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1901-07-16

House of Representatives.

Mr. Speaker

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

PETITIONS

Mr. PIESSE

presented a petition from 31 ship-owners and shipping agents in Tasmania, protesting against the passing into law of clause 15 of the Inter-State Commission Bill.

Mr. R.

EDWARDS presented a petition from holders of leases and licenses -from the Crown under The Oyster Act 1886, of Queensland, praying that a duty be placed upon oysters imported from beyond the Commonwealth.

Petitions received.

PAPERS

Federal Elections Bill.

Minister for Home Affairs

Sir WILLIAM LYNE

- I beg to lay upon the table the

Report of the conference re proposed Federal Elections Bill.

The report ought to be circulated at once.

Ordered to be printed.

Report of Federal Military Committee.

Sir WILLIAM LYNE

- I beg to lay upon the table the

Report and draft Bill prepared by the Federal Military Committee.

Some correspondence was also promised, but there are two or three leaves, I am informed, not here.

These refer to several names, -but there was nothing important in them.

Australian transcontinental Railway.

Sir WILLIAM LYNE

- I also lay upon the table -

Report of Mr. C. Y.O Connor, Engineer in Chief, Western Australian Railways, on the Australian Transcontinental Railway, Kalgoorlie to Port Augusta, via Tarcoola.

Ordered to be printed.

INTER-STATE COMMISSION BILL

Sir LANGDON BONYTHON

- I desire to ask the Minister for Home Affairs, without notice, whether, after the second reading of the Inter-State Commission Bill has been moved, the Government will consent to the adjournment of the debate for a fortnight or a month, in order that commercial people may have time to consider this measure. I may say I ask this question at the suggestion of the Adelaide Chamber of Commerce.

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Sir WILLIAM LYNE

- The honorable member was kind enough to inform me that he intended to ask this question at the instance of the Adelaide Chamber of Commerce. I had intended, after making the second reading speech, to adjourn the debate for a week; and I do not like to promise definitely to adjourn it for a longer time. But if there be any good reason advanced for a longer adjournment, the Government do not desire to proceed with the second reading debate with any undue hurry.

QUESTIONS

MERCHANTS ENTRIES AT SYDNEY

Mr WATKINS

- I desire to ask the Minister of Trade and Customs, without notice, a question in reference to a matter I brought under his notice in this House some time ago as to Newcastle merchants being allowed to pass entries in Sydney. Has the matter been gone into, and has the Minister arrived at any decision ?

Minister for Trade and Customs

Mr KINGSTON

- The matter has been very carefully considered and inquired into, and the result is as follows : We cannot see our way to alter the Customs practice, which requires that an opportunity for the examination of 'goods -shall be afforded before 'the entry is passed. That opportunity, of course, cannot be afforded so long as goods remain in the ship's hold.

PRINTING OF PAPERS PRESENTED

Sir LANGDON BONYTHON

- I desire to ask the Minister for Home Affairs, without notice, whether any of the papers which have been ordered by the House to be printed have been furnished to honorable members ?

Sir WILLIAM LYNE

- I am not aware whether the papers have been printed ; but, of course, the Clerk will see that all papers ordered to be printed are furnished at the earliest possible date.

Sir Langdon Bonython

- My question is whether or not the papers have yet been printed.

Sir WILLIAM LYNE

- I cannot tell the honorable member, because I do not know what returns have been ordered to be printed. I know there is some delay in connexion with the printing of papers, owing, I understand, to a congestion of work at the Printing office, where the printing for the State Parliament as well as that for the Federal Parliament has to be done. But I know the Government Printer has been urged to prevent any unnecessary delay, and there is no desire on the part of the Government that any delay should be caused. I will again communicate with the Government Printer, and endeavour to ascertain whether there is any delay ; and, if so, what is the reason.

EMPLOYMENT OF WOMEN IN THE POST-OFFICE

Mr PIESSE

asked the Minister representing the Postmaster-General, upon notice -

Whether, as stated in the press, he has determined upon an alteration of policy in regard to the employment of women in his department.

If so, whether that alteration will involve the employment of a less proportion of women than at present.

Whether he will state the reasons for any Such determination.

Sir PHILIP

FYSH :

The Postmaster-General has not determined upon any alteration of policy in regard to the employment of women in his department. 2 and 3. The reply to 1 includes answers to these.

PATENT LAWS

Mr RONALD

asked the Minister for

Trade and Customs, upon notice -

Whether, in view of the fact that he does not anticipate being able to introduce legislation in the matter of patents this session (vide Hansard, page 1954, in answer to Sir Langdon Bonython), he could not secure by arrangements with the State Governments that a patent registered in one State would be respected throughout the Commonwealth, and so avoid the delay and expense of registration in all the States.

Mr KINGSTON

- As the arrangement desired would necessitate an alteration of State laws, the course suggested appears to be hardly practicable.

CUSTOMS BILL

In Committee

(consideration resumed from 11th July,

vide

page 2462) :

Clause 121 (Ships' stores).

Mr KINGSTON

- A variety of points have been raised in connexion with this Part of the Bill relating to ships' stores which

the Government desire to consider further ; and, therefore, I propose to postpone Part 7, which includes also clauses 122 and 123.

Clauses 121 to 123 postponed.

Clauses 124 to 133 agreed to.

Clause 134-

Duty shall be charged on all essences, condensations, concentrations, or preparations of goods liable to duty according to the quantity of dutiable goods into which such essences, condensations, concentrations, or preparations can be converted.

Mr WATSON

- I would like to ask the Minister whether he has had in view the imposition of duties upon vessels which, contain these dutiable articles, and whether he will provide for that in this Bill or in any Tariff Bill that may be introduced?

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Mr KINGSTON

- The matter mentioned is not forgotten, but it is one which is nearly always dealt with in the Tariff itself.

Clause agreed to.

Clause 135 -

Goods charged with duty by measurement shall, at the expense of the owner, be heaped, piled, sorted, framed, or otherwise placed in such manner as the collector may require to enable measurement, and account thereof to be taken ; and in all cases where the same are measured in bulk the measurement shall be taken to the full extent of the heap or pile.

Sir EDWARD BRADDON

- I should like to know whether it is likely that duties will be levied by measurement? The practice proposed under, this clause seems to be an undesirable one, that is, if duty is to be charged by measurement, in contradistinction to specific duties on quantities, or ad valorem duties.

Mr KINGSTON

- As to whether or not a duty of the character referred to is contemplated, that can only be revealed by time. This clause does not bind us to any policy one way or the other, but simply declares when duty is levied by measurement the mode in which the measurement shall be taken. It is not an unusual provision.

Clause agreed to.

Clauses 136 to 138 agreed to.

Clause 139-

The strength of spirits may be ascertained for the purposes of duty by means of a hydrometer approved by the comptroller.

Mr WATSON

- I do not know that it would be a good thing to lay down a hard and fast rule for testing the strength of spirits by a hydrometer.

Mr Kingston

- Clause 140 makes provision for cases where it cannot be done - where there is obscurity.

Mr. WATSON.- I had not noticed that.

Mr Kingston

- I thought that was the point which the honorable member had in mind.

Mr WATSON

- In England nearly all the tests are made now after distillation.

Clause agreed to.

Clauses 140 to 144 agreed to.

Clause 145 -

If after any agreement is made for the sale or delivery of goods duty paid any alteration takes place in the Tariff affecting such goods before they are delivered for home-consumption then in the absence of express written provision to the contrary the agreement shall be altered as follows : -

In the event of the Tariff being altered by a new or increased duty the seller after payment of the new or increased duty may add the difference caused by the alteration to the agreed price.

In the event of the Tariff being altered by the abolition or reduction of duty the purchaser may deduct the

difference caused by the alteration from the agreed price.

Mr McCAY

- I should like to draw the attention of the Minister to the phrase in this clause "any alteration takes place in the Tariff." As he is already aware, from the discussion that has taken place on another clause, the exact meaning of the words "Tariff alteration" is somewhat in doubt, but it seems to me that according to the Government view of clause 257 the use of these words would preclude the object of the clause being attained in the case of goods as to which an agreement is made before a Tariff alteration is proposed, and which are delivered for home consumption before the altered Tariff is actually agreed to. If the goods were delivered in the interval between the period of the proposition being submitted to Parliament and the adoption by Parliament of the Tariff, the use of the words mentioned would absolutely preclude the clause being taken advantage of. If an agreement for the sale or delivery of goods duty paid, were made prior to any proposal to alter the Tariff, and if then a proposal to alter the Tariff were made and the goods were delivered after that proposal had been submitted to Parliament, but prior to the adoption of the altered Tariff by Parliament; in other words if the goods were delivered in the interregnum - about which there has been so much discussion in connexion with the Tariff which is to come into force at an early date - I do not think that under this clause either seller or buyer would be able to make any alteration in price. As a matter of fact, however, the altered duty would be collected by some means or other, either under a resolution of the House under the old constitutional practice, or under clause 257 if it becomes law. I do not think that this clause provides for that particular case.

Mr Kingston

- The honorable and learned member would wish to make the clause read, " If any alteration takes place or is proposed in the Tariff." That would meet his point.

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Mr McCAY

- Bills come on so unexpectedly that I have not my notes upon this point with me. But I am content to leave the wording of the amendment to the Minister if he will take a note of it and promise to have it put into proper form.

Mr Kingston

- I will. Seeing that the honorable and learned member . has not his notes with him, I will not do so now, but I give him my assurance readily that I will look further into the matter.

Clause agreed to.

Clauses 146 to 158 agreed to.

Clause 159-

Drawbacks of import duty may be allowed on exportation in respect of such goods (other than spirits, wine, beer, tobacco, cigars, cigarettes; and opium) to such amount and in such a manner as may be prescribed.

Mr G B EDWARDS

- On this subject of drawbacks I should like to hear the views of the Minister on the question of the Western Australian Tariff. Section 95 of the Constitution Act provides that the State of Western Australia may during the first five years, after the imposition of uniform duties of customs, impose duties of customs on goods passing into that State, and not originally imported from beyond the limits of the Commonwealth, and that such duties shall be collected by the Commonwealth. Under the existing circumstances of the State laws manufacturers in Victoria, Tasmania, New South Wales, and the rest of the States are enabled to send their manufactures into Western Australia, and to recover drawbacks on duties paid upon the articles used in their manufactures. If, however, Western Australia levies duties on Inter-State" manufactures which- come from the States after having already been subject to the payment of duty there - take such things as sugar, jam, preserved fruit, and biscuits - the States will be placed in a very unfair position in competing with the old country or America. For instance, American fruits would be manufactured with practically duty-free sugar, and the English jams would be made in the same way, whereas if the Commonwealth Government puts a duty of £6 or £7 per ton on sugar, or levies an excise duty, we should have to enter Western Australian ports and compete with English and American goods at a corresponding disadvantage. Of course we cannot say what duty will be levied on English jams and confectionery ; but, at any rate, it seems to me that the manufacturers of the other States will be placed at

a manifest disadvantage if some drawback is not allowed to them during the five years for which Western Australia is to be allowed to collect duties on imports from the other States.

Mr Kingston

- Western Australia will not levy duties on all imports, but only on those not originally imported from beyond the limits of the Commonwealth.

Mr G B EDWARDS

- But it is quite clear that whatever duties the Tariff of Western Australia provides for now will continue to be levied on Inter-State products on a sliding scale, and there ought to be some provision made for continuing to the other States drawback on sugar duty paid.

Mr E SOLOMON

- There is no duty on sugar in Western Australia.

Mr G B EDWARDS

- No, but there is a duty on jam. We ought to have some system of tapering drawbacks to coincide with the system of tapering duties that will be charged on the Inter-State products, imported into Western Australia. I think the committee has a right to some expression of opinion from the Minister as to how the Government intend to deal with this question, which is a very serious one for the manufacturers in the other States.

Mr KINGSTON

- The matter is one which has not been overlooked, but my attention is now being directed to the preparation of a special clause to meet the case. Of course we do not know what Western Australia is going to do, but we know that she will have power to levy duties on Inter-State goods according to a certain graduated scale. Therefore, it may be that, in respect to these goods, if these rates are levied, Western Australia will in some respects stand in the same relation to the Commonwealth as a foreign country. I think the matter will be best dealt with by preparing a special clause, and I will frame one and put it on the file, or I will give the honorable member the opportunity of doing so himself. I shall be glad to afford him any assistance I can.

Mr G B EDWARDS

- Does the honorable gentleman mean that he will insert a clause in this Bill?

Mr KINGSTON

- Yes, certainly.

Sir EDWARD BRADDON

- Will the clause the Munster speaks about include some measure of justice to the Tasmanian manufacturers, such as I brought under his attention the other evening ?

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Mr KINGSTON

- I hope it will be a just clause all round, but I cannot promise at this particular moment that it" will deal precisely with the matter that the right honorable member refers to. It will, however, be placed on the file, so that honorable members . may have an opportunity of considering it, and if the clause does not meet the case in the way the honorable member desires, I will do all I can to assist him in framing a clause such' as he wishes, even though it may be our duty to resist it when it comes on for consideration.

Clause agreed to.

Clauses 160 to 165 agreed to.

Clause 166 -

The master of any coasting . ship shall not suffer any goods to be taken into or put out of his ship from or into any other ship at sea, except with the sanction of the collector, nor suffer his ship to deviate from her voyage unless forced to do so by unavoidable circumstances.

Sir MALCOLM McEACHARN

- I think that after the last word "circumstances" there should be added the words "or explanation to the satisfaction of the collector," or whoever the proper authority may be. There are often occasions on which a ship with cargo may pass a port because she may receive a telegram directing her- to call off a port for instructions, and she may then carry her cargo on to a place which was not intended when she left London.

Mr Thomson

- This clause refers to coasting ships.

Sir MALCOLM McEACHARN

- The same thing often happens to even the coasting vessels. A merchant may telegraph from Fremantle desiring that certain cargo, instead of being delivered at Melbourne, shall be carried on to Sydney. In such a case as that, probably the collector would not raise trouble, but at the same time it should be provided for in the clause. There are two distinct points dealt with in this clause - the first relating to the removal of goods from one ship to another at sea, while the second provision is that a ship shall not deviate from her- voyage unless forced to do so by unavoidable circumstances. I think the Minister might agree to the addition of the words I have suggested.

Mr KINGSTON

- I think the point can be met by inserting the words, "Or under circumstances explained to the satisfaction of the collector."

Amendment (by Sir Malcolm McEacharn) agreed to.

That after the word "circumstances," line 16, the following words be inserted: - "Or under circumstances explained to the satisfaction of the collector."

Sir EDWARD BRADDON

- I should like to ask the -Minister whether the discussion which he proposes to have upon the whole subject of penalties will include the matter of fixing a minimum penalty? I have a great objection to laying down arbitrarily that the penalty shall be £100 - neither more nor less - as it is in this clause. There may be mitigating circumstances, but still the penalty would have to be £100.

Mr KINGSTON

- The Bill provides for a minimum penalty.

Sir EDWARD BRADDON

- Not by this clause, which provides- that the penalty shall be £100, and no less.

