and to stop smuggling is rendered nugatory. Power is wanted to deal with a case in which the officer might feel absolutely certain that an offence had been committed.

Senator MILLEN

- The officer should be able to prove the offence before seizing the ship.

Senator O'CONNOR

- No ; the offence would have to be proved afterwards. The mere fact that the thing has been done would enable the ship or the goods to be forfeited. We are giving this power to an officer, so that if he has reasonable ground to believe that certain goods have been smuggled, he may seize them. If a seizure is made, the officer must justify his conduct on the grounds that there has been smuggling, or that some other offence has been committed. Or if there is reasonable cause to believe that there has been smuggling, the officer has to act to the best of his judgment and seize the goods. If it should turn out afterwards that there has been smuggling, the officer is justified in his action, and if he has had reasonable cause to suspect, it is right to give him the power conferred by this clause. Under these circumstances we require to have both powers : in the same way as it is necessary to give a constable power to arrest if an offence is committed in his presence, or where he has a suspicion that a felony has been committed. We could never get officers to act unless we protected them in this way.

Clause agreed to.

Clause 197 (Notice to be given on goods seized) verbally amended and agreed to

Clause 200 (Disposal of forfeited ships and goods).

Senator Major GOULD

- It appears to me that this is a very brief clause, and it might well have been elaborated so that the method of sale might be shown in the Bill, instead of being dealt with by regulation.

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Senator O'CONNOR

- The honorable and learned senator will see that it is impossible to provide for that in the clause unless we provide for it fully ; and it would be very inappropriate, in a Bill like this, to provide details as to the method of sale, the publicity of it, and similar matters. Although it is very important to the persons concerned, still, after the forfeiture has once taken place, and there is the right of sale, the carrying out of the sale is a simple matter enough ; and I presume that all that will be necessary will be that the sale shall take place under such circumstances as will secure the best value for the Government. Any one who knows anything of the working of Customs Acts will bear me out that, in these days, when the old style of smuggling has disappeared, the forfeiture of a ship is a thing that very seldom takes place. It is, however, necessary that we should retain the power.

Clause. agreed to.

Clause. 202- :

Any officer of Customs or police may without warrant arrest any person whom he has reasonable cause to believe has been guilty of any offence against this Act, and no person shall resist or prevent such arrest.

Penalty : Twenty pounds.

Senator PULSFORD

- - This is a clause which might have been taken from the Customs law of China, or some country where law and justice are comparatively unknown. Its provisions are most extraordinary and barbarous, and whatever part of the world it comes from, or in whatever part of the world it exists at the present time, I certainly hope it will not be allowed to disfigure the Customs Act of Australia.

Senator CLEMONS

- I rise, also, to point out the extraordinary nature of this clause, and I preface my remarks by asking the Vice-President of the Executive Council if there is any precedent whatever for such a clause. On analysis it is more objectionable than on the first reading. Under it any officer of the Customs may, without warrant, arrest any person whom he has reasonable cause to believe guilty of any offence whatever under the Bill. There are many such offences which, every honorable senator will agree, would not demand the exercise of such a power as that of personal arrest, but under the clause an officer of Customs may exercise this power merely if he considers he has reasonable cause - which is a very wide phrase - to believe that some person has been guilty of any offence whatever, even the most trivial. I admit that there may be offences under the Bill in connexion with which it might be necessary to give a Customs officer this power, but there are many trivial offences for which there would be no justification for the exercise of this power. I should like to ask the Minister what he means to do with regard to this clause.

Senator O'CONNOR

- I really do not see why there should be so much alarm raised about this clause. I cite the illustration of the law in New South Wales, because my honorable friend, Senator Pulsford, who so worthily represents that State, has suggested China and other places as being the home of this kind of legislation. Yet I find that under the law in New South Wales there is this provision - ,
Any constable or other person may without warrant apprehend any person in the act of committing or immediately after having committed an offence punishable by way of indictment or on summary conviction under any Act.

There is also a provision that any person who has committed a felony for which he has not been tried, may be arrested and his property may be taken, and he may be dealt with according to law.

Senator Pulsford

- The cases are as widely different as possible.

Senator O'CONNOR

- I must deal with the honorable senator's assertion step by step. ' . That power is given in New South Wales to any individual, not only in the case of indictable offences, but in the case of offences punishable simply by fine or summary conviction by a magistrate. All that can be done by any individual ; but in this clause we give this power only to a Customs officer or police constable. In other words, for the purpose of this Bill, we make an officer of Customs a special constable and give him the power of a policeman to without warrant arrest any person whom he has reasonable cause to believe has been guilty of any offence under the Bill. Senator Clemons has suggested that this might include any trivial offence.

Senator Clemons

- It obviously might.

Senator O'CONNOR

- It might include any trivial offence ; but, on the other hand, it includes the most serious offences - offences which can only be dealt with by arresting the offender on the spot.

Senator Clemons

- I have no objection to its application in any of those instances.

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Senator O'CONNOR

- When you give a power of this kind you must not be always regarding the extreme limit of the power, and supposing that it will be applied to the most trivial circumstances. That is a constant way of criticising these powers which, must be given to federal offices for the good of the whole of the people of the Commonwealth. The proper principle is to see whether there are cases likely to occur in which this power may be properly exercised, where it is necessary that it should be exercised on the moment by some officer who happens to be there, and then to trust the officials not to use it on trivial occasions, and not to apply it where its immediate application is not necessary. Custom-house offences are of a peculiar

character. The offences to which the . clause would be applicable would be probably all offences connected with the smuggling of goods, for instance, on a wharf. An immense amount of smuggling is done by lascar seamen off the P. and O. boats. Supposing that a Customs officer on a wharf sees a man going by who, from the appearance of his clothes, he has reason to think has a few thousand cigars about him, what is he to do ? Is he to wait until he can go to a magistrate and get a warrant ? Where will the lascar be by the time the officer 'has got the warrant 1 Is it not obvious that in these circumstances there must be some power in the officer to act immediately. In such a case the clause will enable the Customs officer or a constable to arrest the person on the reasonable suspicion that he has contraband goods in his possession. There are also cases in which a man may be making away with some goods from a ship - in a lighter or a boat. If the Customs officer has to wait until he can get a warrant, what will become of the offender ? These powers, if they are to be usefully exercised, must be exercised on the spot, It is unreasonable to suppose that they will be exercised in trivial circumstances. Where a large power is placed in the hands of government officials they do not like to undertake the* responsibility of its exercise unnecessarily. If there is any leaning in carrying out the power in this clause it will be rather in the direction of letting go a man who might be reasonably suspected of committing an offence rather than running the risk of arresting the man on -suspicion where the case is not . a very strong one. I ask the committee to leave the clause as it is, because, if it is omitted it will leave a very large loop-hole in those precautions which we are very properly taking to secure the revenue of the Commonwealth.

Senator CLEMONS(Tasmania). - I am quite certain that Senator 'O'Gonnor knows that I .have no desire to prevent the clause from operating in any one of the cases -he mentions. 'I have "no 'desire to rob the Customs officers of any power they ought to have for carrying out the Act :in its entirety. But, because I feel that way, .that is no reason why the clause should remain exactly as it is. It will be .perfectly, easy for -Senator -O'Connor 'to amend it, so that an officer will have 'the right to exercise the power in- every case where- it is desirable ; but as it reads, the public, for whom we ought to show some consideration, are liable to be placed in an -extremely awkward and unfair position. There are hosts of offences created in the Bill for which we should not make the offenders liable to arrest without warrant by any Customs officer. Clauses 56, 57, and 5S, for instance, create distinct offences for which a penalty of ,£20 is .provided. I submit, with every confidence, that in the case of all the offences .under the Act, it is unwise to give a Customs officer the power to arrest a man without warrant. Yet, if this clause is passed as it is, he will most certainly be able to do so. Referring to clause 56, is it possible that we shall allow an officer, who may say that he has not had reasonable facilities for boarding a ship, the power to arrest the master ? Again, clause 57 creates an offence which would be covered by this all-embracing clause. I entirely object to the attitude of Senator O'Connor. Surely it is competent for him to provide that the officer can have all the powers he wants him to have, but not ;powers such as no honorable senator would like to see entrusted to any officer. I do not think it is sufficient protection to the public for -us calmly to say that an officer would never exercise the extraordinary powers of this clause. We should not place in any man's hand a power which he can exercise at -his discretion, and then trust for our protection that he will not exercise it. If I searched the Bill I could find twenty instances of offences with penalties provided, 'for .-which even Senator Oconnor would not think it desirable that an officer should have the power of arresting a man without warrant, simply because in his opinion he has reasonable cause for suspicion. It is incredible that we should allow any man 'to be .arrested without a warrant for offences such .as are enumerated in clauses 56, .57, and 58, and half-a-dozen other clauses, all of -which are ridiculous, and ought to place no man in jeopardy of being arrested. One of the most serious injuries you can :do a man is to place him under arrest. I ask Senator O'Connor to cite "the 'Customs Acts containing this provision, .and seeing that he has not cited one, I take it for certain that 'there is no precedent. I shall call for a division on the -Clause if it is -necessary.

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Postmaster-General

Senator DRAKE

. - Will ;Senator Clemons state how the clause can be amended in such a way as will leave power to a Customs officer or a police officer to arrest the offender in such cases as have been referred to by the Vice-President of the Executive Council 1

Senator Clemons

- If the Minister will postpone the clause I may have an opportunity. I am not here to draft clauses. That is the draftsman's work.

Senator DRAKE

- This is one of those matters in which we must give a large power to be exercised at the discretion of an officer when it is necessary. In the case which my honorable colleague put, unless the officer has the power of immediate arrest, it will be impossible for him to sheet home the offence against the lascar who has smuggled . cigars in his possession. In the Crimes Act of New South Wales power is given to a policeman to arrest without warrant, and why should not that power be given to a Customs officer to be exercised in cases where he has reasonable cause to believe that offences have been committed against the Customs Act? If honorable senators will look at the next clause they will see that the power is carefully safeguarded. It provides that on demand the officer must give a statement in writing of the reasons for which the arrest is made, and, therefore, there is not the slightest probability that it will be exercised lightly, or in any case except where it is absolutely necessary. It has been admitted by honorable senators that there are cases in which it is desirable that such a power should be given. Unless it can be shown how it can be given to apply in those cases where honorable senators think it would be justifiable without making it generally applicable, a case has been made out for the clause as it stands.

Senator Sir FREDERICK SARGOOD

- This clause has caused the commercial public and the shipping public a feeling of amazement. They would like to know how it could have passed another place. It is absolutely new, and to show in what way this power, which is desirable and necessary up to a certain point, can be exercised, I would refer the Minister to section 212 of the Victorian Customs Act of 1883. Under that provision all those cases to which Senator O'Connor referred - where crews of vessels have tried to smuggle in goods - have been successfully stopped. It is absolutely necessary that the Customs authorities should have the power to prevent acts of smuggling which in themselves are small matters but which in the aggregate are very serious matters.

Senator MILLEN(New South Wales).If this power is necessary, as the Ministers contend, how have Customs Acts without this power been worked? Whether it is necessary or not is proved by the fact that Customs Acts have been worked in the States without the power. The Customs Act in New South Wales and also in Victoria has been administered without this power for very many years. I think that the statement as to the necessity for giving the power is entirely overridden by the challenge to show wherein such a power has ever been claimed or exercised. There can be no objection to giving an officer the power to effect an arrest, when without that power some evasion of the law might be successfully carried out. But to say that because we want to give a power of doing something of that kind we should give power to an officer to do something which he ought not to do, is carrying the thing to a ridiculous extreme. It is something like the case of Charles Lamb's Chinaman, who burnt his house down in order to roast his pig. I am not prepared to go to that length. I hope that the Government will see that the opposition to this clause has a great deal underlying it, and will consent to modify the provision.

Senator Drake

- In the section of the Victorian Act quoted by Senator Sargood power is given to detain the ; person to be dealt with. What is that but arresting without a warrant?

Senator MILLEN

- For what offence?

Senator Drake. - Under the Victorian Act there are a series of offences for which a person may be detained without warrant.

Senator MILLEN

- There is a vast difference between the section cited by Senator Sargood and this clause. The clause gives power to arrest for any offence, but in the section cited there are certain offences specified.

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Senator Major GOULD

- The difficulty would be got over if the Government would accept the section of the Victorian Act. I understand it refers to the more serious offences that may be committed. We could get over the difficulty by specifying the offences which must be committed before power is given to an officer to arrest a man.

What we want is to prevent a man being arrested "for any trumpery offence. Under this clause a man may be taken before a justice of the peace, who then has two courses open to him. Either he may send him to gaol or he may admit him to bail. Even if the man has committed only such an offence as failing to bring his ship to for boarding, or has not brought his ship to the mooring place as quickly as possible, he may be arrested. Again, a man may be arrested because he has not arranged his goods properly, or has not paid certain dues, or has not provided sufficient lights, or has not provided proper accommodation for the Customs officer.

Senator O'Connor

- Does the honorable and learned senator suggest that that would happen 1

Senator Sir William Zeal

- If it did, what would happen to the officer ?