Mr KINGSTON

- If the right honorable member will refer to clause 5 of the Bill he will see that the penalties provided for in this and similar clauses are maximum penalties. Then there is a provision in which the honorable member for North Sydney does not quite agree, for imposing a minimum penalty, which is one-twentieth of the maximum.

Sir Edward Braddon

- That is all right.

Clause, as amended, agreed to.

Clause 167 agreed to.

Clause 168 -

The master of every coasting ship shall at prescribed ports deliver to the collector in the prescribed form particulars of all cargo consisting of Australian produce or manufactures then on board his ship.

Sir MALCOLM McEACHARN

- I think it will be necessary to insert the words "or owner" after the words " or master " at the beginning of this clause. Clause 167 provides that -

The owner of any ship employed in the coastal trade may with the consent of the collector report ;

Whereas clause 168 provides only for the master doing so.

Mr Thomson

- How is the owner to get the information ?

Sir MALCOLM McEACHARN

- He gets it under clause- 167. The manifests are forwarded and it is as a rule the "master or owner" who supplies the information. I also desire to have added to the clause the words "within a reasonable time after leaving port."

Mr Kingston

- I do -not object to insert the words " or owner;"

Sir MALCOLM McEACHARN

- The Bill provides for regulations, and these may render it difficult, or utterly impossible for the owner to give the particulars.

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Mr Kingston

- I should not object to putting in the words "within the prescribed time," but to say "within a reasonable time " would make the clause very vague.

Amendment (by Sir Malcolm McEacharn) agreed to -

That after the -word master, line 1, the words " or owner " be inserted.

Mr KINGSTON

- I move-

That after the word "collector," line 2, the words " as prescribed " be inserted.

That will give the time that the honorable member for Melbourne asks for.

Amendment agreed to.

Amendment (by Mr. Kingston) agreed to-

That the words " in the prescribed form" be omitted.

Clause, as amended, agreed to.

Clause 169 agreed to.

Clause 170-

Any owner of goods may comply with the provisions of this Act and by agent lawfully authorized.

Mr McCAY

- I should like to ask the Minister for Trade and Customs whether he has considered the question of adopting the system, which works so satisfactorily in Victoria, of having . licensed Customs agents? The clause apparently contemplates any person being employed or appointed an agent. An agent is of no use in reference to Customs unless he knows the procedure, and it is desirable for the sake of those who employ them that these agents should be men who understand the business. A large importer employs his own clerks, who understand the business, because their employers are continually importing; but there is a large number of people who, in dealing with the Customs department, feel very much at sea. If they know they can go to a licensed agent who has some knowledge of his work, they can trust their affairs to him with confidence.

Mr. G.

B. EDWARDS (South Sydney).I think there -is some confusion in this clause between Customs-house agents and ordinary business agents. If 1 may allude to clause 172 at this stage, it will be observed that provision is there made for making the agent responsible as though he were the- principal. A Customs-house agent is in a very different position from that of an ordinary business agent. He knows only what his principal chooses to inform him of, and gets no other information ; but an "ordinary business agent would have to take much greater responsibilities than that. We' should therefore make some clear distinction between business agents and Customs-house agents.

A Customs-house agent receives through his principal the information upon which he acts, but a business agent takes all responsibility for the work.

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Mr HUME COOK

- I also desire to obtain some information with respect to clause . 170. The custom in Victoria and in South Australia has been to license certain persons as Customs agents. Apparently the clause contemplates the abolition of that provision and the authorization of any person to act as a Customs agent. The Victorian agents have waited upon me and requested me to put their case before the Minister for Customs. The right honorable and learned gentleman will recollect that I have spoken to him upon this subject on one or two occasions, but we have not had sufficient time to go -into details. Under the system in force in Victoria - I am not quite so familiar with the position in South Australia - certain persons have been authorized to act as Customs agents. They are required to enter into a fidelity bond of £500 each, and having entered into that bond they are permitted to carry on business. It has been found in: Victoria that these men are of great assistance in facilitating Customs-house work. They are expert men, with years of experience which helps them very materially in carrying out their duties. They have proved of assistance to the Customs-house authorities themselves. It was a Customs agent in Victoria, who upon one very celebrated occasion, showed the Commissioner of the day where a very serious leakage had taken place, with- the result that a large sum of money was recovered by the State. These agents are of opinion that their rights and privileges, if they have any, are being . token away from them by this clause,

The honorable member for South Australia, Mr. Glynn, has circulated an amendment which it appears to me might meet the difficulty. He proposes to add the following new clause-after clause 170 : -

All persons at the time of the commencement of this Act licensed as agents for the purposes of the Customs Act of any State may continue to enjoy and exercise within such State the rights powers and privileges conferred by their licences.

Reference- has been made by the honorable, member for South Sydney to clause 172, which makes agents personally liable for any penalties recoverable under the measure. Surely this provision is not contemplated with respect to Customs-house agents pure and simple. It may be intended with regard to those who act as Customs-house clerks or shipping clerks in the employ of large firms, and other business people. It could hardly be intended, however, that the provision should apply to a business agency, particularly when such agencies are licensed in the way I have suggested. In order to save time I would inquire whether the Commissioner of Customs has read a very trenchant article on this subject, which appeared in yesterday's issue of the Age, under the heading of " Trade and Finance." The Age devotes half a column to the subject, and the question is summed up by it in this way -

The question that must naturally suggest itself is what are the reasons for abandoning the ; present system, that has been proved to work well, in favour of letting any person, responsible or irresponsible, honest man or rogue, expert or ignoramus, come and try a hand on Customs agency work ? It has been said that the system of licensed agents is not adopted in England. But the answer is very clear, which is that with its virtually free ports their services are not required. It may be fairly suggested that this licence system may be made a source of revenue to the Customs department, and this should favorably suggest itself to the Minister. Impose a licence-fee on a scale graduated on the amount of business done at the port for which the licence is granted. If the sum of , £25 is made the maximum, with a minimum of say £5 per annum, a fair return will be obtained, whilst the regulations on which a licence will be granted will be so framed, as to secure the best results to the State and the public.

That in short sums up the whole position. I believe that these provisions have been inserted largely as the result of suggestions made in Sydney. New South Wales, however, has very few items, comparatively speaking, to be dealt with through the Customs as compared with Victoria and South Australia, and has not had the same necessity for employing skilled men in this direction. To dissect a list of goods, and to put it into proper form for entry, is no light work. I have some examples here, which I am prepared to lay before the Minister privately. It requires greater knowledge and experience than will be found in the case of any person casually appointed or authorized to do the work. I would suggest to the Minister that he might add the words which have been proposed by the honorable member for South Australia, and that he should make it quite clear that the persons to be made personally liable under clause 172 are the clerks of business firms, and not Customs-house agents as such.

Sir MALCOLM McEACHARN

- I would urge the Minister of Customs to accept the suggestion which has been thrown out in regard to this clause. I think it would be very unfair if those who are at present acting as Customs agents were not allowed to continue in that capacity.

Mr Kingston

- There is nothing in the Bill to prevent them from still carrying on the business.

Sir MALCOLM McEACHARN

- It would be very unwise to allow everybody and anybody to come in and deal with what will become an even more technical and troublesome work than it is at the present time. The fact that agents are required to give a substantial bond to the Government, will be an assurance to those having business to place in their hands that their work will be carried out properly and their goods delivered. If there were no guaranteed Customs agents any one might put himself forward, obtain possession of a man's luggage or goods, and make away with them. The effect of having an agent under a substantial bond to do the work is a guarantee, and it will satisfy persons that their business will be properly attended to.

Mr KINGSTON

- The provision in the Bill interferes with no rights whatever. It will not interfere with any agent.

Mr McCay

- But it makes the position of the agents valueless.

Mr KINGSTON

- Under this clause a man may employ any one he pleases for the purpose of doing customs work, and so long as the employer is satisfied why should the Government interfere ? What I understand is proposed is' that a provision shall be inserted declaring that no one but a licensed agent shall undertake customs work, and requiring from any person desirous of entering upon such business a security before he undertakes it. I think it is better that we should leave the matter as proposed by the Government. If the party interested is satisfied why should the department interfere ? As it has been remarked, this desired provision is conspicuous by its absence, so far as Great Britain is concerned.

Sir Malcolm McEacharn

- Because Great Britain is practically a free port !

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Mr KINGSTON

- It is to some extent, but I venture to think that we can allow people to manage their own affairs, and to decide whom they employ and whom they will not. If we do not do so we shall create a monopoly in favour of the people who choose to comply with the conditions which have been specified. It seems to me that to interfere as regards a matter of this sort would be to unnecessarily embarrass the people interested. 'We can rely upon business men making a proper selection in determining whom they shall intrust with their work.

Mr HUME COOK

- But the Customs house deals largely with men who are not business men - travellers, and people of that kind.

Mr KINGSTON

- Kb doubt that is so to some extent.

Mr Wilks

- Small indentors

Mr KINGSTON

- It may be. We believe in the free employment of people who are competent to discharge the work and whom the owners are content to intrust with it.

Mr McCay

- But the public are entitled to some guarantee of competency.

Mr KINGSTON

- It is a matter, of course, for the committee to decide, but the Government have a preference for the clause as it stands.

Mr V L SOLOMON

- Speaking as who one has had a quarter of a century's business experience, and especially of Customhouse work, I think the Government are adopting a wrong course in not adhering to the custom which has been in vogue in South Australia and in Victoria for many years past, the custom of having licensed Customs agents under proper bonds. It is fi protection, not only to the importer, but a protection and a help to the Government also. There can be no greater annoyance and worry to the officers of the Customs department than that which is caused by amateurs attempting to pass general Customs entries. It is always very much better, both for the owner of the goods and for the Government, that the man who has the duty of passing entries should understand the various entries under which goods require to be passed, the rates of duty collectable, and the general routine of the Customs department. It would be of benefit to the Government and to the owner, especially, iri respect of a drastic Bill such as this, and of the probable equally drastic regulations that will be made under the Bill, because in many cases, owing to innocent errors of agents, who are not educated in Customs work, owners of goods may be involved in litigation and trouble with the Customs department. The system of having licensed Customs agents has been in vogue in South Australia for many years past, and I believe I am right in saying that it has also been the custom in Victoria, and I have no doubt that, for the merchants, the agents, and the Government department, it would be very much better that that system should be adhered to. I shall therefore have very much pleasure in supporting any amendments proposed in the direction suggested by my honorable friends on the other side of the House.

Mr. McCAY

(Corinella).- I move-

That the following words be added to the clause : - " Being either a person exclusively in the employment of the owner or being duly licensed in manner prescribed."

The clause will then read -

Any owner of goods may comply with the provisions of this Act by an agent lawfully authorized being either a person exclusively in the employment of the owner or being duly licensed in manner prescribed. If the amendment is accepted, it is possible that the verbiage of the clause may require some alteration, but that can be done afterwards, and the amendment I suggest expresses the idea which has been submitted to the committee.

Mr KINGSTON

- A little verbal alteration may be required in the earlier part of the clause,' where a couple of words have been transposed. There seems to be a disposition on the part of the committee to have an amendment of this description made. There is a good deal to be said as regards the practice of the States, and as the practice of the States seems to me in a good many cases to be in effect what is proposed by the amendment, the Government are not disposed to divide the committee against the amendment.

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Mr THOMSON

- I admit there is a good deal to be said on both sides of this Customs agent question, but the absence of the provision for licensed agents does not prevent the establishment of Customs agents who are not licensed, but who become recognised in the trade as persons who can be looked to for the proper passing of the necessary entries through the Customhouse. I am inclined to agree with those who think that as we are likely to have a widening of our duties, as compared with those existing in some of the States and in Great Britain, it may be desirable to have licensed agents, so that security is given to the Customs department, which they would not otherwise possess, for the proper fulfilment of the law as laid down in this Bill and in the regulations which may be passed under it. But I think the proposition to add the words submitted by the honorable member for Corinella may go further than he possibly intends, because under the clause, as he proposes to amend, it, an agent may be a firm, and, as defined in the interpretation clause, the word " owner " includes all sorts of persons.

Mr Kingston

- And very properly.

Mr THOMSON

- There is no reason why a consignee firm, which has its own Customs-house clerk, should not pass entries.

Mr McCay

- The amendment allows for that, because the clerk would be " exclusively in the employment of the owner " within the meaning of the interpretation clause.

Mr Kingston

- It might be better to use the words " in the service of."

Mr THOMSON

- I think there is some confusion of terms here, and I suggest that if the Minister takes the proposed amendment into consideration he will also take the wording of the clause into consideration. There is, to my mind, some confusion between " owners and agents " ; and clause 170, as proposed to be amended, would evidently mean that a consignee of goods could not pass entries for the goods, but that the owner, in the ordinary sense, must employ a Customs agent. If you take it with the interpretation clause, all agents are owners, including the Customs agent.

Mr McCay

- I do not think that "agent" there has so wide a meaning as the honorable member ascribes to it.

Mr THOMSON

- The interpretation clause describes "owner" as including all agents, and consequently a Customs-house agent must, for the time being, become an owner. The owners of goods might not be in Australia, but in other ports outside the Commonwealth. If then, the Minister accepts the amendment, he should consider the wording of the- clause.

Mr McCay

- I have said that I am satisfied to, have the wording altered.

Mr KINGSTON

- There is undoubtedly something in the criticism of the honorable member for North Sydney, and I shall look more closely to the wording, if it appears to be necessary.

Mr WILKS

- I have listened carefully to the arguments presented in connexion with the clause. The Minister himself said that, so far as the owners are concerned, if they were satisfied there would not be much danger to be expected. The only argument used in support of the amendment is that it is in keeping with the practice adopted in South Australia and in Victoria.. There is no proof that there will be any guarantee for the revenue of the country by the establishment of licensed Customs agents. The honorable member for Bourke, in suggesting an amendment, said that the clause was probably due to the practice in Sydney. If this idea has been suggested from Sydney that does not make it bad. Then he argued that because Great Britain has a lesser Tariff than has Victoria probably that is the reason why they have not licensed agents. But there was a time in Sydney, when- for about two years we had a Tariff nearly as strong as the Victorian Tariff, and there were no complaints from the Treasury in regard to the invasion of the law, or difficulties in regard to people passing entries for goods. I think it is much wiser to provide for freedom of action. It is said that a servant can be used by the indenter. That practically gives away the difficulty arising as to a Customhouse agent, but suppose that a small indenter himself wished to do the work he could. I am afraid that the only reason why Customs-house agents have been used, has been simply because, by being practically on right lines, they have the run of the Customs-house.- It has been known for some time past that Customs-house agents present facilities to various business people, and that through their relations with Customhouse officials they manage to pass entries for goods more speedily than other persons can do. Unless some reason be given to me showing that the provision now suggested will be a safeguard for the revenue, or that there is some necessity for it, I shall vote for the clause as it stands.

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Mr CONROY

-I wish to draw the attention of the Minister for Trade and Customs to the interpretation clause. If he will look at it he will see that clause 170 reads as follows :-

Any person holding himself out to be an agent of goods may comply with the provisions of this Act by agent lawfully authorized.