Senator Major GOULD

- It is what happens to the public that I am thinking about. We are placing in the hands of officers powers against the public generally, and honorable senators have the duty of safeguarding the public against the extreme use of these powers. Let me quote the section of the Crimes Act of New South Wales to which Senator O'Connor has referred as authority for the passing of this clause. Section 352 of that Act says - Any constable or other person may, without warrant, apprehend - Any person in the act of committing or immediately after having committed an offence punishable whether by indictment or on summary conviction under any Act.

Any person who has committed a felony for which he has not been tried.

If any honorable senator can draw a parallel between the powers of a constable under that section, and the power proposed to be given to a Custom-house officer under this clause, I do not know where his judgment is. I wish to guard against giving an officer power to arrest a man for what may only be a mistake, or a difference of opinion as to whether a certain thing has been done or not. It is really absurd to give the power sought. This afternoon we passed a clause under which a merchant is made liable for an improper declaration made by his agent. The merchant may know nothing at all about the declaration, but under this clause a Custom-house officer might go to him, and say - " Come here, my fine fellow. I am going to take you to gaol because your servant has made a declaration which is not quite correct. I intend to arrest you, and bring you before a justice of the peace." Is not that absurd 1 I hope the Minister will consent to some reasonable amendment in the clause approaching the terms of the section of the Victorian Act which specifies the offences.

Senator Dobson

- Would the honorable senator accept such an amendment?

Senator Major GOULD

- Yes.

Senator CLEMONS

- I am sorry that any attempt made on this side of the Senate to offer fair criticism seems to be resented by some honorable senators. The clause before the committee is one that demands the careful criticism of every honorable senator, and should not be passed unless it is made clear that it is absolutely necessary. I direct attention to clause 188, which, it seems to me, would do everything which the Vice-President of the Executive Council says it is desirable to do. He instanced the case of a lascar making an attempt to smuggle goods. Clause 188 would cover such a case. That clause corresponds to the section of the Victorian Act quoted by Senator Sir Frederick Sargood. That is an additional reason why the clause under discussion is not necessary. I am desirous of giving the Custom-house officers any power which they should have for the prevention of smuggling. If Senator O'Connor would agree as to the particular offences for which it is desirable that this power should be used, those offences might be enumerated in the clause. I should agree to such an amendment as that.

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Senator Sir JOSIAH SYMON

- I certainly was unaware, when we began the discussion of this Bill, that it was intended by some clauses in it to repeal the provisions of Magna Charta, the Habeas Corpus Act, and every other foundation of British liberty, for the purpose of protecting the Customs, but that is exactly what this clause does. For the purpose of Customs administration it enables any officer of the Customs or any member of the police

force to arrest, not anybody who has been guilty, but anybody whom the officer may suspect to have been guilty of an offence under the Customs Act. A more monstrous and Draconian provision was never inserted in any Act of Parliament. I would give the Customs all reasonable power for the prevention of smuggling, but I would not give them power to arrest any person coming as a passenger of a ship. A Customs officer might arrest a person whom he did not like or who might not give a satisfactory answer to questions put to him. I agree that there should be stringent provisions for the prevention of smuggling, but this clause goes altogether too far. If we are to repeal Magna Charta let us do it, but do not let us introduce such a proposal by a sort of side wind for the purpose of making stringent the Customs Act. To sweep away, by a clause such as this, the foundation upon which the immunity of persons from arrest now stands, is an infringement of the rights of the subject. It seems to me that clause 188, which contains the powers given by the "Victorian Act, is sufficient. If it were necessary to enlarge that provision no one would object,, because we are all agreed that every possible power must be put in the hands of the Customs authorities to safeguard the revenue. But it should not be within the option of a Customs officer to exercise such powers of arrest as are proposed to be given.

Senator DOBSON

- I trust that the Minister will see that there is a great deal of force in the criticisms that have been made by honorable senators opposite with regard to this clause. I hope they will see their way either to adopt the Victorian section or to limit the clause in the way that has been suggested by defining the offences for which arrest may take place, or by confining it to smuggling. If one of these courses were adopted, the difficulty would be overcome.

Senator Lt Col NEILD

- There is an old saying, which is applicable to the present case, that "Those whom the gods wish to destroy they first make mad and if it is possible to conceive that the designers of this Bill and the honorable and learned gentleman in charge of it seek to make federation distasteful to the people of the Commonwealth, such an intention may be found in such a proposition as this.

Senator McGregor

- The people of the Commonwealth are not all smugglers, are they?

Senator Lt Col NEILD

- The honorable senator entirely overlooks the criticisms that have been levelled against this clause. If it were limited to cases of smuggling there would not be much objection to it.

Senator O'Connor

- If the honorable senator says that, I will say, like the man in the coon story, "Don't shoot, Colonel ; I'll come down."

Senator Lt Col NEILD

.- If the honorable and learned senator will agree to make the amendment, I need not deal with the matter further.

Senator O'CONNOR

- Honorable senators opposite admit that this power would never be exercised except in serious cases ; but they object to have such large powers, left for possible application to trivial offences. Inasmuch as it was never intended that the clause should apply to trivial offences, and as it would be absolutely of no value as applied to trivial offences, I have no objection to amending the clause in the form in which we really wish to have the power exercised - that is, for preventing smuggling. We do not desire anything more than that. It must be remembered that the clause will be exercised by responsible officers, under proper official control. But, inasmuch as the Government will secure all the power they require for the protection of the revenue by making the amendment suggested, we may save time if I state at once that I am going to consent to it. Therefore, 'if the honorable senator will pardon the application of the American story to himself," though I do not wish to deprive the committee of the pleasure of hearing his "speech, I hope he will reserve it for another occasion. It will be found that the word "smuggling" is defined in the interpretation clause in this way-

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

I move -

That the words "any offence against" lines 3 and 4, be omitted, with a view to insert in lieu thereof, the

words "smuggling contrary to the provisions of this Act."

Senator Sir Josiah Symon

- The words, " contrary to the provisions of this Act," are not wanted.

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Senator O'CONNOR

- I think they are. If we were to set out all the offences which could be cited under the provisions of the Bill, we should require to insert a very large number of clauses. There is no doubt what smuggling means, because the word is defined, but we might have to insert references to ten or fifteen clauses to include the different acts which might constitute smuggling.

Senator CLEMONS(Tasmania). - I am glad the Vice-President of the Executive

Council is willing to meet what we desire, and recognises that we do not want to unreasonably restrict the powers of Customs officers; but I cannot see why, in his proposed amendment, he should insert a limitation to smuggling "contrary to the provisions of this Act." I submit that the words he proposes to add after " smuggling " are not necessary.

Senator Sir WILLIAM ZEAL

- I suggest to the Vice-President of the Executive Council that he might allow the clause to be postponed, and have his amendment printed, so "that honorable senators may see by to-morrow what he proposes.

Senator Clemons

- No ; we are very near it now.

Senator Sir WILLIAM ZEAL

- I do not think we are, because one senator after another rises to suggest amendments. If honorable senators who raise objections would bring forward some reasonable amendment to meet them it would be more in accordance with the essence and spirit of constitutional procedure in Parliament. . I can tell honorable senators that proceedings have taken place here that are utterly unconstitutional.' It is generally supposed that a Bill is. debated on the second reading, and remarks in committee should have reference only to particular clauses. These general debates in committee are not allowed in the House of Commons, and they are wasteful of the public time.

The CHAIRMAN

- The honorable senator may be sure that I shall see that honorable senators are confined to the various questions before the committee ; and I have done so.

Senator Sir WILLIAM ZEAL

- The honorable senator has not been here very long, and I can assure him that during the time he was away honorable senators were not so confined to the question.

Senator MILLEN(New South Wales).I am beginning to resent these continual lectures from Senator Zeal.

Sir WILLIAM ZEAL

- Zeal. - The honorable and learned senator should not give cause for them.

Senator MILLEN

- I shall do just as I like, subject to the rules of the House, and I accept no dictation from Senator Zeal.

Senator O'Connor cannot have fully realized the argument addressed to the committee by Senator Clemons. If he looks into the matter he will see that the words "contrary to the provisions of this Act " are not only unnecessary, but. absurd. They imply that there may be two kinds of smuggling - one contrary to the provisions of the Act, and one in accordance with the provisions of the Act. If there is a process of smuggling in accordance with the provisions of the Act, I would like to know what it is.

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Senator CHARLESTON

- While this clause was being discussed, I wrote the word " smuggling " on the margin of my Bill, thinking that that would meet the wishes of honorable senators; but when. I came to look back to clause 1 88,I thought that that clause would cover it, and that there is therefore no necessity for this clause at all. I feel even now that there is no necessity for this clause, if it is intended that smuggling only shall be dealt with under it, because that is already dealt with under clause 188. I agree with the arguments advanced in opposition to the insertion of the words " contrary to the provisions of the Act," because that would seem to imply that people may smuggle if they can do so in accordance with the provisions of the Act.

Question - That the words " any offence against " stand part of the clause - resolved in the negative.

Senator Sir JOSIAHSYMON (South Australia). - I think the Vice-President of the Executive Council might give way, and admit that it is not necessary to insert the words " contrary to the provisions of this Act," because they do not. carry the thing one atom further. The honorable and learned senator will see that the offence is being guilty of smuggling, which is defined as the importation and introduction, or attempted importation and introduction, of goods with intent to defraud the revenue. The words " contrary to the provisions of this Act," if inserted, will not make the smuggling more heinous, and will not make that an offence which is not an offence without them. Apart from the criticism that they seem to imply, that there may be some other kind of smuggling which is not contrary to the Act, on which I do not offer an opinion, the words may very well be omitted; but if Senator O'Connor is obstinate in the matter, I would suggest to Senator Clemons that he should then not press his objection to a division, as the responsibility for any absurdity of this kind must rest with the Government.

Senator O'CONNOR

- The words I wish to insert after the word " smuggling " are words which, in 99 cases out of 1.00, are inserted to describe an offence.

Senator Major Gould

- That is where an offence is general, and not specific.

Senator O'CONNOR

- I do not think so. Every kind of smuggling must be done under this Bill, and it is in order to make it more emphatic that it is a breach of these provisions which it is intended shall be dealt with that I think the words are necessary.

Senator CLEMONS(Tasmania). - I do not intend to divide the committee on the question ; but with regard to the last criticism of Senator O'Connor, the use of these words would be perfectly justifiable if they were preceded by the word " offence," or some similar word ; but when put in collocation with the word " smuggling " - which is defined in the interpretation clause-there is not the slightest doubt that Senator Symon is right when he says that they will take the matter no further.

Senator McGREGOR

- I am sorry that Senator O'Connor has agreed to' alter this clause at all. It was a very comprehensive clause, and honorable senators who opposed it acknowledged that. They have great fears that under it something would be done that would affect - whom? The great mass of the people of the Commonwealth, who are very few of them engaged in the business of smuggling or importation of any kind. It concerns them very little. What they are anxious about is that the legislation passed will be for the purpose of protecting the revenue. I want to tell honorable senators that there are many other ways of evading the just dues of importers to the Commonwealth Government than that of smuggling, and if those ways were attempted, and there was a probability of the perpetrators being discovered, they could elope. But under the clause as it stood at first, if there was any possibility of their doing these things, it would have been possible for an officer to arrest them and prevent their escaping the justice that ought to overtake them. It is for that reason I am sorry Senator O'Connor has accepted any amendment at all. I hope that he will see before the Bill gets out of committee that every offence in the way of defrauding the Customs will be met.

Senator STEWART

- I agree very much with what Senator

McGregor has said, and I think this alteration of clause 202 is altogether unnecessary. We have the offence of smuggling dealt with under clause 188, and clauses 203, 204, and 205 provide for a different procedure, and are evidently intended to apply, not to cases of smuggling, but to any offence which may be committed against the Customs. I agree that the clause was much better in its original form than in its amended form.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 203-

Any officer arresting any person shall, on demand, give him a statement in writing of the reason for his arrest.

Senator Sir JOSIAH SYMON

- I would suggest to Senator O'Connor that the words "on demand" should be omitted.

Senator Sir William Zeal

- And insert "forthwith."

Senator Sir JOSIAH SYMON

- At any rate, the words "on demand" should be struck out. In the typical case of the lascar, I do not think we could attribute to the person arrested the knowledge that he could make a demand for a written statement of the reason for his arrest, and probably 999 persons out of 1,000, if so many were arrested, would not know that it was necessary to make this demand. It is only fair that at the earliest possible moment the person who is arrested should have an authoritative statement in writing of the reason for his arrest. I move -

That the words "on demand" be omitted.

Senator O'CONNOR

-I do not see that Senator Symon has given any reason for the amendment. Ordinarily speaking, if a power is given to arrest it may be exercised without any statement in writing. It is quite a special thing to entitle a person to a statement of the reason for his arrest.

Senator Clemons

- This arrest is without warrant.

Senator O'CONNOR

- There are a hundred other ways in which a person may be arrested without a warrant for offences other than offences under this measure, and he may be arrested not only by a constable, but by a private individual.

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Senator Sir Josiah Symon

- But you immediately lay an information against him, and there is no provision for that here.

Senator O'CONNOR

- I submit that, unless it is demanded, there ought to be no necessity to give a statement of the reason for the arrest.