That, of course, would be quite wide enough for the exercise of all the powers required, and would allow everything to be done in a proper fashion. I think the addition of the words may rather complicate matters and create difficulty, while if the clause stands, it is plain and straightforward, because it is taken in conjunction with the interpretation clause. I see now that it is quite wide enough as it stands, therefore I ask the Minister to consider whether he will accept the amendment?

Mr Kingston

- I think I shall take it as prepared.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 171 agreed to.

Clause 172-

When any person is expressly or impliedly authorized by the owner to act as his agent in relation to any goods for all or any purposes of any Customs Act or represents or passes himself or acts or assumes to act as such agent such person shall for such purpose be also deemed to be the owner of such goods and shall be personally liable for any penalties recoverable under this Act in the same manner and to the same extent as his principal. But nothing herein contained shall be taken to relieve any principal from liability.

Mr G B EDWARDS

- I desire after the word "person" to insert the words " other than a duly licensed agent."

Mr.V. L. Solomon. - Custom-house agent.

Mr G B EDWARDS

- I do not think we have the word "Customs" in the previous amendment.

Sir MALCOLM McEACHARN

- If we want any words inserted there, we had better insert the words used in clause 170, because this clause will have to be taken in conjunction with that clause.

Mr Kingston

- It is not necessary.

Sir MALCOLM McEACHARN

- We have added certain words to clause 170, and we should employ the same words here.

Mr. G.

B. EDWARDS (South Sydney). I took those words to be "owner or being duly licensed in manner prescribed." All I want to do is to protect the ordinary Customhouse agent from being held liable, in the same way as we hold liable an agent who may collude with the owner. A Customhouse agent has no means of ascertaining the facts, except from the person employing him, and he ought to be protected against probable fraud on the part of a man who makes use of him. Taking the words of the previous amendment, I move -

That after the word "person," line 1, the words "other than a person duly licensed as an agent in manner prescribed," be inserted.

Mr HUME COOK

- Perhaps the Minister will explain exactly what is intended by the clause. As I understand it, he means to make those persons who are, under the terms of clause 170, exclusively in the employ of owners, personally liable ; but as it reads, it seems to me that it may also have application to those who act as Custom-house agents. What we want, therefore, is clearness, as between the person exclusively employed, who ought to be liable as being the direct representative of the owner, and a Custom-house agent, who ought to be liable under the bond he will have to give, which is another kind of liability. Perhaps, if the Minister will explain the situation, or suggest words which would make it quite dear, the whole matter would be righted.

Sir MALCOLM

McEACHARN (Melbourne). - I would like the Minister to explain the clause further, because it appears to me to mean that a man may represent himself as the agent, who may not actually be the agent, and commit a fraud, while the person concerned, not knowing, may become responsible for the penalty.

Mr KINGSTON

- It is the very reverse. Clause 172 as it stands provides that when any person represents himself as an agent, he is to be deemed to be the owner of the goods, and liable for the penalties recoverable under the Act to the same extent as his principal ; not to give him any protection or to throw upon him any obligation which does not properly attach to the owner himself, but to let him know that he cannot so act without exposing himself to the consequences.

Mr McCay

- Would that apply also to the Custom-house agent ?

Mr KINGSTON

- The question of the Custom-house agent is just introduced, and I want to consider the point, which I understand to be that the agent shall be free-

Mr McCay

- No ; liable under his bond.

Mr KINGSTON

- That is one way of putting it. The point I understand to be that the agent shall be free from the liabilities which ordinarily attach to an agent.

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Mr McCay

- I think that is the effect of the amendment.

Mr KINGSTON

- I do not like the amendment.

Mr V L SOLOMON

- He will be subject to the ordinary liabilities of a Custom house agent under his bond, to be provided by the regulations.

Mr KINGSTON

- So he may ; but still at the same time I think it would hardly do to allow the agent to be acting under such circumstances, for he could turn round and say, " I did not know this," or " I did not know that, and I am not liable."

Mr V L SOLOMON

- The Minister would still have behind him the owner and the goods.

Mr KINGSTON

- Yes ; but I am inclined to think that what a man can do by himself, he does by an agent, and if the agent chooses to act, the agent should take the responsibility. I hardly like releasing the agent from the responsibility in the manner proposed.

Mr G B EDWARDS

- We should not get anybody to act.

Mr KINGSTON

- There is no pleasing honorable members in respect to the proposals as to an agent. First they insist that no one else shall act; they declare that they shall be licensed agents, and when we have provided that, they say " You shall not get agents to act," and where are we?

Mr G B EDWARDS

- Not if we make him take all the responsibility.

Mr KINGSTON

- He ought to take all the responsibility.

Mr V L SOLOMON

- - He does not now.

Mr KINGSTON

- It seems to me that he ought.

Mr Conroy

-Do any of the State Acts contain the same power?

Mr KINGSTON

- I shall see.

Mr McCAY

- As I understand the amendment, it has the effect of declaring that a licensed Customs agent shall not be responsible for any infringement of the law committed by himself.

Mr G B EDWARDS

- No.

Mr McCAY

- I do not understand what else the amendment can mean. Clause 172, in effect, says that any person who deals with goods at the Customs as an agent shall not be allowed to shelter- himself behind the statement, " I am only an agent ; I am not the owner." If we expressly extend the protection afforded by such a statement to the Customs agent, it "seems to me we shall give the agent a loop-hole for escaping in all sorts of ways. Looking through the Bill hurriedly, I do not find any, or many, clauses which create penalties in respect of matters the agent might not very well know the truth or falsity of. If the honorable member for South Sydney can point out to me clauses which create penalties for offences which the agent might be ignorant of committing, the point he has raised might be considered in connexion with those clauses. But the vast majority of the provisions of the Bill to which any penalty is attached are provisions dealing with matters of which the agent especially has knowledge. In moving the amendment recently, which created, or rather extended, the system of licensed Customs agents, I certainly did not contemplate that in addition to giving licenses, we should also give license to agents to do what they choose without being subject to penalty. I know the honorable member for South Sydney does not desire the latter, but I am afraid that, so far as I understand, the amendment will have that effect. It seems to me that the effect of the clause as amended would be to say that every agent, except a licensed agent, shall be responsible for breaches of the law as if he were the owner of the goods, but that licensed agents shall not be responsible for breaches of the law, because they are not the owners of the goods.

Mr Kingston

- The licensed agents ought to know better than do others.

Mr McCAY

- Yes; agents ought to know better, and the people who know best ought to be punished most. I ask the honorable member for South Sydney to reconsider his amendment, which seems to me to go a great deal further than can be fairly contemplated,

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Mr ISAACS

- I agree with what the honorable and learned member for Corinella has just said. I am sure it is not the intention of the honorable member for South Sydney to allow an agent who has a licence, or anybody else, to have freedom from the obligation to strictly comply with the Customs law. But I would draw the attention of the Minister for Trade and Customs to the framing of this clause, and point out to him what I think is a loophole by which an agent, whether licensed or not, might find a means of escape. The first part of the clause reads -

When any person is expressly or impliedly authorized by the owner to act as his agent in relation to any goods for all or any purposes of the Customs Act . . .

That is a case where a person is, in fact, the agent, and has, in fact, a principal. Then the clause goes on - or represents himself or acts or assumes to act as such agent . . .

That is a case where the agent has no principal, but pretends that he has. The consequence is - such person shall for such purpose be also deemed, to be the owner of such goods, and shall be personally liable for any penalties recoverable under this Act in the same manner and to the same extent as his principal.

Now the worst cases would be those in which the agent has no principal

Mr Kingston

- We might say " alleged principal."

Mr ISAACS

- The agent might not allege any person as principal; but we desire to make the agent liable to the same extent as the principal, as if he were the principal.

Mr Kingston

- Yes.

Mr ISAACS

- Then words are wanted to cover both ?

Mr Kingston

- Yes, certainly.

Mr. G.

B. EDWARDS (South Sydney). - In defence of my amendment I may put a case to the committee. A man could go to a Customs agent and say - " Pass entries for me for 30 cases of flour." That so-called flour may turn out to be tobacco, but the agent, not knowing

anything of that, may pass the entry, and when the cases are stopped and found to contain tobacco, the innocent agent may be made to suffer for the fraud of his employer. It may be that being a mere layman I cannot construct my amendment in the way I would wish, but it is quite clear what I want to get at, and I should be glad of any assistance. Customs agents, as the clause now stands, will be made responsible for a great deal more than they are undertaking, and they may be the victims of fraud. Having regard to the latter part of the clause, which provides that nothing therein contained shall be taken to relieve any principal from liability, I think the revenue would be amply protected if my amendment were passed.

Mr V L SOLOMON

- I am sure that the Minister for Trade and Customs cannot have looked closely into the existing systems under which Customs agents work in most of the States at the present time. The clause would make the Customs agent liable not only for any neglect of duty in regard to the manner of passing entries on his own part, but also absolutely personally liable for fraudulent invoices, for under valuations, and for a host of other offences of which he has no possible means of possessing proper knowledge.

Mr Page

- Somebody has to be liable.

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Mr V L SOLOMON

- Of course, and the owner of the goods should be liable. The Customs authorities always have the owner of the goods at hand, and the goods themselves in the Customs' possession are the very best guarantee of liability. Is that not the system in Victoria and in South Australia to-day? The Customs agent is liable for any breach of any Customs Act. He is liable for wilful misrepresentation ; but this clause as it stands would make him liable, not only for any offence that may be laid down and will be laid down under the regulations, which will have to be framed for the guidance of Customs authorities, but also liable for fraud on the part of the principal. For bogus invoices, invoices which do not represent the full contents of cases, invoices which represent improper and under valuations and a host of other offences, which might and which do come fairly under previous clauses of the Bill, the Customs agent, who merely receives the half-crown, or whatever is the usual charge for the entry will be held responsible exactly in the same way as a principal. That, I think, is absurd. We undoubtedly want Customs agents, not only for the assistance of owners and principals, but also for the assistance of the Government and the Customs department, in order that the work may be done properly. The experience of every business man in the House will indorse the statement that properly licensed and experienced Customs agents are a benefit to the whole business community ; and we do not want to prevent the employment of such agents, who pay reasonable licence-fees and give bonds for good behaviour to the extent of some hundreds of pounds. The bonds amount, I think, to £500 in South Australia, but I do not know what they amount to in Victoria. We do not want men like that to be debarred by any clause so stringent as this, from carrying on business which they may have been conducting for the last quarter or half a century. I would suggest that as the question of licensed Customs agents is a new one, with regard to this Bill at any rate, having only been introduced this afternoon by the amendment of the honorable and learned member for Corinella, the Minister for Trade and Customs might reasonably consent to postpone the consideration of this clause.

Sir Malcolm McEacharn

- And the following clauses.

Mr V L SOLOMON

- Yes, and also postpone the following clauses until he has had an opportunity of looking carefully into the provisions, and also of considering the rules and regulations under the Customs Acts of the other States of Victoria and South Australia especially - in order to ascertain the terms under which Customs agents act at the present time.

Mr KINGSTON

- I would rather not do that.

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Mr THOMSON

- I quite agree with the honorable member for South Australia, Mr. V. L. Solomon, that, as this is a new matter which will need, perhaps, several clauses to deal with it in all its aspects, the Minister might postpone it and consider other legislation. Some remarks have been made to the effect that an excessive amount of tenderness is being shown to the Customs agents, seeing that other agents who may be equally innocent with them, are made liable to the full penalties of this Bill. For instance, a carrying agent passes his entries, and neither he nor the Customs-house agent can be acquainted with the contents of the cases for which he is passing those entries. He does not know - if ad valorem, duties are being levied - that the values given are legitimate values. He simply passes the entry on the faith of his instructions, and he is equally innocent with the Customs agent if there is error or an attempt to defraud. The clerk to the firm is also made liable under this Act, although he may be absolutely innocent of any attempt to defraud. It has been said that the owners are the security behind the agent, but I would point out that the owners are very often beyond our jurisdiction. Then the goods are security in addition. But the goods very often are not worth anything like the amount of the duty imposed. For instance, when it is attempted to smuggle goods, the value of those goods is often very small in comparison with the amount of duty that would be levied. Where is the security there? - I have not agreed with some of the extremely drastic provisions of this Bill, but I do agree with the necessity for holding responsible somebody who is "get-at-able." I do believe in holding the agent who passes an entry responsible for frauds which may be attempted on the Customs-house authorities. But if we let the Customs-house agent escape, because he cannot know - and it is a fact that he cannot know - then we must let the other people, such as forwarding agents, carriers, clerks in the employ of firms, business firms who act as delivery agents to pass goods

from another firm in another country, who cannot know anything about the goods, be fully freed from responsibility. The principle of Customs provisions is . this - that any agent acting takes care to see that the people he is acting for are such as are not likely to commit fraud, or to insure that he has sufficient security from them to pay any penalty to which he may become liable.

Mr. HUME

COOK (Bourke).- By the amendment which has just been carried, we have created two kinds of agents. One class includes those who act, and who are, in point of fact,, clerks, and the other class comprises those who are not clerks, but who act for all and sundry who have to do Customs-house work. The latter are to be licensed. I have just taken up the Victorian Customs Act, and I find that licensed agents have to enter into a fidelity bond of £500 for themselves and their clerks acting for them. The penalty is that these licences may by order be cancelled or revoked, and their holders' businesses stopped for any fraud or misconduct. There is no such provision in this Bill. -Whilst I am not opposed to some kind of penalty being imposed in the case of a certain class of Customs agents, it does seem, in view of the fact that we have attempted to do two things, that the Minister ought to consider whether he will extend the same kind of penalties to the licensed man as he proposes to extend to those who are not licensed, but who act exclusively for their principals.- I rose chiefly to support the request which has been made, that in view of the new provision the Minister might reconsider the whole matter. Whilst I think that licensed agents ought to be subject to some kind of penalty, it ought not to be the same penalty as is meted out in the case of owners or their clerks. I suggest that the Minister should consider the section of the Victorian Customs Act, and also look up the South

Australian Customs provisions, -and meet the views of the committee by suggesting a clause to cover the whole case.

Sir MALCOLM

McEACHARN (Melbourne). - I would urge the Minister to accept that suggestion, and to deal with this matter at a later stage. I still feel' that I am right in my reading of this clause, notwithstanding the Minister's explanation as to its intentions. It reads -

When any person is expressly or impliedly authorized by the owner to act as his agent in relation to any goods for all or any purposes of any Customs Act, or represents or passes himself, or acts, or assumes to act, as such agent, such person shall for such purpose be also deemed to be- the owner of such goods, and shall be personally liable for any penalties recoverable under this Act in the same manner and to the same extent as his principal.

The provision clearly contemplates that the principal shall be liable. As I say, the party who passes himself off as the agent might not actually be the agent, and this clause certainly contemplates that the principal shall be made liable for his acts.

Mr KINGSTON

- What has fallen from the honorable member for Melbourne would be met by the suggestion of the honorable and learned member for Indi. Then, of course, no liability will attach to the principal whom an agent wrongly represents.

Mr Reid

- Then the wrong man may be punished. The innocent agent, who does not know, may be punished instead of the owner.