Senator Sir JOSIAH SYMON (South Australia). - What Senator O'Connor has said is a very good reason for striking put the clause. I have no objection to its omission, and to rely on clause 204. But if clause 203 is to be retained, I press my amendment to omit the words "on demand."

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

Ayes 13

Noes 15

Majority 2

Question so resolved in the negative.

Amendment agreed to. .

Senator PULSFORD

- The Bill so bristles with penalties against persons who in any way infringe the law that it is reasonable to require the imposition of light penalties on officers who exceed or do not fulfil its requirements. It is a very serious matter if an officer arrests a man and does not forthwith give him a statement of the reasons for such arrest. I move -

That the clause be amended by the addition of the words " penalty £50."

Senator O'CONNOR

- I do not know if the amendment is a mere lumbering attempt at a joke, or whether Senator Pulsford intends it seriously. If it is intended seriously he will make the clause perfectly ludicrous. We are to give a power to an officer to make an arrest ; he is to make the arrest on the spur of the moment, and to give the offender at once a statement in writing of the reason for his arrest, and if it is incorrect he is to be liable to a penalty of £50. Is there any other clause under which you impose a penalty upon an officer for not carrying out the provisions of the law? It is quite obvious to me that the amendment, whether it is so intended or not, would make the clause absolutely absurd. It seems to me to be carrying the passion for alteration, without any ostensible object or reason, to an absurd extent to make it an offence if an officer does not carry out his duty under the Act. Under the Bill there are hundreds of occasions in which the officers will have to perform duties quite as important as this, and you impose no penalty. What officer is likely to carry out the duty of arresting a person who is in the act of committing a felony if he knows that any mistake in the statement of the reason for the arrest is likely to subject him to a penalty ? I shall

oppose the amendment, and if it is carried ask the committee to vote against the clause.

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Senator Sir JOSIAH SYMON

- I think Senator O'Connor has made a mountain out of a molehill. He has denounced the amendment as a lumbering attempt at a joke. I do not think that is a way in which an amendment, seriously put as this is, ought to be treated. It only wastes time. My honorable and learned friend has misapprehended or not quite accurately represented what the amendment is. He has put it that it is a penalty sought to be imposed on an officer for giving an incorrect statement of the reason for the arrest. That is not so it is for not giving a statement. If it is obligatory on the officer, in the interest of the liberty of the subject, to give a statement of the reasons for an unauthorised arrest, he should be obliged under some kind of a penalty to hand in those reasons. His reasons may be utterly wrong, or quite incorrect, but if he gives a statement of his reasons that is all the clause requires. Surely there ought to be some penalty imposed on an officer for neglecting to furnish a statement. I would suggest to Senator Pulsford that a penalty of £50 is a little too much, because under clause 202 the penalty for resisting or preventing an arrest is only £20. I think £20 is a moderate penalty.

Senator PULSFORD(New South Wales). - I cordially welcome the utterances of Senator O'Connor, because they explain very clearly the spirit in which this Bill has been drawn. It is drawn very much in the spirit of "heads I win, tails you lose." The Customs officers are to be on top all along, to have the power of arrest and to be able to do anything they choose; but there is to be no check upon them. I admit that one or two clauses allow punishment to the officers, but substantially they may do all sorts of things without any of those penalties attaching to them which the Bill requires to be dealt out to those who infringe the law. I admit that £50 is a considerable sum, therefore I am willing to make the penalty £20.

Amendment amended accordingly.

Senator DOBSON

- I hope that the amendment will not be pressed, and that if it is it will not be carried. I think Senator Sir Josiah Symon, with his great legal knowledge, might very well have pointed out to Senator Pulsford, a layman, that he never saw a penalty of this sort attached to such a clause.

Senator Sir Josiah Symon

- I never saw such a clause.

Senator DOBSON

- If we are to put on every petty police officer a penalty of £20 or £50, because he neglects to do something which he ought to do, there will be no carrying on the machinery of police government. Supposing that a police officer catches a lascar or a petty officer red-handed with cigars, jewellery, or watches on his person, and he arrests him, but that, after he gets to the station, he has to rush away to arrest somebody else or to seize some goods which are being landed, and he keeps the man waiting for a statement for half-an-hour or an hour, when is the penalty to attach ? Surely Senator Sir Josiah Symon cannot countenance slipshod legislation of this sort.

Senator Sir Josiah Symon

- What are we to do with the officer if he does not hand over a statement?

Senator DOBSON

- He has to carry out the Act, and if he does not do what it tells him-if he does an injustice to a man - he will be reprimanded, or the man arrested will have his action against him. The amendment, I think, is wasting the time of the committee.

Senator Major GOULD

- I can understand that, with a Bill cast on the lines on which this one is, it does seem a revelation that anybody but a citizen should be liable to a penalty - that a Customs officer, for neglecting his manifest duty, should not be liable to any punishment. Is that the sort of legislation we want ?

Senator Dobson

- He might lose his situation.

Senator Major GOULD

- What is the value of the provision unless it can be enforced? However, as there seems to be a strong objection to putting a penalty on a Customs officer under any circumstances, we might allow this matter to pass, now that the provision under which a man can be arrested is for smuggling alone. He would know at

once that he had been so arrested. That being the case, and as there is such a strong objection to the amendment, the honorable senator will perhaps consent not to press it, but will leave it to the officer to do his duty. If he fails in this respect, he should suffer a more severe penalty than a mere reprimand.

Senator PEARCE

- I hope the amendment will be withdrawn, because it is an attempt to put into the Customs Bill what should be in the Public Service Bill. If any servants of the Commonwealth neglect their duty, we can provide a remedy in the Public Service Bill. That is the measure in which to impose penalties for lapses of duty.

Senator PULSFORD(New South Wales) - I am satisfied with having pointed out to the committee the remarkable difference between the protection that is accorded to the public and to Custom-house officers. Having done that, I am willing to withdraw the amendment.

Senator MCGREGOR

- I again protest against the great anxiety that some honorable senators display in the interests of deliberate swindlers, whilst at the same time they have so little interest in the welfare of public servants.

Senator Pulsford

- I rise to a point of order. I desire to ask whether Senator McGregor is referring to me, and whether he wishes to infer that I have any interest in "deliberate swindlers"?

The CHAIRMAN

- If Senator McGregor intended to reflect upon Senator Pulsford he is certainly out of order:

Senator McGregor

- I was not making a remark with regard to any senators in particular, unless they take it to themselves.

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The CHAIRMAN

- The question is was Senator McGregor reflecting upon any honorable senator ?

Senator McGregor

- Certainly not. If I was going down the street and saw a policeman attempting to arrest a criminal, and another individual taking the part of the criminal against the officer of the law, I should have my own opinion with regard to that individual. If honorable senators like to take my remark in a way that I did not mean, it is not my fault.

Senator Charleston

- I should like to ask what the remarks of Senator McGregor have to do with this clause ?

The CHAIRMAN

- I think Senator McGregor is relevant in his remarks.

Senator MCGREGOR

- I always try to be. The way this clause has already been amended - and has been attempted to be amended, although Senator Pulsford's amendment is now to be withdrawn constitutes a deliberate waste of time.

Senator Millen

- I rise to a point of order. I wish to ask whether or not the honorable senator has a right to state that a discussion arising on an amendment submitted to the committee is a "deliberate waste" of time ?

Senator O'Connor

- On the point of order, I should like to say that, although I wish to support the Chair in every endeavour to keep debate within proper limits, it seems to me that to stamp as disorderly a suggestion which any honorable senator has the right to make as to the way the business of the committee is being conducted, would be to limit the right of free debate. It would be really taking away a right which honorable senators should exercise in the interests of the public. Senator McGregor has simply endeavoured to express his opinion as to an amendment which has been moved, and I hope that the point of order raised will not be so ruled upon as to prevent the exercise of legitimate and free discussion.

The CHAIRMAN

- If any honorable senator said that other honorable senators are guilty of a "deliberate waste" of time, that would be a reflection on honorable senators, and would have to be withdrawn. Any honorable senator, however, is at liberty to express the opinion that there has been a waste of time.

Senator McGregor

- I have no intention of withdrawing what I never said. I merely say that in my opinion there appears to be an attempt to waste the time of the committee. I have the right to say that.

Senator Millen

- I drew the attention of the Chairman to certain words used by Senator McGregor- that there has been a " deliberate waste " of time. I think these words- should be withdrawn.

The CHAIRMAN

- I hope that if Senator McGregor made use of the word " deliberate " he will withdraw it, as it is distinctly out of order ; but I have understood him to explain that he did not make use of that word.

Amendment, by leave, withdrawn:

Clause agreed to.

Clause 206 (Production . of documents, &c, in cases of seizure).

Senator Sir FREDERICK SARGOOD

- May I ask whether the honorable and learned gentleman in charge of the Bill is. quite satisfied that this clause goes far enough ? The clause is very drastic, but that is absolutely necessary in order to protect the Customs. I am not quite sure whether the words " all books and documents " go quite far enough. The interpretation clause simply says that " documents include books." Does the .word cover correspondence and telegrams?

Senator O'Connor

- Yes. The clause goes far enough.

Clause agreed to.

Clause 207 (Collector may impound documents).

Senator Major GOULD(New South Wales.) - There seems to be no provision in the clause with regard to the owner obtaining the return of his documents. I do -not know whether there is any reason why the collector should not take a copy, and certify to its being correct, so as to allow the copy to be used in court. It might, be very inconvenient for a man in his business to have his books kept from him,; although if they are likely to be used in evidence, the Crown should be permitted to retain them Ought there' not, however, to be . a time within which the books shall be returned ? '

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Senator O'Connor

- Not necessarily.

Clause agreed to.

Clause' 21 1 (General power of collector).

Senator PULSFORD(New South,Wales) -I should be glad if the Minister will kindly explain what -is meant by this clause, which appears to me to have a very far-reaching power. There is- some risk that the collector may exercise \ powers which Parliament has. not conferred upon him.

Senator O'CONNOR

- The clause, I think, is very plain. It simply provides that wherever there is power given by this measure it may be exercised by the collector. No power can be exercised that is not given by the measure. We say in some clauses that power may be. exercised by "the Customs." For instance, it is provided in clause 39 that -

The Customs shall have the right to require and take securities for compliance with this Act.

That is a power given to the Customs, and not to any officer. The clause says that the collector may exercise any power exercisable by the Customs.

Clauseagreed to.

Clause 213 (Notice of action to be given).

Senator Major GOULD

- This clause provides, no doubt very properly, that before an action is brought against an officer notice 'shall be given. I am perfectly sure that no one will take exception to that. But there is no provision to meet the case where, owing to any unforeseen circumstances, or want of knowledge, notice has not been given within the time specified. It would be a matter of fairness in such a case to leave the power in the hands of a Judge - if he were satisfied that a person had a bond fide cause of action, and had from inadvertence not given the notice - to extend the time. This would not be a novel proceeding, because under the Employers' Liability Act, where notice must be given within a limited time, power is placed in the

hands of the Judge to extend the time under exceptional circumstances. The Judge would be very careful in exercising this power, because he would recognise that an officer should have the fullest possible notice of any action that is to be brought. But it would be reasonable to have in the clause such a provision as I have just suggested, which would give the plaintiff an opportunity, where, through any unforeseen reason, notice had not been given in the proper time to bring an action, after making application to the Judge.

Senator KEATING

- I agree to a great extent with the views of the last speaker, but I hardly think his remarks are applicable to the clause under consideration, which provides that no action shall be commenced against an officer until at least one month's notice has been given. This is not a limitation upon an individual taking his action within a certain time after the accrual of the cause of action. An amendment such as suggested would come in better under another clause. If there was a clause providing that no action should be taken against an officer for anything done in pursuance of this measure unless the action was commenced within 12 or 18 months after the accrual of the cause of action, the suggestion of Senator Gould would be to the point, but in this connexion there is no limit as to the time within which the individual has to bring his action.

Clause agreed to.

Clause 214-

Upon any proceeding instituted in pursuance of such notice, the plaintiff shall not be at liberty to advance any evidence of any cause of action, except such as has been distinctly stated in such notice, nor shall the plaintiff be entitled to a verdict without proving on the trial that such notice has been duly served, and, in default of such proof, the defendant shall receive a verdict, with costs.

Senator EWING

- The amendment suggested by Senator Gould might well be introduced at the conclusion of this clause. I suggest also that instead of the words "the defendant shall receive a verdict, with costs," it will be better to say "the plaintiff shall be non-suited." A man might bring an action without giving his notice properly, and might get a speedy trial in a local court. Thus he might yet have time to give a second notice, and it would be manifestly unfair that a verdict should be given against him because he had not complied with the law, when, if he were merely non-suited his remedy would not be gone, and he might still give fresh notice and bring a fresh action. To take away his remedy simply because he has not given the required notice while there may be time for him to give that notice seems to me rather an arbitrary procedure.

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Senator Major GOULD

- The suggestion made by Senator Ewing, is a very reasonable one. But it is a matter entirely distinct from the suggestion I made with regard to the power of the Judge. I agree that that might well be dealt with, not by an alteration of the verbiage of the clause, but by an addition to the clause. In such a case as Senator Ewing has suggested, it would be better that the clause should provide that the plaintiff should be non-suited rather than that the provision in the clause should remain as it stands.