Mr Piesse

- How could the principal be held -responsible for a man who was not his agent?

Mr KINGSTON

- But he would not be. There was some little fear on the part of some honorable members that he would, but we propose to make the matter clearer in the way suggested. I thoroughly agree with what has fallen from the honorable member for North' Sydney. The position is this : We were asked to do two things. One was that we would create a class of licensed agents. Well and good, we have done that. But then we are asked to go further, and to declare that those agents shall not be liable for inaccuracies.

Mr V L SOLOMON

- For matters beyond their knowledge.

Mr KINGSTON

- It would just amount to this, then : that instead of having men transacting business with the Customs, as

it has been transacted from all time, subject to the condition that in case of error - in point of fact one is punished for error for the security of the revenue and for the prevention of error in the future - we should have it set up as a plea - "I did not know - the knowledge was not within my power." Agents would be employed all over the place and our whole security would be gone, because if their want of knowledge were accepted as an excuse, they would be in a position to cut at the whole root, bottom, and foundation of the Customs Act.

Mr V L SOLOMON

- The principal would still be liable. Would the Minister make the agent responsible for the contents of his invoice?

Mr KINGSTON

- I would make the agent responsible for the faithful transaction of the Customs business which he undertakes, just as ignorance should not be accepted as an excuse on behalf of the principal.

Mr V L SOLOMON

-Would the Minister make the agent responsible for the invoice being the true value in the case of ad valorem duties.?

Mr KINGSTON

- If he declared to it - yes. He has to declare to it, and why not ? If it be not the true value, where are we? What would be the good of the declaration ? The declaration is one of the most important things in the transaction. It is the basis of the whole estimate of the duty. Is it to be permitted that because a man is a licensed Customs agent, and says - "I did not know," when he ought to have known-

Mr.V. L. Solomon.- How can he know?

Mr KINGSTON

- He can see that his principal gives him 'all possible information on the subject. He can get the invoice, and, if necessary, take other precautions. If you are going to lay down the principle that a false declaration - for that is what it is - as to the value of goods is to be excused, and the Customs robbed, or become liable to be robbed, simply on the statement that the agent did not know, or the owner did not know, I say that the whole thing goes by 'the board, and we shall lose every security we should have and such as we have possessed for years.

Mr Isaacs

- If a man does not know he ought not to say that he does know.

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Mr KINGSTON

- The agent puts his hand to a sworn statement, in which the crux is the question of the worth of the goods, and if he says that the goods are worth so much, are we to be told, when an error is made, that he did not know. Let agents deal only with those who are respectable men.

Mr Reid

- It is a difficult matter to decide who is respectable sometimes.

Mr KINGSTON

- If a man is going to do cheap work and to encourage cheap work, he must take the risk, and if he does dishonest work he ought to be punished for it, and the Government cannot consent to any provision that licensed agents shall be free from the penalties provided for, simply because they are agents and have not made themselves acquainted with the facts. I trust that honorable members, seeing that we have got so far with the clause and that we propose to amend it to meet the suggestion of the honorable member for Melbourne, will reject the proposal of the honorable member for South Sydney, and let the clause pass.

Mr PIESE

- It seems to me that it will be necessary to go a good deal farther than the Minister has so far expressed his readiness to go, and that, as an honorable member has suggested, we should provide that agents shall give bonds or other necessary security for the proper performance of their duty. I think the Minister would hardly be able to provide for this merely by prescription under regulation, and as there must be a very stringent provision for voiding the bonds in certain events, I submit that it is necessary to introduce some provision in the Bill with regard to these bonds. I would like to point out to those honorable members who are desiring to relieve Customs agents of liability to penalty that they are not at all

concerned about the innocent clerks who may make declarations for owners who have an intent to defraud the Customs.

Mr Reid

- Does the honorable member approve of exempting them from penalty?

Mr PIESSE

- No. No doubt there will be certain hardships under any hard and fast provisions that we may make, but in our efforts to relieve possible hardships we may weaken the security that is necessary for the protection of the revenue. Those who are engaged in the business must be ready to undertake all the risks attached to it, and although I sympathize, to some extent, with the amendment of the honorable member for South Sydney, I regard it as one that cannot very well be entertained.

Mr. V.

L. SOLOMON (South Australia). - I would like to ask the Minister whether, in considering the question of the liability of agents, he has looked into the position of Customs agents at the present time in Victoria and South Australia ; whether he has studied the regulations under which Customs agents work in those States, and whether he can tell us if Customs agents are liable, as it was suggested by me just now they would be under this particular clause, for making false invoices, for under-valuations, and for incorrect descriptions, in the same way that the principals or owners of the goods would be liable.

Mr Kingston

- I would not say that in so many words.

Mr. G.

B. EDWARDS (South Sydney). - I shall feel justified in pressing this amendment, unless the Minister will consent, as suggested, to hold it over for further consideration, so that he may consult his officials, and bring it forward again in some more acceptable form. I hold that these agents might be made quite innocent perpetrators of fraud, and they should not be held responsible with regard to declarations of values. The difficulty that has been suggested by the Minister, could easily be got over, because it could be insisted that the declaration as to value should come from the owner or his business agent. The Minister has not answered the case that I put of a man passing an entry for say 30cases of flour which afterwards turned out to contain tobacco. It would be impossible for an agent in such circumstances to discover the actual facts, and he ought not to be held responsible for the incorrect description of the goods. The owner of the goods ought to be called upon to declare the value, either personally or through his business agent, and the matter should not rest with the Customs agent at all. As it is not fair or just that the agents should be held responsible for all the frauds that might be perpetrated through them, and considering that in cases of fraud the department has the owners or principals to fall back upon, I will press my amendment. These agents cannot be in collusion with the principals.

Mr Kingston

-Can they not?

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Mr G B EDWARDS

- No. They would be licensed by the Minister, who would make them enter into a bond for the proper performance of their duties, and seeing that the Minister would have the selection of the men, and that the Customs would be protected to the extent of the bonds that the agents would have to enter into, I do not think it is right that the agents should be held responsible for the declared value or the description of any goods.

Mr KNOX

- I earnestly hope that the Minister will comply with the request made by several honorable members, and hold the clause over for further consideration. It is really a very- important matter which will affect a large number of people in various parts of the States and involve a large sum of money, and, as the Minister has already admitted, it is one really vital to the collection of the duties. I hope he will give the matter further consideration, and that the representations made will show the Minister clearly that, while there is a strong feeling on the part of some honorable members as to the undesirability of pressing the obligations too heavily on the agents, it is recognised that the department is entitled to look to the agents to take some share of the responsibility. A middle course will have to be taken, and I am strongly of the opinion - -which I believe to be shared by several other honorable members - that the clause should be

postponed, so that the obligations and responsibilities of agents may receive consideration.

Mr. THOMSON

(North Sydney). - In view of the determination of the honorable member for South Sydney to press his amendment, I would like to add a few words to what I have already said. I would point out that all classes of agents dealt with in this clause might be the innocent perpetrators of fraud or error - all of them - but the only proposal so far is to relieve those who happen to be licensed Customs agents. Why should this protection be given to one set of men and not to others

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I have- already directed the attention of the Minister to one matter, and that is that while I quite recognise the need of protecting the Customs by imposing penalties even where there has been innocent error, I do object that, with these penalties, there shall be any imputation of fraud, or any description of the offence as a crime, when no crime has been proved or any evidence of intent to defraud produced. In another part of the Bill where smuggling is dealt with, I pointed out that, whilst there should be a liability to penalty, there should be no charge of crime or any description of crime unless such crime could be clearly proved. The penalty may be imposed, but-what is often worse to an honest firm - the suspicion that they have been committing crime should not be imputed to them. I agree that there should be opportunities of imposing penalties, or else carelessness would become so frequent that the Customhouse would have great difficulty in dealing with it.

Mr V L SOLOMON

- The Minister for Trade and Customs in reply to my last observations was not clear as to whether he had looked into the existing system, which has been in force for the last 25 or 30 years in Victoria and South Australia.

Mr Kingston

- I have not looked into the regulations.

Mr V L SOLOMON

- Has the right honorable gentleman looked into the matter as to licensed agents ?

Mr Kingston

- Yes.

Mr.V.L. SOLOMON.- If the right honorable gentleman has looked into the systems with regard to licensed agents that have prevailed in Victoria and South Australia, what is the reason for the Government departing from a system about which I never heard any complaints made - although I have been in business in South Australia for a great number of years - either from the Customs houses or from mercantile firms 1

Mr KINGSTON

- I do not think I have received any suggestions for introducing the system referred to, except as regards a clause protecting the rights of agents, of which the honorable member for South Australia, Mr. Glynn, has given notice- I am speaking a little bit without book and without reference to the papers in my possession, but I believe I am correct in saying that I have not received either from the officers of the department or the general public suggestion's that the system of licensed agents should be introduced. Of course the Government are desirous of getting on with the Bill, but I do not want to press it unduly ; and we ought to know at the earliest possible moment whether there is an intention to depart from the practice which requires Customs house entries to be passed under such circumstances that whoever passes them shall be liable to consequences if he does not pass them correctly.

Mr V L SOLOMON

- Are not the clauses in this Bill framed in accordance with the Acts of the States ?

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Mr KINGSTON

- In some respects.

Mr Thomson

- The provisions of the bill are different in other respects ?

Mr KINGSTON

- They are. I can give the committee the references to other Acts -with regard to this clause. They are the New South Wales Act, section 70 ; Victoria, section 28 ; India, section 202; Great Britain, sections 65, 69,

and 72 ; Canada, sections 46, 110, 145, 158, and 159.

Mr V L SOLOMON

- The Canadian and Indian Acts are not so important from our point of view.

Mr KINGSTON

- I think we can learn a good deal from the examples of other countries. The case put by the honorable member for South Sydney I understand to be this - suppose an agent attempted to pass twenty cases of tobacco, calling them flour.

Mr Reid

- The honorable member did not put it in that way ; he did not give the case of an agent attempting to pass tobacco as flour.

Mr KINGSTON

- If the agent attempted to pass tobacco as flour, and got an invoice from the merchant, if he was not to be liable under the circumstances, the question arises - who should be liable? First, the department would bring its action, or attempt to impose penalties upon the agent. He would turn round and offer the defence that he was not responsible. He would escape. Next, it would be attempted to enforce the remedy against the merchant. The agent would not be a willing witness under the circumstances. The - department would not know from whom the consignment came or by whom it was obtained. If .excuses of that sort were allowed, it is impossible to over-estimate the danger to the Customs revenue.

Mr Watson

- And the danger to honest traders.

Mr KINGSTON

- Undoubtedly.

Mr Reid

- That is very important.

Mr KINGSTON

- It is important, to protect honest traders from reckless and fraudulent competition. I would ask the committee to assist the Government in passing the clause, and I will promise that afterwards, if it is desired that the clause should be reconsidered, the Government will not offer any factious opposition to that course.

Mr REID

- I am afraid that this is a rather strange way of doing business. A number of honorable members have very courteously asked the Minister to postpone this clause, and the right honorable gentleman, in reply to them, says - - "Let- us fight it out now, and after we have fought it out we may go back to it again." If the Minister has the slightest intention of yielding in any. event to the postponement, it will save time that that course be taken now ; because there are only a few clauses which will offer trouble, and the effect of postponing a debatable clause very often is. to get the work through more readily. Honorable members are justified in calling jointed attention to some of the provisions of this clause. Right through the Bill the provisions are, as honorable members who are familiar with the Customs Acts will admit, very severe. They multiply the possibilities of persons being punished by the Commonwealth Customs department in a fashion that is entirely unknown at the present time. All sorts of things are attempted against persons who have business with the Customs department ; there are all sorts of penalties and conditions in favour of the department, and enabling the Minister to punish as fraudulent actions which are not in all cases fraudulent at all. The Minister might see his way to reconsider some of these matters. In the case of the licensed Customs-house agents the Minister will see that the department has such persons completely under his control. The bread and butter of the agents depends largely on the confidence and favour of the department. That is evident. What is a penalty in connexion with a shipment of goods to a Customshouse agent as compared with the risk he would run of being deprived of his licence ? The amendment suggests that these persons should be licensed in the manner prescribed . That means that the Government may surround the licences with every precaution and may take pains to secure themselves in any conceivable way. They can take away the licence of any! agent who comes under the suspicion of the department in connexion with his business. Could there be a heavier penalty than that ? I put it earnestly that that is the greatest penalty that could be imposed upon any Customs-house agent - that if he is not acting in a manner that is straightforward with the department he is immediately exposed to the

forfeiture of his means of living.

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Mr HUME COOK

- That is the Victorian provision.

Mr REID

- I was not aware of that. A special provision is scarcely required,' however, because if the agent is licensed the power to license implies a power to revoke. It follows as an incident of the licensing that the Minister, if he found a Customhouse agent associated with any suspicious character or a party to any suspicious transaction, might immediately say, "We can have no confidence in this man we will take away his licence." That is the hold which he possesses over the licensed Custom-house agent. I think that every well-administered Customs department does its best to remain on good terms with these agents, because they are practically of great advantage to the department. They save the Customs officers a great deal of trouble. They are persons skilled in their work and the department finds them a positive convenience. In dealing with them they are dealing with skilled persons, instead of with a number of persons more or less ignorant, perhaps, and perhaps more or less tricky. A Customhouse agent cannot afford to be tricky, because the Minister has his thumb on him all the time. The more the Custom-house agent is encouraged the better it will be for the department. As a rule, these agents take a good deal of care of themselves. My anxiety goes a good deal further. I can see that clerks in offices may be liable to these penalties in simply carrying out their masters' business. They may come down to the Custom-house to pass an entry, and some unfortunate man may, perhaps, be designedly put forward by the principal. Sometimes there is a tendency to take the smaller instead of the larger man.

Mr Piesse

- Clause 173 touches that point.

Mr REID

- Only as to one matter.

Mr Conroy

- Only so far as declarations are concerned.

Mr REID

- The tendency of this clause seems to me to be, that after the Customs authorities have taken every conceivable precaution over these people, they want a second string, and they wish to keep their hold of the first string all the time. These things can be overdone, and I think there is an attempt to rather overdo the penalizing provisions of this clause. I certainly would vote for the amendment distinctly on the ground that by it these persons will be brought directly under the control of the Minister, and therefore we shall have some assurance that they will be kept in order.

Mr CONROY

- I think the committee should be all the more careful in passing a clause like this which makes agents responsible even when they act bona fide, when we remember the way in which the whole Bill has been drawn. It has been drawn as if every attempt at trade were a criminal offence, and in certain prescribed offences the penalties accruing are laid down in a manner rather worthy of Draconian legislation than legislation of to-day. Therefore we should not allow agents to be made liable, provided that they can show that they have acted in a bona fide manner. The Minister for Customs says that they are liable. I presume, therefore, that he is also liable for the acts of his Custom-house officers; and as his Custom-house officers last month destroyed the heads and livers of 150 head of cattle and some 1,200 or 1,300 sheep, which would have done very well for food, he must take the responsibility of that act.

Mr Reid

- What food was destroyed?