Senator O'CONNOR

- I think, the clause is better as it stands, and to accept the amendment suggested might simply lead to the piling up of litigation. If the plaintiff were non-suited because he had not given sufficient notice, he would have to pay costs; but he would be able to make another attempt, and if that failed he would be able to make another. The result would be that the officers would be liable to be harassed by actions, and it would be impossible to know when a matter would be at an end. In dealing with a question of this kind, it is a good thing to put the rights of the members of the public and the rights of the Customs officers plainly upon the face of the statute. The person who brings an action knows before he goes into court what his rights are. He knows he must give notice, and must prove his case in accordance with that notice. He knows, too, that if he does not do that he will fail. The proposed amendment, however, would leave it open to him, if he failed, to give notice to try again. Of course he must pay the costs of the action, if he fails, but that might be a very small matter. There are scores of statutes in which a clause similar to this is found, but I know of none in which there is any such provision as is suggested by Senator Ewing. In all cases where notice is necessary, the failure to give the required notice is always held to be an absolute bar to the action.

Senator Keating

- In ordinary cases the procedure is to move for a non-suit in the absence of notice.

Senator Major Gould

- That -would riot be done if the defendant knew that by waiting he could get a verdict.

Senator O'CONNOR

- The necessity for a provision of this kind is continually forcing itself upon the notice of every Government official who has a large number of employes under him. The principal Custom-house officials will have a very large number of officers under them. A person may come into court with a complaint that upon a certain day, so many months ago, he was improperly treated by a Customs officer. Where? notice is giving in writing, the Custom-house officials get an opportunity to make inquiries, and to find out the particular officer who was in charge on the occasion, referred to in the complaint. They are able to find out all the circumstances, and direct their proof to meet the case brought against them. A complaint may be made that on a certain day something took place, but months afterwards it may be impossible to identify the particular transaction,' and to ascertain whether a particular officer was in charge at the time or not ; but this proposal would place it in the hands of any plaintiff to bring forward a claim when it would be impossible for the department to bring evidence to meet it.

Senator Major Gould

- By clause 216 every proceeding must be commenced within six months.

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Senator O'CONNOR

- I am quite aware of that ; but how is it possible six months after a complaint has arisen to find out the particular man amongst thousands of officers who was in a particular place at a particular time. It is very necessary in such cases that notice should be provided for so that the Custom-house officials may have an opportunity to make necessary inquiries. The clause as it stands puts the department and the plaintiff in what is simply a fair position, and it is better to have the rights of the parties settled definitely once and for all. If the law is not complied with, the verdict should be with the defendant, and if it has been complied with the case for the plaintiff can go on on its merits. To adopt the amendment suggested might compel the Government or the officer complained of to prefer to pay an unjust claim to taking up time with it any longer.

Senator EWING(Western Australia). - I think this is a matter of some importance, and Senator O'Connor has not dealt fairly with the proposed amendment at all. He has drawn into the discussion of it side-, issues which may lead honorable senators to the conclusion that the results of adopting the amendment would be entirely different from those which are contemplated, or could really arise. What is the position
1 A man has a right to bring an action against the Government within six months. He brings an action, and, for the sake of argument, we will say he has forgotten to give the required notice. Why, because he has made a slip like this, should we take away all his remedies and right ? If Senator O'Connor could show me that there would be any hardship done by non-suiting the plaintiff in such a case I would be with him, but the honorable and learned senator has in no way justified his opposition to the amendment. This is a very arbitrary way of dealing with the matter, when under such a case as I have suggested, there would be sufficient time to give fresh notice and bring a fresh action. If Senator O'Connor would consider that this Bill is being framed in the interests of the public as well as in the interests of the .Commonwealth 'Customs department, he might be prepared to agree to the amendment. I move -

That the words ' 'defendant shall receive a verdict with costs" be omitted, with the view to insert in lieu thereof the words " plaintiff shall be nonsuited."

That will not give a person any more right than he has under the Bill at present, but will preserve to him the rights we have already provided for, and will not permit them to be taken away on account of a technical mistake having been made.

Senator KEATING

- I entirely agree with Senator Ewing in this amendment, and the reasons advanced by the honorable and learned senator should, in my opinion, appeal to every honorable senator. It is apparent that, in the exercise of the duties devolving upon the different Customhouse officers, there may frequently be instances in which hardship will be inflicted upon a private individual, and for which he may seek redress in the courts at his resort. The clause, as at present worded, favours the department inordinately, and

regards very lightly the rights of the individual. I know from experience of cases of a similar character, where the defendant has been a company carrying on operations under Statute. The legal representatives of such defendants have always been ready to take advantage of any legal technicality of this kind that may arise. Under this clause, an individual who has been aggrieved by the action of a Custom-house officer, and brings forward a bond fide claim, may have omitted to give the statutory notice, and may thus be absolutely prevented from pursuing his claim against the department, though he may have brought his action well within the period of limitation. He may, under the Bill, commence his action within six months, but he may have begun it within three weeks, ignoring the fact that it was necessary for him to give at least one month's notice to the department. The clause provides that, because of this mistake, there is to be a verdict for the defendant, with costs, and the plaintiff is absolutely debarred from taking advantage of the opportunities, that would be afforded him, under other circumstances, of bringing a fresh action during the remaining four and a half months. I have known cases of great injustice under a provision of a similar character, where private companies have been the defendant, and such injustice might be inflicted to a greater extent where a State department is the defendant.

Senator O'CONNOR

- I would invite the attention of Senator Ewing to a proposal I am about to make. Although I do not agree with him as to the necessity for his amendment, I am quite willing to admit that there may be many reasons why it would not be desirable to compel a Judge to find a verdict for the defendant in the circumstance of a notice not having been given. I think it would be very much better if we were to leave out the words -

And in default of such proof the defendant shall receive a verdict with costs.

If the plaintiff does not prove the notice, of course he will be non-suited. If he likes to go on, there will be a verdict against him. If he applies for a non-suit, or consents to be non-suited, or if the other side applies for a non-suit, he can be non-suited and he can bring another action. I have no objection to the clause being put in that way, because there will be an intimation on the face of it that a plaintiff, to succeed, must carry out these conditions. What I object to is to putting a label on the face of the clause that he shall be non-suited in default of this proof. I think it is very much better to leave the matter in the discretion of the court, as it will be, under the ordinary procedure, and just intimate in the clause that the plaintiff, if he does not comply with the conditions, shall not be entitled to a verdict. I am willing to go to that extent if my honorable friend will accept that amendment.- It will carry out his object very much better than his own proposal does, and it will then be open to the court to take any proceeding which is justified under the circumstances.

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Senator Major GOULD

- The proposal of Senator O'Connor would have the effect of the amendment of Senator Ewing, and a plaintiff would be non-suited if he were unable to prove delivery of notice. At an earlier hour I mentioned that the Employers' Liability Act contains certain provisions which might fairly be embodied in this Bill - provisions which would be in favour of the liberty of the subject, and which at the same time would do no harm to the Customs officers. The amendment would, in the event of any inadvertence or mistake on the part of the plaintiff, still leave the door open to him to prosecute a cause of action if it were an honest and just one. Section. 6 of the Employers Liability Act of New South Wales provides that before an action for the recovery of compensation under the Act shall be instituted notice shall be given within six weeks and the action must be commenced within six months from the occurrence of the accident causing the injury- Provided always that the want of such notice shall be no bar to the maintenance of such action if on motion made for leave to proceed notwithstanding no such notice has been given a Judge should be of opinion that there was reasonable excuse for such want of notice.

There is a provision with regard to how it should be done if the action were brought in the District Court. It would be fair to put a proviso of this character at the end of the clause, so that if a Judge were satisfied that there was reasonable excuse for such want of notice, there would be no necessity then to let the plaintiff take a non-suit and give his notice after this, but it would give him an opportunity to have his case tried straight away. Of course it would always have to be in the opinion of the judge. Section. 7 of the Act gives power to amend a defect in the notice -

The court in which any action for recovery of compensation under this Act is commenced or is pending, may, at any stage of the proceedings, amend any defect in a notice of injury or death, or direct that the action shall proceed and be maintainable, notwithstanding that such notice has not been given duly if the Court, having regard to the circumstances of the case, thinks just so to direct.

And section 8 contains this further provision -

No such notice shall be deemed invalid by reason of any defect or inaccuracy therein unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced, in his defence by such defect or inaccuracy. Supposing that a man meets with an injury in the course of his employ, then every possible provision is made in the Act, consistent with fairness, to enable him to proceed with his action. While the employer is protected by it being necessary to commence the action within a limited period, and by the provision that notice shall be given, nevertheless if either of these things be omitted there is always power in the hands of the court, assuming that the action is commenced within a reasonable time, to get over the defects. In our Customs Act it would be reasonable to have a similar provision for an individual who felt himself aggrieved by any action of an officer, so that in the event of any mistake being made with regard to notice or times he should still be able to prosecute his action, always provided that he could satisfy a Judge that there was reasonable cause for his omission to give a notice, or that the defect in the notice was not of a character which would prejudice the defendant in any way. While it is necessary to be stringent with regard to actions brought against the Government for anything done by a Customs officer unless it is only reasonable that no technicality should be allowed to stand in the way of a man obtaining redress for a wrong he had sustained. The Crown, we know, fights its cases just as strongly and earnestly as does any private individual. I do not propose to submit an amendment until I hear what Senator O'Connor has to say of my suggestion. If he regards the principle as a fair and reasonable one to adopt I have no doubt that we can mould an amendment which will adequately conserve the rights of the Government, and at the same time protect a man who has a good cause of action from being defeated by a pure technicality.

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Senator DOBSON

- We have five clauses dealing with notice and regulating the conduct of these actions. I do not think we shall gain any advantage by spending an hour or two in striking out this clause, and embodying the provisions suggested by Senator Gould, who, I think, will see on reflection that if there is one man who should not be shut out because he has not given notice, it is a man who brings an action under the ; Bill which he holds in his hand. I do not think that an Employers' Liability Act can for a moment be compared with a Customs Act. A constable or an officer is trying to do the best he can to prevent smuggling, and because, on some occasion, he goes a little too far, some trader or importer makes up his mind to go for him. The importer ought to know at once whether he has an honest action against the officer - whether the officer had any reasonable cause for arresting him, or for doing something else. There is no occasion to give this man more than a reasonable time ; he has six months in which to bring his action, and what more can he want 1 If he does not adhere strictly to the Act he is shut out, and rightly shut out, I think, because we are dealing with an officer of the Crown who is trying to collect the revenue, and who is surrounded by certain safeguards to which private litigants have no right. I do not think that a litigant who is trying to get damages out of a Customs officer, because he slightly exceeded his powers, has any right to be surrounded with the safeguards of those unfortunate men who may have an action under the Employers' Liability Act. The suggestion made by Senator O'Connor carries out the spirit of the amendment. Senator Ewing has certainly drawn attention to a blot in the clause; and Senator O'Connor, if he moves his amendment, will cure it.

Senator O'CONNOR

- I cannot agree with Senator Gould as to the necessity for any provision similar to that in the Employers' Liability Act. The circumstances in the two cases are absolutely different. In framing that Act it became apparent, although it was fair that a man should give notice of cause of action, and that it should be delivered within a particular time, yet very often from the mere circumstance of the happening of the accident, the party might be incapable of giving the notice. At the very time when the notice ought to be given, he is either lying at death's door, or he and his family are in such trouble about the injury that the matter is likely to escape attention. A hundred and one things may happen which make it consonant only

with mere justice that want of notice or a technical objection should not be allowed to stand in the way of the action, and ample powers are given to the Judge to amend the notice or allow the action to proceed without notice. But we are dealing with an entirely different state of things. The whole proceeding under the Employers' Liability Act shows that the amendment would mean a great multiplication of the expenses of litigation. Under that Act, before an action commences, the plaintiff is obliged to go to the court for permission to proceed without notice or to amend his notice. That cannot be done without the expenditure of money and time. Surely we do not want to introduce unnecessarily this lengthening of proceedings ; and it is certain that if the principle of the Employers' Liability Act is adopted this will follow. A provision similar to this is in almost every Act which imposes duties on the servants of the Government. In almost all these Acts there is provision for the protection of the officers, in that an action should not be brought against them without notices containing certain particulars. But in very few, if any, of these Acts is there a provision similar to that in the Employers' Liability Act. The cause of action under the Bill is a perfectly simple one. The injury does not incapacitate the person aggrieved from giving notice, and he knows what he is claiming. To go beyond the simple requirements of the clause, and to put it in the power of either party to go on with protracted litigation, is beyond the necessities of the position. In a Bill of this sort we ought to make the rights of the parties as clear and definite as possible, and so fix them that there can be no misunderstanding. I cannot fall in with Senator Gould's amendment ; but, in regard to the other matter, I would suggest that the amendment which I have foreshadowed will really carry out Senator Ewing's wishes, but in a way which will give more liberty in dealing with the matter in court.

Senator EWING(Western. Australia). - I am quite willing to withdraw my amendment. In regard to the other matter, however; Senator O'Connor is apparently under the impression that only one class of action will arise against an officer of the Customs. If, however, an officer has a large number of men in his employ, and one of them is killed or injured in carrying out his instructions, the injured party or his representatives have to bring an action and to give notice.

Senator O'Connor

- That would be a different thing altogether.

Senator EWING

- If the collector ordered a man to do something which was manifestly dangerous, and which the man ought not have been ordered to do, and he was killed, the collector, and the Government through him, would receive notice of action from the representative of the person killed. Where is the difference between a notice under the Employers' Liability Act, and the notice provided for in the clause?

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Senator Glassey

- Is that likely to happen?

Senator EWING

- It has happened many times that a man obeying the instructions of a superior officer has met with an accident.

Senator O'Connor

- In that case the action would be brought against the Government, and not against the officer.

Senator EWING

- In such case it would be argued at once that the accident arose by reason of something done in the execution of duty, and by reason of his office. There is no distinction between the Government and the Collector of Customs, who stands in the position of the Government.

Senator O'Connor

- No person will bring an action against an officer when he can proceed against the Government.

Senator EWING

- Under ordinary circumstances the Government itself would be sued, but the whole policy of the Bill contemplates that the proceedings must be against the officer whom the Government had appointed. If the collector, for instance, stops my goods, I have to sue him, and give him notice ; and if a man is killed in carrying out dangerous duties under the instructions of the collector, where is the distinction 1 It is something done in the exercise of his office, and it seems to me there is a close analogy between the two cases. If goods are seized at Wyndham, in Western Australia, the merchant in Perth may not hear of the occurrence for months. All that Senator Major Gould is asking for is that the court may use its discretion in

regard to the notice if there are circumstances which excuse want of notice. A man may be wrongly arrested in the northern parts of Western Australia or Queensland, far away from any place where he can get legal advice, and he may be, perhaps, locked up for months under an action taken by an officer of the Government, and thus rendered incapable of giving notice. These are the very cases to which an exception of the kind is intended to apply. Such a man would probably not know of the existence of this law, and to say that he is to be deprived of all his legal remedies simply because he has been kept in prison, seems one of the most monstrous propositions ever put before a legislative body. If a Judge is satisfied that circumstances have intervened which render it impracticable to give notice, he should have power of dispensing with the notice. A man in the back-blocks cannot get hold of a Commonwealth Act, and find out exactly what he has to put into the notice, and yet, if the notice is not exactly in accord with the clause, his claim is to be cast out. The power to rectify errors and dispense with formalities should be given to the Judge, if he be satisfied that the justice of the case calls for such a course. It is easy for us to say that a man ought to know the provisions of an Act, but in practice it is impossible for the people in Australia to know the laws of the country ; and to say that, because a man does not give notice, the remedies for wrongs done him must go to the winds, is not consonant with twentieth-century justice.

Senator O'CONNOR

- Now that Senator Ewing is willing to accept my amendment instead of his own, I would suggest that it be dealt with, and that the amendment of Senator Gould be made the subject of another clause.

Senator Major Gould

- Or of a proviso to this clause.

Amendment, by leave, withdrawn.

Senator O'CONNOR

- I move-

That all the words after " served," line 7, be omitted.

Amendment agreed to.

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Senator Major GOULD

- I move -

That the following words be added to the clause : - " Provided always that the want of such notice shall be no bar to the maintenance of such action, if upon motion for leave to proceed, notwithstanding no such notice has been given, a Judge of the High Court of Australia, or of the Supreme Court of the State in which such action is commenced, shall be of opinion that there was. reasonable excuse for such want of notice."

I think that is practically the wording of the provision in the Employers' Liability Act.. I propose this proviso so as to enable the Judge of the High Court of Australia or the Judge of the Supreme Court of the State in which the action is commenced to have power to allow the action to go on, notwithstanding that the notice has not been given, supposing that there is reasonable excuse for such want of notice. It will be observed that I provide that the Judge must be satisfied that the application is a reasonable one before giving permission. The Employers' Liability Act also contains provisions enabling the notice to be amended if it be defective in form and substance, provided that the amendment would not be to the prejudice of the defendant. What was said in opposition to this proposal a little time ago, by the "Vice-President of the Executive Council has been very effectively, I think, answered by Senator Ewing, who pointed out several instances in which an injustice might be done to the individual. While I know that the committee very naturally want to amply safeguard the Customs, yet I am sure that honorable senators are averse to doing anything unjust, and if anything like what I propose can be reasonably provided for it should be done. The only fear is that the committee, in their desire to frame the Bill in such a way as to make it a terror to evil-doers, may err on the side of too great stringency. There is no probability of their erring on the side of too great leniency, judging from the debates that have hitherto taken place. But while we should see that the law is made stringent against wrong-doers, provision should be made amply to protect the man who honestly believes that he has a cause of action against the Government or against an officer for something done in the execution of his duty. My proposal by no means takes from the strength of the measure, but rather strengthens it. Our duty is to make the measure as strong as we can, consistent with fairness to the individual. Senator Dobson drew a distinction between an Act like the Employers' Liability

Act and "the Customs law. I admit that there is a difference ; but both under the Employers' Liability Act and a Customs law, an endeavour should be made to do justice to the individual

Senator Dobson

- In this case the individual has five months within which to bring his action.

Senator Major GOULD

- Suppose he has started his action ? AVe will say that six months have expired before the action comes to trial.

Senator Dobson

- There must be a limit surely.

Senator Major GOULD

- Yes, and I do not propose to interfere with that limit. But surely the Judge should be able to say whether there has been an honest mistake, and whether there is a fair and reasonable ground why the action should proceed, notwithstanding the absence of the proper notice. The individual has no opportunity of repairing a mistake unless there is some proviso of the character I propose. I have no doubt that, except in the very exceptional cases mentioned by Senator Ewing as to actions that may be brought a long distance away from the centres, there would generally be ample time for a man to give his notice, and the Judge would say so. But it may be discovered after the six months have gone by that the law has not been properly complied with.

Senator Dobson

- The Statute of Limitations applies similarly in other cases.

Senator Major GOULD

- It would be a reasonable thing to provide for getting over any difficulty, so far as form is concerned, if the Judge thinks that that should be done; and I shall be prepared, at a later stage, to submit an amendment on that point also.

Senator Dobson

- Would the honorable and learned senator insert a proviso to override clause 216 1

Senator Major GOULD

- No ; my proposal is only to enable an action to be proceeded with, notwithstanding that notice has not been given. An action may have been commenced within the six months, and it may turn out that no notice, or no notice conformable to the Act, has been given. Then the Judge can say, "Here is a clear mistake," and he may allow the action to proceed, notwithstanding that the proper notice has not been given. If the Judge considers that there is a reasonable excuse for such want of notice, the proposal leaves it absolutely within his power to dispense with it. We can surely trust a Judge of the High Court with a power like this. I am convinced that no Judge would allow the notice required by statute to be dispensed with unless he was satisfied that there were very strong reasons to justify the waiving of the notice.

Senator Dobson

- On the face of the honorable and learned senator's proviso, a man could sleep on his rights for five months.

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Senator Major GOULD

- No. If it could be shown to the court that a man had slept on his rights for five months, the Judge would not grant the order. In an enormous territory like ours there must be Customs officers here, there, and everywhere in remote parts, and it may be a long time before the man can communicate with the centre and obtain' advice, so that it is only reasonable to give a wide margin in the event of any mistake happening. If the Government like to say that they will extend the time to twelve months, the reason for this proposal would be removed at once. This power could only be brought into force in the event of the Judge being satisfied that a man had not slept on his rights.

Senator O'CONNOR

- I must oppose this amendment, and I shall give my reasons- very shortly. What is the object of these clauses with which we are now dealing? It is. to protect the officer who has the administration of the measure. The officer is carrying out his duties day by day, dealing with hundreds of cases and. hundreds of persons, probably, in a busy place. Why do we want to protect the officer, and why do we treat him in a

different way from that in which we treat an ordinary individual ? For the reason that he has a multiplicity of transactions with the public, and deals with an enormous number of persons - in the course of a day : and, if his attention is not directed ' to the circumstances immediately after the event, it is very likely that he may not be able to meet the charges made against him. It can be easily understood that if we definitely lay down in this Bill that there shall be six months' notice of any action, the officer will know what he is about; but, if this provision is added, it means that the case may be brought up some considerable time afterwards, when the whole of the circumstances may have gone out of the officer's memory. In other words, this proviso means; that instead of settling the rights of the parties definitely in the Statute, we shall leave it to the Judge to decide whether there ought or ought not to be a notice. If this is done we simply fritter away the protection given by the Bill for the purpose of enabling officers to do their duty. The officers have no interest in the matter except to do their duty. They make no profit out of it. If an officer in doing his duty knows that if a complaint is to be made against him it must be made within six months, and that there* must be definite notice of what the complaint is, and that the action can only be on that cause of complaint, his position is well defined. But if this proviso is allowed to stand, a person can bring his action many months afterwards - without giving notice at all, because the person making the complaint can go to the court, for an extension of time. That means a multiplication of legal proceedings, and enables persons to sleep on their rights, instead of looking into the law and understanding what their rights are, and acting accordingly. The Employers' Liability Act is quoted in justification of this proposal. But the principle upon which that exception rests is that, from the very nature of the injury itself, a man may be incapacitated from giving his notice. That does not apply here. With regard to the argument of Senator Ewing, that the cause of action may take place in the centre of Australia, I reply that that cannot be a hardship, because the notice has to be served, not on the comptroller or any officer at the centre of departmental administration, but on the officer of whom the complaint is made. What hardship can there be in that ? I presume that if a man is injured he can serve his notice within a short time upon the man who has injured him. With regard to the argument as to the man knowing, nothing about the law, no one knows better than Senator Ewing that that is not an excuse. It would be a very bad thing, indeed if ignorance of the law were permitted to be an excuse. The laws are passed, and every one may acquaint himself with them. It is to be assumed that every one does know the law. Especially is that the case with regard to a law of this kind, when a person is dealing with the Customs. It is very easy for him to ascertain what his rights are. I hope the committee will not assent to this amendment, for the reasons I have given. After all, we have to consider what is the main object of the clause, and the main object of this clause is to protect the officer and prevent him being harassed. If the clause is carried as it stands, it will effect that object without doing any injustice to the person who may be injured, and if it is not carried as proposed we shall fritter away the protection of the officer and establish opportunities for piling up costs and litigation.

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Senator Sir JOSIAH SYMON

- I have had a good deal of experience of these notices, and I really feel that the clause as it stands is the best means of piling up costs and harassing everybody concerned that was ever invented. I take a much stronger view of these so-called notices of action than I have yet heard expressed. I entirely disbelieve in them. I see no more reason why these highly technical notices of action should be given in the cases of officials, police officers, justices, and so on, than in the ordinary cases of controversy that arise between man and man. That there should be some kind of notice - a letter-before-action sort of business - every one will agree, but Senator Dobson knows as well as anybody else that there never has been a more fertile source of technical argument in courts of justice than these notices of action. They have been a constant source of delay and expense in courts of justice. I do not regard the existence of these notices as any protection to the officer. The protection to the officer is the limitation of six months. No man, however injured he may be, is entitled to bring an action against an officer who may have done him the greatest injustice - seized his goods, personally arrested him without reasonable cause - after six months. These officers must not be harassed too much, and we must not put them in the position of being liable to actions for a long period of time, when the suspense would itself be intolerable. What is this notice for ? It is not for the purpose of enabling the officer to get up his defence, but simply for the purpose of enabling him to do what a defendant might desire to do - tender amends. It is exactly the same thing as occurs

under the Employers' Liability Act, in which there is a thoroughly just provision to enable the employer to tender amends in respect to an injury done to his servant. Suppose some ignorant man gives a notice which is defective. The Bill says that the cause of action must be stated in the notice, and those of us who happen to know a little of law know that the cause of action is one of the most difficult questions to be settled in considering notices of this kind. I know of a case at the present moment where a man, who has a perfectly honest claim, has sustained an injury, and is prevented from recovering because of a defect in his notice of action, which is not stated in a sufficiently technical way. My honorable friend, Senator O'Connor; asks why we should bring in a Judge to decide this thing? But we bring in a Judge as it is. We provide that the cause of action must be clearly and definitely stated, and, unless it is so stated, evidence is not to be admitted. Who is to decide but the Judge whether it is clearly and definitely stated? If he says it is not clearly and definitely stated, that, is equivalent to a decision that it is not a valid notice at all. The only effect of this amendment will be to give the Judge a little further discretion, and enable him to prevent injustice being done to a man who may have a valid claim to compensation.

If we intrust a Judge with the powers already intrusted to him by these two clauses; of deciding whether the notice is sufficient or not, surely we may trust him to say whether or not the giving of a notice should not be excused, if no injustice is done to the defendant. But the plaintiff must not exceed the six months' limit. If a complainant has neglected his interests, and allowed five months to expire before he gives his notice, it will not matter how it is worded, because the expiration of the six months will bar his action. It is a fair thing that a little further discretion should be intrusted to the courts to secure justice to both parties.