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Mr CONROY

- What I have referred to actually took place last month. The Minister has now expressly declared that he himself takes responsibility for all these things, and so a charge should be made against him of doing away with good, wholesome food. The people whose food was destroyed in that fashion ought to wait on the Minister. If the clause reads one way it must read the other. If the right honorable and learned gentleman had been living in the time of the French Revolution, and had sanctioned such a proceeding,

we know the fate that would have befallen him. No matter how innocently an agent may act, clause 242 provides that no reduction of the penalty can be made. That clause provides -
No minimum penalty imposed by this Act shall be liable to reduction under any power of mitigation which would but for this section be possessed by the court.

It will, therefore, be of no avail for an agent to say that he acted innocently. In these circumstances, and in view of the fact that many of these offences are almost of a criminal nature, I will support the amendment proposed by the member for South Sydney. I should like to see it go further and exempt every agent, provided that he acts in a bona fide manner.

Mr. G.

B. EDWARDS (South Sydney). I am sorry that I am as obstinate as the Minister for Customs, because the Minister has been asked to do what is a very reasonable and a very expedient thing. We have already amended clause 170 by introducing a provision for licensed Customs agents; and I am sure the Minister himself does not see what the effect of this sub-clause will be. To give him an opportunity of considering the point, and the question how far agents should be held responsible, as well as for considering any further alteration, we ask to have this clause postponed. I think the Minister by resisting this request has hardly treated the committee in a way that will help us to get through the Bill. If the right honorable and learned gentleman had agreed to the postponement half-an-hour ago, we should have been half-a-dozen clauses ahead. I am quite certain that if he allows the clause to be postponed and comes down to the committee with some qualification, which, while it might not give all that we ask, would meet the position I have taken up, we should get on much faster. I am of opinion that we ought to take the amendment a little further so as to include innocent agents outside licensed Customs-house agents, and at the same time, if the Minister thought fit, he might make some further amendment so as to protect his revenue from fraud, where these people were clearly participating in that fraud. I think it is the Minister who is really wasting the time of the committee, because if he were to postpone the clause and to come down subsequently and say that he could not meet us to more than a certain extent, we should be prepared to help him. I am certain he has not fully considered the clause.

Mr. BATCHELOR

(South Australia). I do not think we shall gain anything by postponing this clause, and I intend to support the Minister in asking that the matter should be decided at once. We have had a very fair debate on the clause. The question is not a particularly complicated one, and I do not think that it has been rendered more complicated by the amendment which was carried in clause 170. The effect of that clause is to give certain agents a licence and practically a monopoly, and to make their positions very much more profitable.

Mr G B EDWARDS

- And we get the advantage of their skill in return.

Mr BATCHELOR

- The amendment in clause 170 limits the choice of the public, and gives special advantages to the licensed person. Now it is proposed that, in addition to giving them a monopoly, we shall also exempt them from the provisions of this clause. I fail to see any reason for doing so. The question seems to me fairly simple. Shall we render a person who acts as agent liable in the same way as the owner? It seems to me that there is no reason at all for setting aside the liability of any persons, and especially of those persons who have special privileges. I intend to support the Minister.

Sir malcolm

mceacharn (Mei- bourne) - I am not disposed to support the amendment, but at the same time I would urge the Minister to recommit these clauses. I do so because I feel that the amendment made in clause 170 may have such an effect upon other clauses, that it is wise to give the matter full consideration before passing them. I think the Minister may undertake to recommit that clause, because I shall certainly move the recommitment of clause 172 upon another point, and also of clause 173.

Mr KINGSTON

- Very well; that will not be opposed. I am sorry if honorable members think I am too much attached to this Bill. We have not introduced its provisions without giving them some consideration, and we may therefore be expected to adhere to them until we are satisfied that they are wrong. So far as the amendment of the honorable member for South Sydney is concerned, we are not satisfied that there is any error. We would

ask the committee therefore to take a division, and give us the clause, as I am perfectly prepared, seeing that a new point has been raised by the introduction of licensed agents, to recommit these clauses.

Amendment negatived.

Amendment (by Mr. Kingston) agreed to-

That the word " his " line 9 be omitted with a view to insert in lieu thereof the words. "if he were."

Mr. CONROY

(Werriwa).- I understand that the Minister is prepared to recommit these clauses ?

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Mr Kingston

- Yes.

Clause, as amended, agreed to.

Clause 173 -

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

Mr ISAACS

- I do not know whether the Minister has intentionally departed from the provisions of the Victorian Act, but I would like to draw his attention to the difference, because it seems to me that very great and unmerited hardship may be cast upon owners of goods by this clause. The provision is absolute that- Any declaration authorized by this Act -

And that of course will include the regulations also - made by any employee or agent of any person shall be held to have been made with the knowledge and consent of such person.

It matters not whether he can prove absolute innocence in the matter, or whether he has given written directions which have been wilfully violated, the clause holds simply that because the declaration is made, it is made with the consent of the person. In the Victorian Act, which has never been found to be defective, we have section 83 under which it is provided-

Any declaration made under any law now or hereafter in force relating to the Customs by any shipping clerk or known employee of any importer or owner of goods or merchant shall be held to have been made with the knowledge and consent of such importer or owner of goods or merchant unless the contrary be proved.

And the note to that section in Dr. Wollaston's book, "The Victorian Customs and Marine Law," at page 39, is this -

The burden of proof is shifted upon the importer, &c. He would have to prove a negative - always a difficult task.

It seems to me that it is a very important thing, and a very strong thing to say that however clearly a man may be able to prove his innocence he is not to be heard. It should be quite sufficient to put the onus of proof upon the owner, and until he proves his innocence to assume him to be guilty. . That itself is a strong thing to do, but I think it is necessary to do it. I think it is certainly sufficient to do that without shutting the door upon him altogether. A man's character may be at stake, and he may have taken every proper precaution, but business cannot be carried on altogether personally; men must trust to agents, and for the mere wilfulness or negligence of an agent, a man may be held irretrievably to have made a false declaration when he is absolutely innocent. I trust the Minister will see the necessity for adding these words, which are to be found in the Victorian Customs Act. I believe they will be found to meet all that is required, and if in time they are not found to be effective, the law can be strengthened. I do not want formally to move the addition of the words, but I ask the Minister to accept the suggested amendment.

Mr KINGSTON

- The honorable and learned member will see what the result will be, if we are compelled to trace the connexion between the employer and the agent or clerk. The result will be that the employer can shield himself from all consequences.

Mr Isaacs

- No; it is the other way about. You assume he is guilty until he proves his innocence.

Mr KINGSTON

- But the honorable and learned member will see what sort of an inquiry we would be driven into by his proposal. Of course the onus would be cast upon the defendant of showing that he is innocent.

Mr Isaacs

- The Victorian law has always worked well.

Mr KINGSTON

-But, at the same time, the honorable and learned member will see there is still the question between the clerk and the master. What probability is there of establishing a direct authorization of the false document, or refuting the explanation which will be tendered by the clerk and master, for the purpose of discharging the master?

Mr Isaacs

- What is the law in other States ?

Mr KINGSTON

- I do not know what it is.

Mr Isaacs

- That is what we ought to know.

Mr KINGSTON

- I shall turn up the various sections for the honorable and learned member in due course. He has turned up one of them, and I have a variety of Acts here.

Mr V L SOLOMON

- It is a pity that a reference to them is not given in the marginal notes to the clauses.

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Mr KINGSTON

- They are extracted from different parts of various Acts, and I imagine that there is no one more familiar with customs practice in South Australia, than is the honorable member. If it is to be taken as an excuse that the connexion between master and employee is not further shewn than by the nature of their employment, it seems to me that in a very large number of cases indeed, although we throw on the master the onus of establishing this, there is a very great probability of the intention of the law being defeated ; and when a false declaration has been made of the master testifying that he did not authorize the clerk to make the statement referred to, and the clerk - looking at the risk he is exposed to if he gave evidence - declining to give evidence in opposition to the statement of the master. We have not declared that there shall be, and it is not the purport of the Act that there shall be necessarily any moral wrong attaching to an infraction of the law. Of course, where we hold the master liable under all circumstances that . could hardly be the case ; but if we are going to let the master go free when his declaration is made by the employee, because he declares that he did not know anything about it, we are simply accepting ignorance or want of proper supervision as an excuse for that which ought not to be excused. Look at the position in which we put the vigilant master and the careful master.

Sir Malcolm McEacharn

- Even the vigilant master will make mistakes at times.

Mr KINGSTON

- Of course he will.

Sir Malcolm McEacharn

- We ought to provide for that.

Mr KINGSTON

- We cannot provide further. The principle which has been contended for in various parts of the Chamber is that where a mistake is made the man has to suffer, and if mistakes are not to be punishable simply because they are mistakes, if the most perfect disclosure is not to be insisted upon, and punished where it is not given, we are sapping the foundations of the Customs system, and rendering possible a leakage in connexion with the Customs revenue which it is our duty to do our best to prevent.

Mr Higgins

- The Minister means that there is only a money penalty and that the clerk cannot pay the money.

Mr KINGSTON

- The honorable and learned member will notice as regards this particular clause that we provide for only a pecuniary penalty---

Shall be liable to the pecuniary punishment provided in the Customs Act : is if such declaration had been made by himself.

Mr Isaacs

- That is in addition.

Mr KINGSTON

- In addition to the punishment of the clerk ?

Mr Isaacs

- No ; it is held for all purposes that it is made with his knowledge and consent. How far that makes him criminally liable we do not know.

Mr KINGSTON

- No ; I think the text shows what the whole force and meaning are -

Any declaration authorized by this Act made by any employee or agent of any person shall be held to have been made with the knowledge and consent of such person.

Mr Isaacs

- That is one thing, but the clause continues -

And in any prosecution.

Mr KINGSTON

- Of course there are certain penalties for false declarations. This is a declaration and a limitation of the penalty that would otherwise attach. It says -

And in any prosecution in respect of any declaration made by any such employee or agent such person shall be liable to the pecuniary punishment provided by any Customs Act as if such declaration had been made by himself.

I do not think it is possible for us to be too careful in providing that we get what we are entitled to from the merchants - correct information ; and any system which lands us in the trouble, either in the first instance or afterwards, of an inquiry as to whether the clerk told the master or whether the master told the clerk, seems to be of a most mischievous description, and one against which it is our duty to struggle. We recognise that within the four corners of the Bill we are punishing two classes of cases. One is mistake, error, want of perfect information ; it may be more or less culpable, but not a crime, and certain pecuniary penalties are attached. Then, where fraud is committed heavier punishments are provided for, and it has to be specially clearly proved that that does not apply here. This is simply as regards the making of a declaration which is inaccurate. I ask honorable members to take the two positions. In the first place, the merchant, careful and vigilant, employs a clerk and instructs him fully ; the clerk goes down and makes a declaration and it is untrue.

Sir Malcolm McEacharn

- The importer may be in England.

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Mr KINGSTON

- Wait a moment. In that case the merchant is punishable as if he knew all about it. Take the other case.

The merchant, reckless and careless, may be in England, if the honorable member likes - and we cannot get him, well if he is there-

Sir Malcolm McEacharn

- The Minister would under these clauses.

Mr KINGSTON

- The Minister would have a job to enforce the clauses against the importer in that case. The merchant, careless and reckless, looks in no way after the business, is utterly reckless how it is conducted, knows nothing. The result is utter carelessness from which the revenue suffers. As regards this question of carelessness we generally find that it is not carelessness which gives us a larger revenue, but carelessness in a different direction.

Mr Reid

- Why does not the Minister allow the person who has to pay this penalty under these circumstances to recover it from the wicked man under whom he is acting ?

Mr KINGSTON

- From whom?

Mr Reid

- That is a little detail, perhaps, but why should he not ?

Mr.KINGSTON.- What would be the result if we adopted an amendment such as is here proposed ? The case is *aprima facie* one, but what can we naturally expect as regards an employee and a master ?

Mr Isaacs

- How is it that none of these things has happened in "Victoria during all these years ?

Mr KINGSTON

- I do not know what has happened in Victoria except during the last six months. Look at the position, and apply our common sense to the question. When it was a question of saddling the master with a liability, what clerk would risk his place by contradicting the statement which we might expect from the master, that he knew nothing about it? Once land ourselves in an inquiry of that sort, once make an excuse which is bound to be accepted, master and man, I venture to say, will think very similarly that it was the clerk's fault, and that the master had nothing to do with it, and the result will be that the master will be freed from liability, and the collector cannot get the money from the clerk. The result is that a coach and four may be driven through the Customs Act.

Mr Crouch

- Two of these mistakes carry imprisonment ?

Mr KINGSTON

- No, they do not. The clause reads - "shall be liable to the pecuniary punishment." As to imprisonment, it would not be a bad thing if, in some cases, offenders were liable. I mean to say that we might be suspicious in the first case, but the suspicion would pretty well change into certainty, I venture to think, when we found the offence repeated. It seems to me that the State cannot enter into an inquiry between the master and his employe.

Sir Malcolm McEacharn

- It is so in Victoria ; and the law has worked very well.

Mr KINGSTON

- Once we attempt anything, of that sort we are not likely to get at the facts, or, from the very nature of the circumstances, colour will be given to the facts, so as to operate to the injury of the revenue, and exempt from punishment those who ought to be punished, not for crime, but for carelessness and not doing what they ought to do, namely, give complete information to the State. The State does not care from whom the information is obtained - from master or clerk, or both - so long as it is true. All the State wants is accuracy, and we venture to consider that the penalty attaching to inaccuracy should, in any circumstances, be enforced against the person who has control of the matter- the master - as a punishment to him and a warning to others who might be similarly animated to negligence to the injury of the Treasury.

Mr Reid

- That is what we said when clause 172 was being considered, but the Minister would not believe us then.

Mr. HIGGINS

(Northern Melbourne).I feel that there is a great deal of force in the contention of the Minister. I recollect a man who was liable to pay a big income tax telling me that he always allowed the schedule to be drawn up by his clerk, who was much more liberal in matters of conscience than was the employer himself.

Mr Isaacs

- But the employer signed the schedule.

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Mr HIGGINS

- The employer signed the schedule ; but, at the same time if a prosecution should eventuate for perjury, the employer could say that he did not know the statements were made in the schedule. We know how such things are done. There is no need for definite instruction for a clerk to do wrong, because if a clerk understands a certain thing is wanted, that certain thing is sometimes forthcoming. Although I feel there is a good deal in what the Minister says when he contends that we must try, -by every possible means, to get at the man who is . responsible, I say that if a master employs a clerk to" do a thing for him, then the master must take the consequences of that clerk's negligence, just as any employer is responsible for his employe's negligence. As regards the pecuniary penalty, if a master does not know anything about the

offence, he must pay the money which the conduct of his clerk involves. But the honorable and learned member for Corio asked me to look at clause 228, under which it appears that when a person has been convicted so as to be liable to a pecuniary penalty twice, he is further liable to be imprisoned for a period of not less than six months, nor more than two years, with hard labour.

Mr Crouch

- There is clause 243, too.