Senator Sir FREDERICK SARGOOD

- The object of the amendment is, as far as possible, to secure justice being done, and to secure that where there is a fair case a man shall not be thrust out of court simply because of some unavoidable or unexpected delay that has occurred. It appears to me that that is a very reasonable proposal. Senator Dobson has asked whether there is any precedent for such an amendment. I do not know whether it is a precedent, but I may quote a case from my experience under the Victorian Customs Act, which occurred a good many years ago. A case was brought against the collector, and the action was defended by the Crown. The Chief Justice tried the case with a jury, and the evidence was unmistakably in favour of the plaintiffs. The Chief Justice summed up unmistakably in favour of the plaintiffs, and the jury brought in a unanimous verdict in his favour. We thought the whole matter was over, when Mr. Webb, subsequently Mr. Justice Webb, quietly called attention to a clause in the Customs Act requiring the action to be brought within a certain time, and he pointed out that it had been brought one day after that time had expired. As a consequence the case was lost, and the plaintiff had to pay £1,500 in costs. There is a case in which there was an absolute denial of justice because the Judge had not power to extend the time allowed by one day.

Senator O'Connor

- Does the honorable senator say there ought to be power to extend the time limit of six months also?

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Senator Sir FREDERICK SARGOOD

- As a layman, I would be inclined to go a slight extent beyond that. I have quoted this case as an instance in which it was recognised by the Chief Justice and by the jury that justice was on the side of the plaintiffs, and yet they lost the case because of the delay of a day which occurred in consequence of protracted negotiations between the traders on the one side and the Ministry on the other.

Senator Drake

- If we gave power to extend the time by a week, perhaps the plaintiff in the case would be eight days behind.

Senator KEATING (Tasmania). - I entirely support the principle involved in the amendment moved by Senator Major Gould. It seems to me that the opposition to it is based upon a misapprehension of its object. It is not contemplated to affect in the least degree the administration of the department. An officer may have exceeded the bounds of discretion in the discharge of his duty, and thereby injured a private individual, and he may be proceeded against under the terms of the statute within a period of six months from the accrual of the cause of action. It appears to me that "the officer is sufficiently protected by the limitation of six months, and in endeavouring to protect him we should be exceedingly careful that we do not at the same time too much trench upon the rights and privileges of individuals. Under ordinary

circumstances an aggrieved individual would have two, three, or, perhaps, six years within which to bring his action ; . but here he is absolutely limited to six months, and there is this notice, which is a condition precedent to the maintenance of the action. The object of the amendment is that the Judge before whom the matter comes may take into consideration the whole of the circumstances, and say whether or not it is excusable that such a condition has not been complied with. Taking the whole of the provisions of the Bill into consideration, I think the Customs department is amply protected in these matters. If an individual is guilty of any violation of any of the provisions of the Bill, a prosecution may be instituted against him so long afterwards as a period of five years; and when Senator O'Connor asks why this notice should not be given, in order that the defendant may be able to prepare his evidence to meet a case presented against him, we might ask with equal force why an individual against whom a charge was brought by the Customs department should not have a similar degree of protection.

Why should he be asked four years and nine months after an offence is alleged to have been committed to get his witnesses together to meet the charge which may be levelled against him ? I look upon the notice of action as a preliminary condition which is more or less of a technical character, and one in respect to which we can very well give the Judges the discretion of deciding whether the absence of notice is of such importance in the particular case that it should be considered an indispensable or a dispensable condition precedent. I support the principle of the amendment.

Question - That the words proposed to be added be so added - put. The committee divided -

Ayes..... 17

Noes..... 8

Majority 9

Question so resolved in the affirmative.

Amendment agreed to.

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Senator Major GOULD

- I move -

That the clause be amended by the addition of the following words: - " Provided further that no notice required under the provisions of the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Judge who tries the action shall be of opinion that the defendant is prejudiced in his defence by such defect or inaccuracy. "

The previous amendment gave power to a Judge to allow an action to be maintained, notwithstanding that notice has not been given, if he is satisfied that it is a case in which he should exercise that discretion ; and this amendment provides that in the event of the notice proving defective or inaccurate, it shall not thereby be deemed invalid if the Judge is satisfied that it does not prejudice the defendant. It will tend to make the amount of litigation as small as possible.

Senator O'CONNOR

- This amendment I take it, is a consequential one, and as it is a very much smaller matter than the other, I do not propose to take a division.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 217-

No proceeding whether against an officer or otherwise for anything done for the protection of the revenue in relation to any Tariff or Tariff alteration proposed in Parliament shall except as mentioned in the next section be commenced before the close of the session in which such Tariff or Tariff alteration is proposed.

Senator CLEMONS

- I should like to hear from Senator O'Connor some explanation as to the revenue which is to be collected under the clause. I can quite understand that if there were no other Customs duties except those which are to be proposed in the Federal Tariff, there would be no difficulty in agreeing to the clause, but I should like to know from him if he feels that it will empower not only the collection of the duties to be imposed by the Commonwealth Parliament, but also the collection of the various Customs duties which are in force, or which may be imposed, in the States, until the Federal Tariff comes into full operation. In this clause there is nothing with regard to the collection of anything except any Tariff or Tariff alteration contemplated by this Parliament.

Senator O'CONNOR

- I am sorry to say that I cannot give Senator Clemons the information which he asks for. I do not see that the clause has anything to do with the question of what duties are to be collected, or under what statutes or sanction they are to be collected. It does not authorize any collection or anything to be done. It simply protects the officer of the Customs as to the time of bringing an action for a certain kind of illegality. This is a permanent Customs Regulation Bill which is to apply to any proposed Tariff or any proposed alteration of the Tariff, not only in this session, but in any future session. It is not limited to any particular set of circumstances or any particular illegality. It is a well-known constitutional usage to begin to collect the duties under a proposed Tariff immediately that Tariff is laid on the table of the House, and to afterwards legalize what has been done.

The obvious necessity for a course of that kind has rendered the usage constitutional. If that were not done, and those who deal in imported goods had three or four months in which to make arrangements while the Tariff discussion was going on, there would be very little revenue to collect. Senator Clemons asks me whether the clause will legalize the collection of duties under a uniform Tariff before there is an Act enabling that to be done, and whether it will also protect the Customs officer in the collection at the same time of the duties imposed by the Tariff Acts of the different States. My answer is that it will protect the officer in any illegality committed for the protection of the revenue in the course of collecting the tariff. Whatever the . illegality may be, it is covered by this clause, so long as the officer is acting for the protection of the revenue in the collection of any proposed Tariff or proposed Tariff alteration. It would be quite impossible for me to make a statement in regard to what the intentions of the Government are in the collection of duties ; but as to the clause itself, it is one that is necessary, and I hope it will be passed unanimously.

Senator CLEMONS(Tasmania).- My attitude is in no sense hostile to the clause, and any questions I have put, or any criticisms I may offer on the clause tend in the direction of making certain that the Government have the power which obviously they want. I wish for no indication on the part of the Government as to what is intended in the Tariff, but it may be desirable, and positively imperative to collect the higher of two duties, which may be a States duty, and personally I have grave doubts whether the clause, as worded, would enable that to be done.

Senator O'Connor

- The clause does not enable anything to be done ; it simply protects the officer in doing something.

Senator CLEMONS

- I may have used the wrong phrase, but if the officer collects the higher of two duties, which happens to be a States duty, I doubt whether the clause, which is desirable and necessary, will give him the protection sought. If that protection is not given, the clause ought to be altered.

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Sir JOHN DOWNER

- I support the clause, but I have always had great doubts whether it is worth while to put a clause of this kind in the Bill. What we are authorized to do under the Commonwealth Act is to establish a uniform Tariff ; but what we shall have to do in the first instance is to establish, by Act of authority, a uniform Tariff. A Tariff will have to be brought down which will ultimately be uniform, but in the meantime its incidence will be the enforcing of the highest Tariff in each one of the States. I have, therefore, taken the view throughout that it matters very little whether the clause be carried or not ; because, without being in the confidence of the Government, or knowing their views, I think it absolutely necessary for the prevention of fraud on the new Tariff, to have an act of authority which it will be absolutely impossible for us to legislatively provide for, but which it will be quite possible for us to subsequently ratify. I think the clause is some protection, and all the protection we can give, and I support it for what it is worth.

Senator Major GOULD

- We can readily understand the object of the Government in inserting the clause. We cannot blind our eyes to the fact that we shall be put in the position of having a Tariff that is not uniform ; but, whether it will be necessary to collect both State and Commonwealth Tariffs, is another question. On that there seems a difference of opinion, but we can readily forecast what the Government will do under, a provision of that character. They will collect on the proposed Tariff where that is the higher of the two," and where

the State Tariff is the higher, they will collect the State Tariff under the State laws as they exist to-day, and, no doubt, when the Tariff has been finally dealt with, will refund any moneys over-collected. We must recognise the fact that we shall be labouring under the same trouble as now, that of the Inter-State duties, which we want to see abolished as early as possible.

Senator O'Connor. - I am sorry to interrupt, but I would ask you, Mr. Chairman, to keep this discussion to the clause before the committee. There is such a tempting field for discussion opened by what Senator Gould has said just now, that we may be led away, and take up a great deal of time with matters irrelevant to the clause. All the clause provides for is the protection of the officer in anything he may do for the protection of the revenue in relation to any Tariff. It is quite irrelevant to discuss those other matters as to whether it is desirable to have Inter-State free-trade or not ; and I would suggest that the discussion be kept strictly within the limits of clause 217, because we all wish to get through the Bill to-night, if possible.

The CHAIRMAN

- I can assure Senator O'Connor that I had my eye fully on what he has suggested, and I did not hear anything from Senator Gould that was not relevant to the clause. Senator Gould is at perfect liberty, by way of illustration, to make use of any argument of the kind.

Senator Major GOULD

- I do not propose to go into a dissertation in regard to the establishment of InterState free-trade, but we must not blind our eyes to the effect of the provision. The Government will collect duties on the borders of the States, as well as on the borders of the Commonwealth. The clause proposes that nothing shall be done until after the close of the session, but we have no assurance as to how long the session is going to last. We are required to have a session each year, but I was member of a Legislature in which a session lasted 13 months. We must bear in mind, therefore, that we are possibly suspending a person's cause of action for some indefinite period. I admit at once that there is a necessity for doing something, and I am not prepared to propose anything more satisfactory than the course suggested by the Government. But I want the committee to realize what the effect will be if they pass the clause as it stands.

Senator CHARLESTON

- The Government are extremely desirous to protect their officers, but I share with Senator Clemons the fear that this clause will not protect them in the direction desired. Therefore I urge upon Senator O'Connor that he should think over the matter again. The clause distinctly says ' ' any Tariff or Tariff alteration proposed by this Parliament.' ' What is to be feared is that this will not protect officers in the collection of duties under State Tariffs. That is a point really worth considering; and even if we spend a little time over it, so long as we finally give to the officers that protection which we all desire to give, the time will not be wasted.

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Senator O'CONNOR

- I have no doubt whatever that this clause will give all the necessary protection. The clause has been considered with exceeding care. As honorable senators no doubt are aware, Other methods were suggested at first of dealing with this question, and finally, after a great deal of consideration, this has been determined upon as the best method of getting over the difficulty that must arise in dealing with the uniform Tariff. It will be observed that the protection is for anything done in the collection of the revenue in respect of "any Tariff or Tariff alterations." Even if it is proposed to collect the State duty where it is highest, or the uniform duty where that is highest, this clause clearly protects the Customs officers. The proposal simply means that it being necessary to do certain things for the collection of the revenue, what is done for that purpose is protected. I can assure honorable senators that this clause, in the opinion of the Government, will carry out the object we aim at.

Senator Sir FREDERICK SARGOOD

- This clause has necessarily received considerable attention at the hands of importers generally. The best legal opinion has been taken upon it, and that opinion is that the clause will not fully carry out what is intended. I do not think there can be any doubt that for a time two duties will have to be collected, namely, the existing duties, which we may call the State duties, and the duties under the Tariff brought in by the Commonwealth Government. The proposal I have to submit to the Minister, as the result of a legal opinion which has been taken, is that the clause should be slightly altered, so as to read as follows : -

No proceeding, whether against an officer or otherwise, for anything done for the protection of the revenue in relation to any existing Tariff or any Tariff or Tariff alteration proposed by Parliament. That covers the whole ground.

Senator O'Connor

-It is not necessary.

Senator Sir FREDERICK SARGOOD

-I am assured that it is. It is another case of doctors differing.

Senator O'Connor

- Why should the importers take such an interest in the protection of the officers ? I do not quite understand that.

Senator Sir FREDERICK SARGOOD

- If they take an interest in protecting the officer, and in protecting the revenue, they take an interest in protecting themselves.

Senator CLEMONS(Tasmania). - Of course, we all know that the protection sought to be secured to the officer is to be extended where the officer proposes to collect duties which may be higher than the duties proposed by the Federal Government. The persons called upon to pay those duties may object to do so, because they have not been passed into law by the Federal Parliament. The clause, however, provides for the case where an importer objects to pay the duty imposed by the Commonwealth, and the officer insists upon his paying it. It protects the officer, no matter what the ultimate duty on the particular article may be. It is perfectly adequate to protect the officer with regard to the Commonwealth Tariff. But something else has to be contemplated as possible - that is, the collection by the Customs officers of the existing State duty, because it happens to be higher than the Commonwealth duty. In that case the protection which ought to be given to the officer is not given by this clause. The clause directly limits his protection to the collection of higher duties than are ultimately imposed by the Commonwealth Parliament. That is a protection which Customs officers have the right to expect. But I suggest that something more than that is needed, and that the object would be met by making it read as follows : -

For anything done for the protection of the revenue in relation to any Tariff or Tariff alteration proposed in Parliament, or any Tariff now in existence in any of the States.

Senator O'Connor

-Any Tariff in existence is collected under the Act which authorizes it. There is no need for any legislation in that case.

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Senator CLEMONS

- What I suggest secures the protection of the officer if he collects a Tariff not proposed in this Parliament. Senator O'Connor may say that the Commonwealth is now collecting the Tariffs in existence in the various States. But those Tariffs are not Tariffs which come within the description of the words of this clause. They are not Tariffs imposed by this Parliament. I urge upon Senator O'Connor the necessity of securing protection to the officers in the collection of existing Tariffs.' The words suggested by Senator Sir Frederick Sargood were " existing Tariffs." I would sooner see them modified so as to refer distinctly to any existing State Tariff. We' can, I think, safely call them Tariffs existing in any of the States. An importer may object to pay a duty because it exists in a Tariff that is merely tabled, and which has not become law. This clause will protect the officer who insists upon the payment of that duty. An importer may also say, "I object to pay a duty which is imposed by the Tariff of any particular State, and shall only pay the duty which is in the Tariff tabled in the Commonwealth Parliament." There is a clear line of objection on the part of the importer,- just as strong as his objection to the duty mentioned in the Tariff that is merely tabled. Senator O'Connor will recognise that unless some alteration is made, that objection will be made on all hands.

Senator O'CONNOR

- I understand that the objection is-that while the protection is given to the officer for collecting under a Tariff which is not yet altered by law, no. protection is given to him for the collection of duty under a Tariff under existing Acts. Well, it is absolutely unnecessary to give the officer any such protection. I will assume that there goes on the collection of a uniform Tariff which is not yet authorized by law. The officer wants protection for that. Suppose, at the same time, that there goes on in certain cases the collection of

duties under the existing Tariffs. That is legal. The existing Tariff Acts are not repealed, and the Commonwealth is now collecting duties under them, and will be collecting duties under them until they are expressly or impliedly repealed. The mere fact of collecting duties upon some other basis, which may be in addition to these, and which are not authorized by law, does not render illegal the collection of duties authorized by the existing Tariffs. I have not the slightest doubt that that is the position, and for that reason we have found it necessary to provide for the protection of the officers with respect to what they do in the collection of duties imposed by the Tariff which is not yet authorized by Parliament. With regard to anything "done under existing statutes, no such protection is needed. With regard to the question of collecting uniform duties at the same time as the State duties, does the collection of those duties render nugatory or invalid the existing Acts ? I have no doubt it does not, and therefore no protection is necessary in the collection of duties under existing Acts. Under the circumstances, I hope the committee will see that there is no need to go beyond what we have done already to secure the protection of the officers. As to what the protection of the officers is, we have not taken away the right of action against an officer ; we have only postponed it under certain conditions. If the party who makes the complaint thinks fit, he may make an application for security against the officer, and if the officer does not give security, the action may go on at once. If the officer does give security, the action is postponed until after the end of the session in which the Tariff is proposed. I have thought it well to state my view, and it is the view of the Government, that the protection here given to the officer is ample.

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Senator Sir JOSIAH SYMON

- I think that after the statement of the Vice-President of the Executive Council in regard to the protection afforded by this clause and its extent, my honorable friends will do well to withdraw their amendments. Of course the responsibility rests with the Government. Their desire is the same as ours, to afford protection to the officer in the collection of duties under a uniform Tariff or any alteration of the Tariff, not necessarily in this session of the Commonwealth Parliament, but in any session of the Commonwealth Parliament. If the Government are satisfied that this clause, as framed, will carry that into effect, I think my honorable friends may be satisfied to let it rest there. As it is, the clause is enormously extensive. It says - No proceeding, whether against an officer or "otherwise, for anything done for the protection of the revenue in relation to any Tariff or any Tariff alteration.

I think the words " or otherwise," which I cannot say I understand, ought not to be here, or if they should be here they should also be in clause 218. It would be more difficult to conceive of anything which an officer might do, which would not be included in this clause, than to enumerate the things which should be included under it. This is a provision which has never appeared before in any Customs Act, but although that is so, it has always been regarded as part of the ordinary law in connexion with the administration of this particular department of executive government. It is a distinct improvement and advance in legislation to put this plainly and clearly in a Customs Bill, because then we know exactly, and the Customs department know exactly, how we stand. We know that the imposition of a Tariff. by Executive act would be, from the point of view of constitutional law, an entirely illegal proceeding, and an action might be brought in regard to it. We know that it is followed by an act of indemnity, and an action brought might be avoided by a judicious step on the part of the court to stay proceedings until the legislation is complete. That would be a perfectly legitimate exercise of discretion on the part of the court. I think this clause one of the best provisions we have in this Bill so far as it departs from the ordinary form of a Customs Bill. It is very wide in its operation, and as the Government are satisfied with it, I think my honorable and learned friend Senator Clemons might withdraw his amendment.

Senator CLEMONS(Tasmania). - I feel, after what the Vice-President of the Executive Council has said, that there is no reason why I should press the amendment. I have myself very grave doubts as to the efficacy of this clause in guarding against a possible objection, but I recognise that the responsibility for it is entirely with the Government. I have satisfied myself by indicating my views upon it, and if the Government do not agree to accept my suggestion, I do not feel that I am called upon to press it any further. It is a matter upon which I am in no way in opposition to them.

Senator Sir Frederick Sargood

- I would like to ask, what is the exact meaning of the words "or otherwise"?

Senator O'CONNOR

- This clause is intended to cover an action, not only against an officer, but against some person who may not be an officer.

Senator Sir JOSIAHSYMON (South Australia). - Then it is quite clear that the same words should be introduced in clause 218, because in that clause provision is made for security in an action against an officer, but there is no provision made for security in an action against any other person.

Senator DOBSON

- I point out that what happened in New South Wales might form a reason why the words "or otherwise" should be put in. In New South Wales the court was applied to for a mandamus compelling the Collector of Customs to give up goods without any duty, and the court refused to exercise its discretion, leaning in the direction of protecting the revenue. I think, therefore, the clause is quite right in dealing with any proceeding by action "or otherwise," which may include such a mandamus. With regard to the remarks of Senators Clemons and Sargood, I always understood that the difficulty was that, the moment the Federal Tariff was laid upon the table, although at nine o'clock the following morning we might begin to collect the duties imposed by virtue of an Executive minute, it would not be such an imposition as is mentioned in the Constitution Act, and therefore would not bring about Inter-State free-trade. It is because that would not be legal imposition of duty that we need the clause to protect the officers, for the Federal Tariff, being collected under those circumstances, would not, as we all admit, be a legal imposition of the Tariff.

Senator Sir Josiah Symon

- I do not admit that.

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Senator DOBSON

- Surely it has been admitted that though this has been done constitutionally for a hundred years, it has not been a legal collection of the duty. That has already been decided in the Stevenson case, in Victoria, in which it was shown that the duty paid could be recovered by action. This clause 217 is to deal with the bringing of an action. As Senator O'Connor has pointed out, the duties under all the State Tariffs will be collected by virtue of Acts, none of which will be repealed until the Federal Tariff is passed into law by an Act repealing the State Acts, and therefore, as I understand it, Senator Clemons' amendment could not be necessary, because whatever duty is collected by virtue of a State Act is absolutely a collection according to law. Several honorable senators have seemed to imply that when the Federal Tariff is laid upon the table there will be a collection of duties under it and possibly also the collection of higher duties in the Tariffs of the different States. I venture to hope that no such proceeding or practice will take place. As I understand the law, no differential Tariff, or no Tariff which is not absolutely uniform, ought to be laid upon the table, and it appears to me that to lay a uniform Tariff upon the table and then to commence to collect duties which are not uniform would be an absolute violation of the Constitution. I hope that whatever takes place, that will not take place, and that some such suggestion as was made by the honorable and learned members for Bendigo and Indi will be adopted to secure such an imposition of duties as will bring about Inter-State free-trade.

Senator Sir JOSIAHSYMON (South Australia). - The only justification for the honorable and learned senator's long speech is his nervous dread of having the high duties existing at present collected for one moment longer than they ought to be. The point emphasized by the Vice-President of the Executive Council is that we have existing now in each State an equal Tariff, and lawfully the duties under those Tariffs may be collected. If the duties under the Commonwealth Tariff are collected and they are lower than the existing duties that will be a concession in each case to the person called upon to pay duty.

Senator Dobson

- That is what I understood would not be legal.

Senator Sir JOSIAH SYMON

- It would be perfectly legal to collect the duties of the lower Tariff. What I rose to say was that my honorable and learned friend must not assume that he is right in saying that everybody admits that the collection by Executive minute of the Tariff which may be imposed will not be an imposition of the Tariff within the meaning of our Constitution. I do not admit that it will not be such an imposition. On the contrary, there is a very great deal to be said in favour of the collection of the Tariff by Executive authority being held to be an imposition of the Tariff for the purposes of our Constitution, so as to enable Inter-State free-trade to come simultaneously into operation.

Senator Dobson

- I rise to order. I have already corrected the honorable and learned senator once. What I said was what I understood the difficulty to be. That is not saying that I understood everybody to admit the difficulty.

The CHAIRMAN

- That is not a point of order ; it is a personal explanation.

Senator Sir JOSIAH SYMON

- My honorable and learned friend did use that expression, "but as every one admits that would not be a legal imposition of the Tariff." I only wish to be guarded against it being supposed that I admit anything of the kind. On the contrary, I contend the very opposite. I hope that my contention will be right, and that we shall enjoy the benefits of Inter-State free-trade, for which every one is hungering and thirsting upon the imposition of the Tariff.

Clause agreed to.

Clause 219-

The following ships shall be forfeited to His Majesty : -

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

Senator PULSFORD

- I rise to propose certain amendments, which will bring the clause more into agreement with the provisions in the English law. In England an Act was passed in 1890, which very considerably mitigated the harshness of the forfeiture provisions. When this Bill was in the other House the Minister of Trade and Customs expressed his intention of putting in some provisions in accordance with the English Act, but he did not do so. That Act made very important alterations. In the first place,, it limited total forfeiture to vessels of under 250 tons burden; and then with regard to offences connected with ships exceeding 250 tons burden, the penalty was limited to a fine of £50, with power, if the commissioners were not satisfied that it was an adequate penalty, to bring the ship into court with a view to a fine of not exceeding £500 being inflicted.

The CHAIRMAN

-Senator Sargooddesires to propose a prior amendment.

Amendment (by Sir Frederick Sargood) agreed to -

That the words "or boats" be inserted after the word "ships," line 1.

Senator PULSFORD(NewSouth Wales). - I move -

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

If that amendment is made, I propose to move that after the sub-clauses these words be inserted -

The owner of any ship exceeding 250 tons burden, which would be forfeited if the ship were under 250 tons burden, shall be fined any sum not exceeding £1,000, and the ship shall be detained until the fine be paid, or approved security for payment be given.

I have worded the amendment so that it exceeds in severity the conditions now ruling in England, but it certainly is an immense mitigation of what exists at present in the Bill.

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Senator Sir Frederick Sargood

- Why should a small owner suffer and not a large one?

SenatorPULSFORD.- The rule is that nearly all these cases of smuggling and other troubles arise in connexion with small vessels.

Senator O'CONNOR

- The power of forfeiture of a ship is a power which has existed, and is used, I think, under all systems of Custom-houses. The power exists in England and in all the States. It is quite true that it is not very often exercised, but when it has to be exercised, it does seem to me that it is just as fairly exercisable in regard to a ship of 500 tons or 1,000 tons, as it is in regard to a ship of 250 tons.

Senator Pulsford

- This is the power as it exists in England.

Senator O'CONNOR

- A ship of 250 tons may be all that her owner has, just in the same way as a ship of 1,000 tons may be, and it seems to me that the punishment - and that after all is what we have to look at - may be just the

same, or perhaps may be even more severe if a small vessel is forfeited. I am quite aware that my honorable colleague did make a promise to restrict the tonnage of the vessel, but not in this way. The proposal of Senator Pulsford, so far as I understand it, is to restrict the tonnage in the case of sub-clause (4) to 250 tons but I do not feel disposed to accept off-hand an amendment of this very sweeping character. If you limit the powers of the clause in this way, you will certainly make it very hard indeed on the owners of small ships.

Senator Pulsford

- No harder than it is at present.

Senator O'CONNOR

- Undoubtedly, you make it relatively harder - and very generally the owners are men who make their living in their own ships. In the case of large ships, all the remedy given is the remedy of detention, as I gather from the proposal, pending the obtaining of the money, or until approved security for its payment is given. The proposal has not been circulated, and I do not see that I can accept it at present. I would like to hear Senator Pulsford's explanation of it. He has explained very shortly what it is ; that is to say, he has referred to the English Act, which he has had the courtesy to hand to me. But I should like to hear his views as to why the proposal he substitutes for forfeiture should be adopted. If he had any difficulty as to the wording of the clause I would not have any objection to- recommit it, but I certainly think we may discuss it to-night.