Mr HIGGINS

- But clause 228 was that to which the honorable and learned member directed my attention. Now I am told that clause 243 has a similar effect, but the latter refers only to the treatment of convicted' offenders, and provides -

Where any pecuniary penalty is adjudged to be paid by any convicted person the court may -
commit the offender to gaol until the penalty is paid ; . or
may release the offender upon his giving security for the payment of the penalty ; or
may exercise for the enforcement and recovery of the penalty any power of distress or execution
possessed by the court for the enforcement and recovery of penalties in any other case.

Mr Kingston

- Clause 228 does not apply to cases under clause 173, because under the latter clause the offender is subject to pecuniary punishment only.

Mr HIGGINS

- If the Minister will look at clause -228 he will see it here provided -

When any person is convicted of any offence against this Act for which a pecuniary penalty is provided and it shall appear that such person had been previously convicted of any similar offence, the Court may in lieu of or in addition to imposing any penalty order that such person shall be imprisoned with hard labour for a period of not less than six months nor more than two years, and with or without the right of release on payment of a penalty.

Mr Kingston

- That would not apply, because clause 173 limits the master's liability to pecuniary punishment.

Mr HIGGINS

- It ought to be made clear in clause 228 that that clause does not apply to anything referred to in clause 173. That would be a mean between two extremes, and would be fair. It is exceedingly important that no man should be treated as a criminal unless the criminality be proved up to the hilt. It is a most dangerous thing to go on the lines of constructively making a man a criminal. It is our duty to keep the brand of criminality off a man's back as far as possible. Even though the State should lose something occasionally by not being sufficiently alert, I should be strongly in favour of making it clear that the provision in regard to a double conviction ought not to apply to a conviction where a master is made liable for the acts of his agent.

Mr Kingston

- Clause 228 is not intended to apply to cases under clause 173. The latter clause says that the offender shall be liable to "pecuniary punishment."

Mr HIGGINS

- The intention ought to be made clear. The Minister is sufficiently aware, and I need not impress on him, that, as we are making a law, we ought to make it perfectly clear that a man is not to be liable to be put in prison for a crime unless he is guilty in . his own personal mind - unless, in fact, he is cognisant of the offence which his clerk or agent is committing. I would rather have a thousand evasions than one case of an innocent man being put in gaol for a thing of which he was not actually himself guilty. I am with the Minister so far as a pecuniary penalty is concerned, but when it is said that in addition a man shall be liable to imprisonment, I distinctly contend that clause 228 ought not to apply to offences under clause 173. If clause 173 be passed, I hope that in clause 228 the Minister will insert distinct words providing that the latter shall not apply in the case of' a conviction for an agent's default.

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Mr THOMSON

- Such words as those indicated by the honorable and learned member for Northern Melbourne ought to go in . clause 173, and not, as he suggests, in clause 228. I, of course, attach weight to the legal opinion

of the honorable and learned member; but if he is" afraid that clause 228 might mean that imprisonment, for instance, should follow the second offence, I would point out that there may be amending acts introduced at some future time which, without considering this clause 173, may provide that a second offence means imprisonment, and, the clause being read in connexion therewith, imprisonment may possibly follow. That would be a ridiculous position, because any one who knows how the large business of a merchant's establishment is conducted, knows that the principal can have no knowledge of a great number of declarations.

Mr Kingston

- Tes, but see' where we should be landed.

Mr THOMSON

- I admit that the principal should be held responsible in the matter of the penalty, but he must not be held guilty of a crime and imprisoned unless the crime be proved. Customs clerks pass the entries : and if a principal is to go through every entry and declaration, and see that the facts therein stated are correct, he will himself become a Customs clerk and be able to do nothing else. Errors will arise, trifling errors often, that do not mean any loss to the revenue, such as in a drawback entry where a wrong ship may be stated, or something of that sort. Such cases no doubt, could be met by providing very small penalties. We must not incur the risk that in addition to a pecuniary penalty, imprisonment may be suffered by a man who knows nothing, and can know nothing of those declarations, and who has not been proved to have any guilty intention. Customs clerks in the hurry of entries, and the intricacies of their work, often make mistakes. This will happen even in the case of a careful clerk, and a careless one will make mistakes much more frequently. I say, let us make the principal liable for the mistakes up to a reasonable amount of fine, and let us make that clear in any clause in which the punishment is stated.

Mr KINGSTON

- I do not think there is really very much difference between the various sides of the House in connexion with the great principle which underlies this legislation. I think we are all prepared to concede that penalties must be attached to inaccuracies, because motive does not affect the question _ of injury and possible loss to the revenue. I think, too, .that there is a general disposition to sever by a great gulf the two classes of cases - inaccuracy and fraud. That is what the Government have attempted to do as well as they possibly can, by the broad distinction in a great class of cases of simply mentioning the penalty, and in the more severe cases of providing for the allegation and proof of fraud and . the heavier punishment. As regards a matter of this sort, we are agreed that there must be a penal by. I think that the clause is put sufficiently clearly at the present time, but there is nothing like making it - in deference to the views of honorable members - as clear as it can possibly be made. I think that the clause is clear as it stands for this reason - if the honorable and learned member for Indi will follow me - that as regards the nature of the punishment which is the question raised by the honorable and learned member for Northern Melbourne, it applies only to the pecuniary penalty. Honorable members will see that the provision runs - In any prosecution in respect of any declaration made by any such employe' or agent, such person shall be liable to the pecuniary punishment provided by any Customs Act, as if such declaration had been made by himself.

When we there specify pecuniary punishment it would be difficult to read in punishment by imprisonment, which is provided for in clause 228 in reference to the second offence.

Mr Thomson

- Clause 228 says that two pecuniary punishments may mean imprisonment.

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Mr KINGSTON

- But this provision not only states the liability of the master, but marks its limit. It limits it by specification to pecuniary punishment. I think, therefore, that the matter is perfectly clear. I hope that the honorable and learned member for Indi will not insist upon the inclusion of these words here for the reasons to which I have given expression. I do not hesitate to assure him that as regards the other objections raised concerning clause 228 I will make the matter as clear as it can be made. Would it not be a good plan, if the honorable member intends to take the sense of the committee upon the question of an offender escaping punishment through allegation of want of knowledge which he ought to possess, and the establishment of a class of cases where ignorance be bliss even to the extent of conferring immunity from

punishment which ought to attach, to do so upon one simple clause, applying it to a variety of cases I think it would. I am perfectly prepared to remove the objections raised as regards the provisions of this clause extending to many cases to which I do not wish it to extend for very obvious reasons ; but I trust that we shall not let in here an avenue for escape and a door to evasion, which I do not think ought to be opened. I take it, that when we specify one kind of punishment in a clause it is to the exclusion of all other forms of punishment. If the honorable member wishes to insert after the word " liable " the word " only " I shall not object.

Mr. ISAACS

(Indi).- In the first place I think that some words are absolutely necessary to remove the application of clause 228. This Bill contains clauses which provide that for certain offences a pecuniary penalty should be incurred. It does not matter whether it be a principal or an agent ; wherever that is provided only a pecuniary penalty is incurred. In this instance a principal, innocent it may be, but in law deemed to be guilty, is rendered expressly liable to a pecuniary penalty. Then comes a subsequent clause, which says that wherever a pecuniary penalty is provided, if the offence is committed a second time, imprisonment may be ordered. How can the Minister exempt any particular case from that provision

t

Mr Kingston

- Because it is stated that the punishment is -limited to a pecuniary penalty.

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Mr ISAACS

- The honorable gentleman cannot say that, because a particular early clause provides that, if a particular offence is committed, the offender shall be liable to a pecuniary penalty, a subsequent clause shall not apply because the earlier clause mentioned only a pecuniary penalty. Clause 228 is a general provision applying to all other 'clauses in the Bill prescribing a pecuniary penalty. The clause says that' wherever a pecuniary penalty is provided for, in the case of a second offence the court may order imprisonment. I would like to draw the attention of the Minister to the early part of clause 173, and I venture to say that he has not removed the difficulties that I have pointed out. The clause says-

Any declaration authorized b3' this Act made by any employee or agent of any person shall be held to have been made with the knowledge and consent of such person.

On the hypothesis that we are putting, ' the owner is perfectly innocent. He is not reckless, he is vigilant, he has given specific directions to his agent, and yet the agent, by reason of negligence, or worse, has made a false declaration. Let us forget the second part of the clause for a moment, because that only sets out that the owner is liable to a pecuniary penalty, as though he had made the declaration himself. But the early part of the clause provides that it is to be an irrebuttable presumption of law that he has consented to the agent making the declaration. The penalty is imposed on the owner as though he had made the declaration himself. Now, ' if the agent has made, a false declaration, what may happen under clause 222, which provides that any person who counsels or procures, or by act or omission is in any way' directly concerned in the commission of any offence against this Act, shall be deemed to have committed the offence and shall be punishable accordingly. The penalty under the previous clause is imprisonment with hard labour. So that two distinct things are provided for in clause 173. A man is taken without any opportunity of proving his innocence - he is taken by law irrebuttably to have counselled and consented to his agent making a false declaration, and a subsequent clause makes him punishable by imprisonment in addition to having to pay the pecuniary penalty, and I think that no innocent person should be exposed to that punishment. The Victorian law, which throws the onus of proving his innocence on the owner, seems to me to be quite sufficient, and, I think further, that the pecuniary penalty would provide quite sufficient punishment for the employer for an act of his employe or other person which may be malicious and for which he is not morally responsible. It must not be forgotten that the Victorian Act has been so constructed that fraud may be reached, and I do not wish it to be supposed for a moment that I desire any fraud to go unpunished. I have already shown the Minister how that could be prevented, but I do say that I regard with abhorrence the idea that a person who ' is able to prove his innocence should be morally tainted with fraud, with a design to cheat the Customs, and that he should be liable not only to fine but also to imprisonment. I am with the Minister fully in his desire to punish fraud, and I would assist him in any way to strengthen his hands in that direction, but if a man can show cause why he

should not be punished for a fictional offence - for that is what it is if he is not morally 'a party, to it - I say that he should be given every opportunity of proving his innocence. The department will have the goods and control over them, in addition to the other means of punishing the owner. I do not object to making the owner of the goods liable to a pecuniary punishment, but the earlier part of the section goes a great deal further. It does not say simply that for the purposes of the section the owner shall be deemed to be guilty, but it contains an absolute statement that he is to be held - to be party to a false declaration, and it goes on, in addition to that, to say that he shall be liable for the pecuniary penalties as if the declaration had been made by himself. I hope the Minister, if he means that the owner of the goods shall be liable only to a pecuniary penalty - and that is stiff enough for an innocent man - will take care to restrict the (Operation of the clause so that it shall not go further than intended. It will not be merely sufficient to say that clause 228 will not apply to such a case, because there are other clauses which might apply, and place perfectly innocent persons in jeopardy.

Mr CONROY

- The title of manufacturers of misery has often been applied to the framers of protectionist Tariffs, and it seems to me that the title is well deserved by those who, as pointed out in connexion with the provisions in a previous clause, preferred that wholesome food should be destroyed by pouring kerosene over it, rather than allow it to be used, simply because it had not paid duty. The whole of this Bill seems to have been framed with the object of making men stand in the position of criminals. Men who are guilty of no offence whatever beyond, perhaps, merely making statements which they have drawn up and signed with the consent of their employers, are to be treated as criminals, even though they may have acted in a perfectly bona fide manner. And the Minister, owing to some peculiar kink of his mind, seems to think that this is a proper course to pursue. I agree with the honorable and learned member for Indi that it is a disgraceful proposition to bring forward, and I would like the honorable member to suggest an amendment that would meet the case.

Sir Malcolm McEacharn

- Why not insert the words of the Victorian Act, "Unless the contrary be proved" ?

Mr CONROY

- Or unless he can prove that he acted in a bona fide manner.

Mr Isaacs

- Perhaps the Minister will take the advice of his officers in this matter which is a very serious one.

Mr KINGSTON

- I have an amendment to propose which I think will meet a good many of the objections that have been raised. I propose to strike out the word "and" in line 4, with a view to inserting the words "so that," and after the word "liable" in the sixth line to insert the word "only." The clause would then read as follows : - Any declaration authorized by this Act made by any employee or agent or any person shall be held to have been made with the knowledge and consent of any such person so that in any prosecution in respect of any declaration made by any such employee 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. I think that goes far to meet some of the objections raised by honorable members. It points to what is intended, that we hold, or want to hold, that the act of the agent shall be deemed the act of the principal for the purpose of enforcing the pecuniary penalty provided for in the Bill.

Mr Isaacs

- That would be a great improvement.

Mr KINGSTON

- I think it goes some way towards meeting the points raised, and I would ask honorable members to agree to the clause in that form, and if honorable members afterwards consider a further amendment of clause 228 is necessary, I shall be prepared to consider it. I am confident, however, that these amendments will meet so many of the points that they will clear the matter up altogether. I move - That the word "and," line 4, be omitted, with a view to insert in lieu thereof the words "so that."

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Sir MALCOLM McEACHARN

- I would like to make a further amendment by inserting after the word "person" in the sixth line, "unless the contrary be proved." I think it would be very unfair to place the full responsibility for the wrongful act

on any one who might unwittingly have an agent pass an entry improperly. The owner of the goods in such a case should not be made liable for the pecuniary penalty. The Minister said a short time ago that the penalty only applied to one party under this clause. That is true, but under clause 172 the agent is made responsible, so that the Minister may recover the penalty from the agent under clause 172, and from the principal under clause 173, whilst the principal would have no opportunity whatever to show whether he had any knowledge of the matter or not.

Mr. ISAACS

(Indi).- I think the proposal of the Minister has cleared away a great many of the difficulties I had before me - that is, as far as I can see at present. Of course the final adjustment of the clause may be a matter for after consideration, but the amendment will certainly remove the most serious objection I had, because it limits the presumption to the mere pecuniary penalty. When we come to consider that we are now going to have Customs regulations operating over an entire continent, some justification is given to the Customs authorities for seeing that they have a fairly strong hand over these matters. I think the honorable member for Melbourne might allow the matter to stand as the Minister has proposed, as there will not be such great danger as existed previously.

Amendment agreed to.

Amendment (by Mr. Kingston) agreed to-

That the word "only" be inserted after the word "liable" in line 6.

Mr. CONROY

(Werriwa). - I would like to know if there is anything that would permit of any mitigation of the penalty under any circumstances? Supposing it were brought to the knowledge of the Minister that no real offence had been committed, but that a simple mistake had been made - a mere clerical error - would the Customs authorities still be bound to inflict the full penalty? I can see no clause that allows the Minister, once the law has been put in motion, to suspend the action, even though attention may have been drawn to the fact that the case is merely one of clerical error or misadventure. Suppose there is any over-zealousness on the part of an officer of the Customs department, and the facts are brought before the Minister himself, has he any power to stop the action?

Mr Kingston

- Yes.

Mr CONROY

- The Minister has not assumed power to act in that manner. I suppose the power goes with the Bill? Is that so?

Mr Kingston

- Of course. There is no compulsion to sue any one, and no one will be sued unless he ought to be.

Mr CROUCH

- It seems to me that there is a most extraordinary combination of language in this clause, in consequence of the amendments that have been made.