Senator PULSFORD(New South Wales). - The reason why there should be a distinction made between small vessels and large vessels, is that the trouble with smuggling and the various other offences mentioned in the sub-clauses are found to be almost wholly due to small vessels. In the case of the big vessels which come to our ports any trouble of that character is almost impossible. In England this has been recognised, and it has been felt to be an absurdity that any provision should exist in an Act whereby a vessel which was worth hundreds of thousands of pounds might be liable to forfeiture if there was some little infraction of the law, which might be easily brought about under some of the conditions mentioned in the six sub-clauses. A big steamer worth hundreds of thousands of pounds might be used by some sailor or passenger for the purpose of smuggling; and that a vessel of that character should be liable to forfeiture is ridiculous. It would never be carried out. I only propose to bring the clause more into accord with conditions which would be carried out. The English Act is a justification for the removal of a great many of the harsh conditions in the Bill, and for the attitude which I and other honorable senators have taken with regard to harsh clauses. Considering, however, that the amendment as drafted gives power to inflict a fine twice that allowed by the English Act, namely, £1,000, I think I have erred on the side of harshness rather than on the side of leniency in this case.

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Senator CLEMONS

- I think I can point out to Senator O'Connor why the amendment is worth his serious consideration. The first reason I would suggest to him is, that the clause as it stands proposes to punish the ship, not according to the gravity of the offence, but according to her size. The offence may be of exactly the same gravity if it is committed on board a ship of 250 tons as if it is committed on board a ship of 10,000 tons. In one case the penalty will be the value of the ship of 250 tons, which you may put down at £1,000 ; in the other case the penalty will be a sum equal to about £500,000. A provision which punishes the offence in that way is one which we ought not to tolerate. This matter had very serious consideration in England, and the provision in the English

Customs Consolidation Act of 1876 was evidently found to be so inequitable and so Oppressive that a special Act was passed in 1890 which altered the penalty, and provided that the forfeiture of any vessel should not take place where the tonnage exceeded 250 tons register. I have no doubt that the reason which actuated the framers of the amending Act was partly the reason I have suggested - that the offence should be punished qua the offence, not qua the size of the ship on which it was committed. It is provided in sub-clause (4) of this clause that ships may be forfeited in case -

Any goods are thrown overboard, stayed, or destroyed to prevent seizure by the Customs.

It is obvious that on a large boat it will be practically impossible for the owners to make it quite certain that some felonious person on board shall not commit the offences laid down in the Bill, while, in the case of a small boat of 250 tons register and under, it is obvious to all of us that the owner or master would be

much more in control of the boat and of every one on her. I can quite understand why the distinction has been drawn. It has been held in a rough sort of way that in the case of a boat of small tonnage the owner or master ought to be held to be in entire control of what is going on. But when you get to a boat of 10,000 tons, it seems to me a monstrous thing that there should be forfeiture, at any rate, for an offence under sub-clause (4). If the clause were enforced literally, with all the powers it contains, it would be possible to forfeit to His Majesty a boat of 10,000 tons worth £500,000, because some passenger, or if you like some of the crew, threw some goods overboard to prevent seizure by the Customs. A power of this sort seems to be monstrous. I cannot see that you have any right to impose a penalty of £500,000 because that happens. Yet the clause provides for a penalty of at least £500,000. There are plenty of ships whose value can easily be assessed at such a sum, and if an offence is committed by somebody on board over whom, perhaps, neither the captain nor any officer has any immediate control, to mulct the owner in a penalty of that sort seems to me an utterly preposterous proceeding. If there was no other provision to object to, I should offer the most strenuous objection I could to sub-clause (4).

Senator O'Connor

- That is not the proposal of Senator Pulsford. It is quite a different thing.

Senator CLEMONS

- No; but his proposal would cover that objection and others.

Senator O'Connor

- It goes much further than that.

Senator CLEMONS

- I admit that it does, and in my opinion for a very good reason. I should like Senator O'Connor to answer my chief objection. By what process of reasoning can he justify the infliction of a penalty not in regard to the offence but in regard to the size of the ship on which it is committed? I cannot believe that he is going to insist on the clause standing as it is. I would suggest to him that however reluctant he may be to have the clause postponed, it is well worth being postponed, unless he can adopt the amendment as it is. It must be desirable to have some limit as to the size of the ship which can be forfeited.

Senator O'CONNOR

- I am quite prepared to carry out the promise made by my honorable colleague in the other House. He promised that he would have an amendment proposed which would bring the Bill into conformity with the English law.

Senator Clemons

- That is all we ask for.

Senator O'CONNOR

- Senator Pulsford's proposal, which is founded on the English Act, goes far beyond it. I am quite willing to consent to the proposal embodied in that Act.

Senator Pulsford

- I have doubled the English fine.

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Senator O'CONNOR

- My honorable friend goes much beyond that. The scheme of the clause is that it provides that certain ships which are used in certain ways shall be forfeited to His Majesty. The governing words at the beginning of the clause, which the honorable senator wishes to amend, apply to the whole of the six paragraphs. The English Act only applies to one, namely, paragraph 4. As to that, the English Act provides that no ship shall be liable to be forfeited on account of goods being thrown overboard unless such ship shall be of not more than 250 tons burden. I am quite willing to consent to an amendment limiting paragraph 4, so that any ship of not more than 200 tons reputed tonnage may be forfeited. The reason for that, as pointed out by

Senator Clemons, is that if goods are stowed on board a ship as part of the cargo, the owner must have something to say to it, but goods may be simply thrown overboard, it may be by a passenger or a member of the crew, or some one not connected with the owners. There may be a very good reason for restricting the tonnage in that case, and as my colleague, the Minister for Customs, has promised in another place to make the restriction in this particular, I have no objection to it. But see how it would operate if applied all round. There are a number of offences mentioned in the clause. One is that any ship having false

bulkheads, false bows, sides, or bottoms, or any secret or disguised place may be forfeited. We all know that these devices are used. I am instructed by a gentleman who is here from the Customs office that there was a case not very long ago in which a foreign barque of 1,000 tons came here fitted with most ingenious devices for running cargo. She had artistic pictures hanging on the walls, perfectly innocent in appearance; but when they were removed it was found that behind them were the handiest places imaginable for the concealment of brandy, cigars, and other goods. All over the ship there were places, part of the ship's fittings, for the concealment of dutiable articles. These hiding places were calculated to baffle the most astute Customs officer, and were fitted up especially for the purposes of smuggling. Why should such a ship, because she is of 1,000 tons burden, escape, while the barque or schooner of 250 tons, which is perhaps her owner's only means of living, is forfeited? What justice is there in entirely forfeiting the 250-ton ship and not the other vessel? Senator Clemons objects to the principle of forfeiting a ship because the amount of the forfeiture has no relation to the advantage gained by the offence. If that principle were generally applied it would be impossible to obtain the forfeiture of goods. Very often, for the sake of obtaining a small advantage, a man may run the risk of the forfeiture of a large quantity of goods, amounting perhaps to 200 or 300 times the value of the duty. But we do not therefore say the punishment does not fit the crime. The reason for the punishment is that it may act as a punishment in terrorem. We make it so severe that persons will be deterred from committing the offence. It may be worth while to run the risk for a certain gain, but it is not worth while to run that risk if it means the forfeiture of the goods or the ship.

Senator McGREGOR

- I have been rather interested in this debate. We have here another instance of protecting the big swindler and coming down as heavily as possible on the little fellow. According to Senator Clemons' argument, if a man were a blackguard, as long he was eighteen or twenty stone in weight it would be all right, but if he were a seven or eight stone blackguard he should be punished as heavily as possible.

Senator Keating

- To be wholesale is to be respectable.

Senator McGREGOR

- That is so. I want to ask any honest senator : is a crime committed on board a vessel of 10,000 tons any less a crime than one committed on a vessel of 250 tons ?

Senator Clemons

- Is it any greater?

Senator McGREGOR. - It is neither greater nor less. If any vessel is to be forfeited for one of the offences mentioned, in this clause, the principle should apply all round. As far as I am concerned my vote will always go to give the same leniency to the big rogue as the little one, and if a small vessel is to be forfeited for one of these offences the same punishment should be meted out to a large vessel. A vessel of 10,000 tons has ten times the capacity for fraud as a vessel of a thousand tons, and certainly ought to be under the same liability. I hope the Vice-President of the Executive Council will stick to the clause as it stands.

Senator Major GOULD

- During the whole of the evening we have been dealing with clauses in which it is provided that if an offence is committed the penalty shall be the same whether it is committed by a big man or a little one. But, according to the argument of Senator McGregor, if a man is reputed to be wealthy, he ought to be subject to a big penalty, whereas, if he is a small man, he ought to be subject to a little penalty.

Senator McGregor

- No.

Senator Major GOULD

- If we are to act upon the principle that a man should be punished according to the enormity of his offence, it should apply when we are dealing with the forfeiture of ships. The forfeiture of a ship worth £100,000 is a very much more severe penalty than the forfeiture of a ship worth only £1,000.

Senator O'Connor

- It may be a very much more severe penalty upon the man who suffers the loss of the smaller vessel.

Senator Major GOULD

- To lay down the principle that a man is to be punished according to his means would be very

dangerous. It is generally the little ships that are used for smuggling purposes. It is more convenient to have a small ship hovering about a coast and running its cargo into some port than a large ship. In the case of a large ship the offence might be committed unwittingly so far as the owner is concerned. It would be better to adopt some proposal on the principle suggested by Senator Pulsford. As there seems to be a difficulty in dealing with it now, I would suggest to Senator O'Connor that we should adjourn the matter rather than push the clause through in the form which it at present assumes.

Senator PULSFORD (New South Wales). - I should be quite satisfied if I understood that the clause would be made to agree substantially with the existing law of the United Kingdom. That would satisfy me. I do not say that our provision should be exactly the same as the English section, but it should be substantially like.

Senator O'CONNOR

- I am quite willing to make an amendment bringing paragraph 4 into substantial agreement with the English law. I cannot accept the honorable senator's amendment, and I have given good reasons why. I am willing to accept an amendment of sub-clause (4) restricting the forfeiture to the case of a ship of not more than 250 tons, but I cannot go any further than that. It would be hard upon the owners of a ship, whether large or small, to make them responsible for throwing over-board by passengers; but in the case of a ship of the size stated, it is much more likely that the master or officers would be connected in an attempt to evade justice. That is an amendment which has been promised by my honorable colleague in the other House.

Senator PULSFORD (New South Wales). - I at once accept the proposal put forward by Senator O'Connor if it is understood that, should I find that the clause with this amendment is not substantially in accord with the English Act, or not fairly in accord with the promise made by the Minister for Trade and Customs, the honorable and learned senator will consent to the recommittal of the clause.

Senator O'CONNOR

- I may tell the honorable senator at once that he will not find the clause with that amendment in conformity with the English Act, which proceeds upon a different basis. I do not think there is a very great deal of difference, but I tell the honorable senator now that it would not be the same.

Senator Major Gould

- Will the honorable and learned senator consent to a recommittal %

Senator O'CONNOR

- Of course, if the honorable senator has any serious amendment to make after the clause is through, and he mentions the matter to me, I shall have no objection to a recommittal for the purpose of bringing it into conformity with what I think is the intention of the committee; but I cannot promise to recommit the clause for the purpose of enabling the honorable senator to carry an amendment on recommittal which he could carry now.

Senator Major GOULD (New South Wales). - If the Minister will consent to an adjournment now there may be no question of a recommittal of the clause later on. If it is attempted to deal with it now, and Senator Pulsford should be dissatisfied with the clause as amended, he might take upon himself the responsibility of trying to get it recommitted, and though the Government might be able to resist the proposal and prevent its recommittal, we would have the whole debate over again. If we adjourn now and take this clause tomorrow, everybody will be given ample time to consider the proposed amendment, and we can come here prepared to say whether we will accept it. I think that will be found to save time.

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Senator O'CONNOR

- I suppose I must consent to the adjournment now, but I must point out that we are adjourning continually at a very early hour, and are getting through comparatively little work. I want to get the Bill finished this week. I have promised the recommittal of some clauses, and there are some new clauses to be proposed. The discussion upon the remaining clauses will take some time, and I would like to be in a position to have the whole of the Bill dealt with, subject to the final recommittal, by to-morrow night. If honorable senators will promise to assist me to do that, by sitting as late as may be necessary, and confining their speeches within as short a limit as possible, I shall have no objection to adjourning now. I hope I may appeal to the Senate to so facilitate business that we may be able to get this Bill through, and send it to the other House this week. If it depended upon me entirely, this Bill would have been out

of this House long ago, and I must ask my honorable friends opposite to help me in the conduct of public business by shortening, discussion us much as possible, and enabling us to deal finally with the Bill this week. Under the circumstances, I am willing that the Chairman should now report, progress.

Senator Sir JOSIAH SYMON

- I only wish to say that my honorable and learned friend's appeal might, be addressed to himself and his friends as well as to honorable senators on this side of the Chamber, because while it is necessary that the Vice-President of the Executive Council should explain clauses, the honorable and learned senator has done his fair share of speech-making on clauses which we have amended, in some cases with his concurrence, and I think the amendments made have been distinct improvements on the Bill.

Progress reported.

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22:18:00

Senate adjourned at 10.18 p.m.