Mr Kingston

- I think it is good enough.

Clause, as amended, agreed to.

Clause 174 -

The commander or officer in charge of any ship or boat in His Majesty's service or in the service of the Commonwealth or Customs, such ship or boat having hoisted and carrying the proper ensign and pendant or Customs flag, may chase any ship which does not bring to when lawfully signalled or, required to do so, and may (after having fired a gun as a signal) fire at or into such ship to compel her to bring to.

Mr McCAY

- Is not the Minister under this clause assuming jurisdiction beyond territorial borders? It provides that the officer of any ship in the service of the Commonwealth "may chase any ship which does not bring to when lawfully signalled." The clause does not seem to give any power to catch the ship, but only to chase her. An earlier clause orders boats and ships to bring to when, within a league of the coast. Suppose a ship does not bring to when ordered but goes further away, beyond the league from the coast, as would probably be the movement of the ship in the cases contemplated, has the Customs launch then power to fire upon the ship? If so, is not that an act committed beyond territorial waters?

Mr Reid

- These extraordinary powers are all wanted under this Bill.

Mr McCAY

- That may be. It is an act of State, and might well be regarded as an act of war committed by the British Empire against a friendly power. I am not prepared to say that the chase should stop at the territorial limit.

Mr Reid

- It would be a perfectly harmless amusement.

Mr McCAY

- If the Customs boat were ordered to hit the ship I could understand it; but I notice the clause says that the Customs boat may " fire at or into such ship." That allows for misses as well as for hits. Seriously, however, I ask whether this is not an assumption of extra territorial powers which may well cause the Bill to be reserved for the signification of His Majesty's pleasure?

Sir MALCOLM McEACHARN

- This clause is similar to a provision in the Victorian Act, with the exception that it leaves out the words " liable to seizure or examination." Why does the Minister take to himself the power to chase any vessel, while he eliminates those words which allow him only to chase the vessel when she is liable to seizure? Under this clause we may have men-of-war going out and sinking' vessels. There should be a limitation imposed.

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Mr KINGSTON

- We have the right to examine any ship coming within our waters. There is no doubt about that. There is no attempt here to declare that the Act shall operate beyond our territorial waters. This is a clause which is practically found in every Customs Act under the sun.

Sir Malcolm McEacharn

- With the addition of the words I have mentioned.

Mr KINGSTON

- All ships which come within our waters are liable to examination for Customs purposes.

Sir Malcolm McEacharn

- But this Bill does not use the words " liable to seizure."

Mr KINGSTON

- It is not a question of liability of seizure, but of liability to examination. The British Act says that any ship or boat shall be liable to seizure that does not bring to. Then we have an even higher authority - that of the New South Wales Act, which is to the same effect. All ships coming within our waters are liable to examination.

Sir Malcolm McEacharn

- This provision is very far fetched, I think.

Mr KINGSTON

- But they are liable to examination.

Mr Thomson

- Not beyond the three mile limit.

Mr KINGSTON

- That is not proposed by this clause.

Mr Thomson

- An officer might read it in that way.

Mr KINGSTON

- I am not discussing the question of our powers of legislation. We might have a question raised with reference to another clause if it provided what the honorable member suggests. There are limitations naturally attached to the provision. If we go beyond our jurisdiction the clause does not help us, and it does not say that we shall do so.

Clause agreed to

Clause 175-

Any officer may require the master of any ship hovering within one league of the coast to depart, and if such ship shall fail to depart accordingly within twelve hours thereafter, any officer may board and bring

such ship into port and search her.

The collector may examine all persons on board of such ship, and they shall each thereupon answer questions relating to the ship and her cargo, crew, passengers, stores, and voyage, and produce documents relating to the ship and her cargo.

Penalty- £100.

Mr HIGGINS

- I wish to ask the . Minister for Trade and Customs how he reconciles this clause with" clause 214? It deals with the hovering" question.

Mr Kingston

- It is the old smuggling clause.

Mr HIGGINS

- The idea of clause 175 is that a Customs officer may require a ship within a league of the coast to depart, and if she fails to depart within twelve hours he may bring her into port and search her, Then clause 214 says - That any ship hovering within one league of the coast, and not departing within twelve hours after being required to depart by an officer, is to be forfeited to His Majesty. If by failing to depart within the twelve hours when ordered, the ship may belong to His Majesty, of course any officer . of His Majesty may search her. Perhaps I am wrong, but I cannot understand how there is any need for a clause allowing search where the very same circumstances make the ship the property of His Majesty. Of course, I understand the second part of the clause ; that is all right. It will be understood that there is a penalty affixed to a breach of the direction to answer questions, but that does not apply to the first part. . It seems to be a work of supererogation to say, if the ship is the property of His Majesty,that, if she fails to depart within twelve hours, any officer is to have power to search her.

Mr Kingston

- There may be no necessity to insist upon forfeiture.

Mr HIGGINS

- But the Bill provides that the vessel shall be forfeited. If we substitute "may" for "shall" be forfeited, that will meet the difficulty.

Mr Kingston

- We must have this provision. It is the old clause relating to ships used for the purpose of smuggling, hovering off the coast. It has not happened here, but we do not know what may occur in the Australian future, and vessels might keep hovering off the coast for the purpose of seizing a favorable opportunity to land their cargoes.

Mr HIGGINS

- If the vessel is forfeited ipso facto there is no need for this power.

Mr Kingston

- We have not got as far as that yet.

Mr HIGGINS

- Will the right honorable and learned gentleman substitute "may' for " shall," as I have suggested ?

Mr Kingston

-i do not know. There is a lot to be said on- the point. I wish to say, however, that we propose at least to qualify some of the provisions with regard to forfeiture of ships.

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Mr ISAACS

- Would the Minister tell me - I am not able to understand it myself - why in clause 175 the power to require a master of a hovering ship to depart is confined to "any officer," which I understand is a Customs officer, while under the previous clause power is given to any commander or officer in charge of any ship or boat in His Majesty's service, or in the service of the Commonwealth or Customs, to deal with such a vessel? A clear distinction is drawn. I do not know whether the Minister intends to limit the power in clause 175 to an officer of the Customs department. It might be that an officer of Customs might . not be at hand, while an officer of the Commonwealth naval service might be available. Unless there is some reason to the contrary, I would suggest to the Minister that he should not limit the power in this way. It will be seen on reading the two clauses that there is-a limitation.

Mr KINGSTON

- I will look into the point. I think that clause 175 has more particularly to do with Customs work than with the firing at a vessel to compel her to bring to - a work that is better intrusted to naval officers - which is dealt with in the preceding clause.

Mr Isaacs

- But they are 'all in the one service.

Mr KINGSTON

- Still, we do not want the naval authorities to search a ship.

Clause agreed to.

Clause 176 agreed to.

Clause 177-

Any officer may -

Board any ship.

Search any ship.

Secure any goods on any ship.

Sir MALCOLM McEACHARN

- I would suggest to the Minister that we should insert after the words " Any officer may " the words " with the written authority of the collector." The clause enables any officer to board and search a ship, but in clause 189, where similar power is given, it is provided that any officer having with him " a writ of assistance or a Customs warrant " may make a search.

Mr KINGSTON

- In clause 189 there is a much greater interference with personal liberty and with the sanctity of the home than there is in clause 177, which relates to a ship. Clause 189 provides that -

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 . . .

That is the power of breaking open and entering into the sanctity of a dwelling house if necessary.

Sir Malcolm McEacharn

- But clause- 177 applies to a ship alongside a wharf.

Mr KINGSTON

- It gives a general power. I think it would be an excellent thing for the security of the revenue to allow the Customs officer to have this power to board and search a ship. Otherwise the whole provision relating to Customs war-' rants is a farce, and the Customs officer will : be armed at all times with a written letter from the Collector of Customs, which will impose enormous disadvantages in the speedy administration of the law, and afford facilities-' for evasion which ought not to be per-' mitted. A Customs officer has the autho-' rity of the department at his back, and he; is not likely to exercise it arbitrarily. If he did, then he would not continue in the ' service. It might happen in a case of' emergency that the superior officer could not be consulted, so that it would be inadvisable to provide that an officer should be armed : with written authority on boarding a ship, or securing jury goods on board a ship.-

Sir MALCOLM McEACHARN

- Will, the Minister be good enough to look at clause" 178, under which any one may board a steamer ?

Mr Kingston

- That is a power which, has long been exercised, and it has never been abused

Sir MALCOLM McEACHARN

- It is., not in the Victorian Act.

Mr Kingston

- Yes ; there is power given to an officer to board any ship.

Mr Thomson

-A shop or warehouse - to which clause 189 applies - is stationary, and. a ship is not.

Mr Kingston

- Exactly; and I would' ask the honorable member for North Sydney whether he has ever heard of the abuse of this authority by an officer going on board a vessel, and remaining there unnecessarily?. We must have large powers, and it is to the ' credit of the Commonwealth that the officers-' exercise these powers with discretion.

Sir Malcolm McEacharn

- Section 200 of the Victorian Customs Act reads -

Any officer or officers . . . producing his or their warrant, may board a ship.

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Mr CONROY

- Under the interpretation clause of the Bill, " officer " includes all persons employed in the service of the Customs. Therefore, I think this power is rather wide, and that we might adopt the provision in the Victorian Act.

Mr KINGSTON

- The clause to which the honorable member for Melbourne is referring has reference to the exercise of the larger powers which are to be used in connexion with dwelling houses, and in regard to which, as the honorable member for North Sydney has pointed out, there is not the same need for haste. Under section 60 of the Victorian Customs Act, it is provided that -

The proper Officers of the Customs may board any ship arriving at any port in Victoria and freely Stay on board until all the goods laden therein shall be duly delivered from the same, and shall have free access to every part of the ship, with power to fasten down hatchways or entrances to the hold, and to mark any goods before landing, and to lock up.....

It is a long clause, and I think the honorable and learned member will see there is no additional strength in using the words " officer or proper officer." The officer will be discharging his duty, and there is no limitation in the Victorian Act as regards the written authority suggested by the honorable member.

Sir MALCOLM

MCEACHARN (Melbourne). - I still think the Minister should amend this clause. The clause we are now dealing with and the next clause are two clauses made out of clause 200 of the Victorian Act, and that most clearly provides that the officer must show his authority for going on board. I think it is desirable that that should be so. Clause 200 of the Victorian Act reads -

Any officer or officers of the army ... or any officer or officers of Customs producing his or their warrant or deputation (if required) may go on board any ship which shall be within the limits of any part of Victoria and rummage and search the cabin and other parts of such ship for prohibited and uncustomed goods, and remain on board such ship so long as she shall continue within the limits of such port.

I would rather the Minister accepted the suggestion for the amendment of the clause than move it myself.

Mr KINGSTON

- I do not find anything in clause 200 of the Victorian Act which qualifies the clause to which I have referred. It says -

Any officer or officers of the army, navy, or marines on full pay, or any officer or officers of Customs producing his or their warrant or deputation.

It is simply a question of producing their warrant if they are officers of Customs, but there is no provision for a special warrant.

Sir Malcolm McEacharn

- We might have any one passing himself off as an officer.

Mr KINGSTON

- If necessary I will put a clause in to prevent that, imposing the heaviest penalties upon any one who passes himself off as a Customs officer, and I am obliged to the honorable member for the suggestion.

An Honorable Member. - That would meet the case.

Mr KINGSTON

- I am inclined to think that very probably the general law would be sufficient for the purpose

Mr Reid

- The captain of the ship would not know whether the man was a Customs officer or not.

Mr KINGSTON

- But they have all uniforms.

Mr Reid

- Those are easily obtained.

Mr KINGSTON

- I would ask the honorable member for Melbourne not to press the amendment, and I will bring up a clause imposing penalties on any person passing himself off as a Customs officer. I am inclined to think

at the present time, that probably the existing State law would deal with such cases. sir malcolm mceacharn.- i do not think that proposal would meet the case. The provision is made in the Victorian statute, and it would be no satisfaction to a ship-owner to think that any one could walk aboard his ship and say that he was a Customs officer, and that the Customs department could afterwards punish him for it. The difficulty is met in the section of the Victorian Act I have quoted, and it has worked well. I do not see why the Minister should object to its introduction into this clause.

Mr Kingston

- But what is his " warrant"?

Sir MALCOLM MCEACHARN

- I want to see the words introduced " either with the written authority of the collector," which is equivalent to saying that there shall be produced, for instance, "his or their warrant or deputation." I will; accept either of those forms. I move -

That after the word "may," in line 1, the words "with the written authority of the collector" be inserted.

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Mr KINGSTON

-I find that the section which I referred to just now as justifying the boarding by an officer independently of the production of a warrant, is not only in the Victorian Act to which I called attention, but that it is also in the New South Wales Act, section 35 -

The proper officer of the Customs may board any ship arriving at any port in the colony and stay on board until all the goods shall be duly discharged and shall have free access to every part of the ship with authority to fasten down hatchways and to secure any storeroom, cabin, or place, and to mark any goods-

Mr Reid

- That is a tide waiter. It is different to the object of this clause. This is a searching clause, and deals with vessels that are not under Customs supervision at a wharf.

Mr KINGSTON

- No, this is a general provision. Instead of putting one set of powers in one clause, and another in another, we have put the powers of officers generally in the one clause. They are here summarized, and the clause covers the powers of boarding, examining, and securing.

Mr Reid

- That includes ; all Customs officers.

Mr KINGSTON

- Yes, and where they exercise special powers there is provision in the Bill under which they have to get either a Customs warrant or a-

Sir Malcolm McEacharn

- A deputation.

Mr KINGSTON

- No, that is a word which I do not quite understand at the present moment.

Mr Reid

- It is often used. It is a document deputing the power of the collector to. so and so.

Mr KINGSTON

- We have special authority provided for in the form of a Customs warrant Or a writ of assistance. What we are putting into this clause is a general power which is never hedged round with conditions of the character referred to. I call honorable members' attention to the fact that where we are proposing to exercise any special powers, we provide by clause 187 that any Judge of the High Court of Australia, or any Judge of the Supreme Court of any State, may, upon application, grant a writ of assistance ; and " such writ, unless superseded, shall be in force so long as any person named therein remains an officer of Customs." Then there is power given under clause 188 for the comptroller or State collector . to grant a Customs warrant to any officer, and by the next clause any officer having a writ of assistance or Customs warrant may break open things and use force. But the ordinary power of entry and examination, searching, and securing will not be found hedged round by the conditions to which the honorable member refers ; and I could not consent to having his amendment introduced at. the present time: I shall be delighted to look up the matter further for him and see if any precedent can really establish the necessity for it. I do not think it can at present, and I therefore must resist it.

Mr Reid

- I think that a captain can compel an officer to produce some evidence that he is an officer of Customs unless there is some provision to the contrary in the Bill.

Sir MALCOLM

McEACHARN (Melbourne). - I am afraid that power will be taken away under this clause, but I am quite willing to accept the Minister's assurance that he will look into the matter. I may say the difficulty has arisen from the fact that sections which have dealt with two different matters are now in this clause dealing with one matter. I think the clause could well be amended either by the insertion of the words " the proper officer," or something that would enable a captain to see that these men boarding his ship are really officers of the Customs.

Amendment, by leave, withdrawn.

Clause agreed to.

Clause 178 (Bonding).

Mr CONROY

- I understand that what the Minister has said applies in the case of this clause as in the case of the former clause.

Mr Kingston

- Certainly. I made some remarks to the committee just now which I abide by.

Clause agreed to.

Clause 179 agreed to.

Clause 180-

The power of an officer to secure any goods, shall extend to fastening down hatchways and other openings into the hold and locking up, sealing, marking, or otherwise securing any goods.

Mr KINGSTON

- I have omitted a somewhat usual provision. I move -

That the words " or the removal of any goods to the King's warehouse " be added to the clause.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 181 (Seals not to be broken).

Mr THOMSON

- As this clause deals with stores I think it had better be postponed.

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Mr KINGSTON

- If the honorable member thinks it better I am willing to postpone it.

Clause postponed.

Clauses 182 to 184 agreed to.

Clause 185 -

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 : - ...

Mr THOMSON

- I wish to ask the Minister what authority he will have for the State police to carry out the provision of the clause. Does he claim an authority under the Constitution Act, or does he propose to try and obtain an authority by arrangement ?

Mr KINGSTON

- This is a power to the police. I take it that this Act will have just as much force as any State Act, with the additional advantage that it will operate throughout the Commonwealth. Of course, should any arrangements be necessary between the States and the Commonwealth in this connexion, they will be a matter for consideration. But I do not think it is at all possible to contend for the necessity for the Commonwealth to establish its own police ; its laws will be enforced by the State police.

Clause agreed to.

Clause 186-

Any officer of Customs or police upon reasonable suspicion may stop and search any carriage for the

purpose of ascertaining whether any dutiable goods are contained therein, and the driver of any carriage shall stop and permit such search whenever required by any such officer.

Penalty- £20.

Mr CROUCH

- Am I to understand that the police as well as the officers of the Customs are to have this power? It seems an extraordinary power to give them. I know that when we give power to the police, in some cases, they use it for a purpose for which the Act was never designed. To give any officer of Customs or police, upon reasonable suspicion, power to stop and search any carriage strikes me as a very drastic power to give.

Mr KINGSTON

- I take it that the police are men whom we have reason to be proud of, just as we have of other public servants. The police in other countries are in the habit of acting in aid of the Customs, and I hope that we shall adopt a similar course here.

Mr ISAACS

- I observe in this clause that it is very distinct, that if the driver does not stop and permit the search, as he is required to do, there will be a penalty of £20 inflicted. I wish to ask, in connexion with that, how clause 184 works in. Is there any penalty for that?

Mr Kingston

- Yes.

Mr ISAACS

- Clause 224 says-

Any person who is guilty by act or omission of any contravention or evasion of this Act for which no other penalty is provided shall be liable to a penalty of not more than £10.

But what would be a contravention of clause 184? Under clause 186 the driver's duty is prescribed. What is the duty of a person under clause 184? It is to be questioned; but it does not provide that he shall answer, and shall be guilty of an offence if he does not.

Mr KINGSTON

- It is provided in clause 220, which reads -

No person shall refuse or fail to answer questions or to produce documents.

Then, clause 215 provides for the forfeiture of-

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

I think the honorable and learned member will see that that clause will meet a general case where no penalty is provided.

Mr Isaacs

- I think it does.

Clause agreed to.

Clause 187 agreed to.

Clause 188 (Customs warrants).

Mr CONROY

- I wish to know if the schedule referred to in the clause is the old schedule ?

Mr Kingston

- No, it has been revised and brought up to date.

Clause agreed to.

Clause 189 agreed to.

Clause 190-

Any officer acting under a writ of assistance or Customs warrant may take with him and have the assistance of any police officer and such assistants as he may think necessary.

Mr CONROY

- Will there be the same trouble as to police over this clause ?

Mr Kingston

- There will be no trouble.

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Mr CONROY

- How does the Minister propose to get the assistance of the State police ? Will that section in the Constitution which gives the Minister power to frame everything incidental to the collection of customs duties carry with it authority to call in the State police ?

Mr KINGSTON

- That will be a matter of arrangement to a very great extent with the State, and this clause gives the necessary authority.

Clause agreed to.

Clause 191-

Any person lawfully making any seizure under any Customs Act may call upon any person present in the King's name to assist him, and such assistance shall be rendered accordingly.

Penalty : Twenty pounds.

Mr CONROY

- I think the penalty is a little heavy - not that anybody would object, probably, to join in a row of any sort, but still he might object to have a suit of clothes spoiled.

Mr Kingston

- He may be let off with a fine of £1.

Clause agreed to.

Clause 192 -

Any officer of His Majesty's forces or any officer of Customs or police may seize any forfeited ship or goods upon land or water or any ship or goods which he has reasonable cause to believe are forfeited.

Mr ISAACS

- The words "any officer of His Majesty's forces" occur several times in the Bill. Does that term, intend to refer only to the Royal navy in relation to ships, because a distinction is drawn in some clauses between His Majesty's navy and the navy of the Commonwealth? I only wish to direct the Minister's attention to the fact that where words are used in a specific sense in one clause they should be confined to that sense in another clause.

Mr KINGSTON

- I am obliged to the honorable and learned member for calling my attention to the matter. The clause he refers to, I suppose, is clause 174, where it says-

The commander or officer in charge of any ship or boat in His Majesty's service or in the service of the Commonwealth or Customs.

Mr Isaacs

- Yes; under clause 192 the Minister may find an officer of the Commonwealth navy unable to act.

Mr KINGSTON

- I shall look at that, and in all probability it will want alteration. I will let it go as it is.

Clause agreed to.

Clauses 193 to 196 agreed to.

Clause 197 -

All forfeited ships and goods, except prohibited imports, shall be disposed of or destroyed in such manner as may be prescribed, or as the comptroller may direct.

Mr CROUCH

- What does the Minister propose shall be done with prohibited imports ?

Mr Kingston

- Prohibited imports are forfeited to the Crown.

Mr Harper

- And destroyed ?

Mr Kingston

- If they are of a character they ought not to be, they are destroyed. .

Mr V L SOLOMON

- Why are prohibited imports excepted ?

Mr CROUCH

- By clause 49, subclause (b), any " coin or money not being of the proper standard of weight or fineness " is a prohibited import. Does the Minister mean to say that that prohibited import will be destroyed completely?

Mr Kingston

- Clause 197 gives full power to the comptroller.

Mr CROUCH

- Except as to prohibited imports.

Mr KINGSTON

- I am inclined to think that the words, "except prohibited imports," ought to come out. As originally drafted, I think it was provided that all forfeited goods should be disposed of, except prohibited imports, and these . we did not intend to " dispose " of in the ordinary sense of the term. I move -

That the words, "except prohibited imports," lines 1 and 2, be omitted.

Mr CONROY

- I think that if the word "except" were omitted, and the word " and " inserted in lieu thereof, the clause would read better, and would give power which might be necessary in certain cases.

Mr KINGSTON

- I have used "goods" in the largest possible sense of the term.

Amendment agreed to. Clause, as amended, agreed to.

Clause 198-

All goods seized by any person, not being a Customs officer, shall forthwith be conveyed to the nearest Custom-house, and there delivered, to an officer.

Mr CONROY

- Does this, clause relate to goods seized by officers of His Majesty's forces ?

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Mr KINGSTON

- The words refer to goods seized by anybody except Customs, officers. The intention of the clause is to get the goods under Customs control.

Clause agreed to.

Clauses 199 to 201 agreed to.

Clause 202-

Any justice before whom any person is brought under this Act may -

Commit such person to gaol until he can be brought before justices to be dealt with according to law : or

Admit him to bail upon his giving sufficient security for his appearance before justices at the time and place appointed for the hearing of the charge.

Mr CROUCH

- This clause is " an alteration of the "Victorian law, the Litter of which provides that any one justice may commit a person, whereas here it is insisted that the alleged offender shall be brought before " justices."

Mr Kingston

- Plural means singular, and viceversa

Mr CROUCH

- I hardly think it does -when the word "justices" is used distinctly as in this case. I think the contrary intention here appears.

Mr KINGSTON

-The Interpretation Act provides that "justices" means that one justice will suffice. I am inclined to think that in a matter of this sort, even if the contrary intention appeared - which I do not think is the case - it would not be a bad thing, because we might as well have a couple of justices to deal with such cases.

Clause agreed to.

Clause 203-

Whenever information in writing has been given on oath to the collector that goods have been unlawfully imported undervalued or entered or illegally dealt with, or that it is intended to unlawfully import undervalue enter or illegally deal with any goods, or whenever any goods have been seized or detained, the owner shall immediately upon being required so to do by the collector produce and hand over to him till books and documents relating to the goods so imported entered seized or detained undervalued or

illegally dealt with, or intended to be unlawfully imported undervalued entered or illegally dealt with, and of all other goods imported by him at any time within the period of five years immediately preceding such request seizure or detention, and shall also produce for the inspection of the collector or such other officer as he may authorize for that purpose and allow such collector or officer to make copies of or extracts from all books or documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to any such goods.

Penalty : One hundred pounds.

Mr CONROY

- I think a period of five years is too long, and that it might well be cut down to three years, especially as the clause is wide enough to embrace not only goods unlawfully imported, undervalued, or illegally dealt with, but all other goods imported. The tendency of modern civilization is to prevent statutes running as long as they do, and any alterations made have in all ways been in the direction of cutting down the period in which actions can be brought. The same rule might very well be followed here, and three years would be quite long enough, especially in view of the large powers granted to the collector. I therefore move - That the word "five" line 1d, be omitted, with a view to insert in lieu thereof the word "three."

Mr KINGSTON

- I know some people attach a great deal of importance to this point. In the Victorian Act the period prescribed is, I think, longer than in this clause.

Mr Isaacs

- What harm can there be in asking, if necessary, that the Customs authorities shall look into their books for five years ? That is not a penalty for five years, but is only a matter of evidence.

Mr KINGSTON

- It is sworn information. The period has been cut down from what it was before, and I do not think that it is at all too long.

Amendment negatived.

Mr. CONROY

(Werriwa).- Power is taken over, not only all goods unlawfully imported, but all other goods and all books relating thereto - all goods imported at any time within a period of five years. I do not think there is any necessity for it.

Mr THOMSON

- I think the object of the clause is that the Customs authorities - if it is discovered that a system of fraud has been carried on by some importing house - may go back over that period to ascertain the extent of the fraud, how much the Customs have been cheated of, and what penalty should be imposed.

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Mr ISAACS

- I think that what the honorable member for North Sydney has pointed out is a very important feature, and I would point out to the honorable and learned member for Werriwa that the position is this: A particular parcel of goods is claimed by the Customs, and an information is sworn that the goods are undervalued or that they have been unlawfully imported. The Customs authorities may have to go back for a considerable time, through the transactions of the particular individual whom they suspect, or more than suspect, since an information has been sworn, in order to get the information they desire from his own business. They want a considerable time allowed them in order that they may see whether the particular goods are under value or not. It is not to trace back the transactions of the particular individual for five years that this term is prescribed, but it is merely to enable the authorities to inspect his books and documents, if necessary, for that period, so that the Customs may be able to make up their minds in regard to the particular goods in question.

Clause agreed to.

Clauses 204 to 210 agreed to.

Clause 211-

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.

Mr CONROY

- I would point out that clause 236 provides that no objection shall be taken or allowed to any information or summons for any alleged defect therein in substance or in form, or for any variance between such information or summons. That is with regard to the Customs itself, but according to the clause under discussion, where the plaintiff is not a Customs-house officer, it appears that he is to be rather strictly dealt with.

Clause agreed to.

Clause 212-

It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff his attorney or agent, and in case such amends be not accepted to plead such tender in defence either alone or with other defences, and if the amends tendered shall be found to have been sufficient no costs shall be recovered against an officer and he shall be entitled to costs if he shall have brought the amount into court when entering his defence.

Mr ISAACS

- I would like to draw attention to the wording of clause 211, which has evidently been taken from some old section. It says - " The plaintiff shall be entitled to a verdict." It may be a judgment or some other form of recovery. I would just like to direct the attention of the Minister to the wording of the clause.

Mr KINGSTON

- I think that if we inserted the word " succeed " in lieu of the words " a verdict," it would put the matter in the largest possible form.

Clause agreed to.

Clause 213-

Every proceeding against any officer shall be commenced within four months after its cause shall have arisen and not afterwards and the venue shall be local, and the defendant may plead the general issue and give any special matter in evidence.

Mr KINGSTON

- I do not know what the practice is in reference to the introduction of new clauses. I know what the practice in the State of South Australia is.

The CHAIRMAN

- New clauses are introduced at the end of the Bill.

Mr KINGSTON

- I believe that is the practice that South Australia has followed. Honorable members will find the amendments which the Government contemplate in print upon their files. I move -

That after the word "shall," line 1, the words " except as mentioned in the next section."

We propose to introduce new clauses, but of course the acceptance of this amendment will not in any way bind the committee to the acceptance of the clauses. I should like to get the verbal amendment in now.

Amendment agreed to.

Mr Conroy

- Supposing that the other clauses are not carried in their present form?

Mr KINGSTON

- If I have not a clause with which that fits I shall have to recommit clause 213 for the purpose of altering it..

Sir MALCOLM McEACHARN

- I would ask the Minister to extend the time in which proceedings shall be commenced against officers from four months to six months. I would point out that circumstances may arise which would necessitate a man's travelling to England, and the proceedings in that case would have to wait till he returned. I think that six months would be a reasonable period to fix.

Mr CROUCH

- May I ask the Minister to make the period eight months ? Really that would only mean seven months, because a previous clause provides for one month's notice being given.

Mr KINGSTON

- I am prepared to accept the suggestion of the honorable member for Melbourne. I think that six months

would be a fair period to fix. I would point out that the clause specifies a period for the commencement of the action only. In these days a man would have time to go to England, spend a couple of months there, and return within four months.

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Mr CONROY

- Let us suppose that the originating cause is the seizure by the Customs officers under certain circumstances of certain goods. Supposing that the goods are detained by the Customs authorities for two or three months, the owner will not be able to find out until the end of that time what is their condition, nor will he be able to say what damage he has suffered. It might be necessary for him, after ascertaining the extent of the damage, to communicate with people at home, and I do not think, therefore, that the six months will be sufficiently long to allow. As officers of the Customs department claim the right to go back in the books for five years, they ought to be content to allow a considerable extension of the term now proposed for taking proceedings. It is not to be supposed that these matters will crop up every day, and it is only fair that we should allow a reasonable time to enable people to arrange what steps shall be taken. I shall propose that the term be extended to twelve months.

Mr Kingston

- Twelve months is too long.

Mr ISAACS

- Might I direct the Minister's attention to another phase of clause 213. There is no definition of "proceeding" in the Bill as I understand it?

Mr Kingston

- No.

Mr ISAACS

- Then the word "proceeding" in this clause might apply to a criminal proceeding as well as to a civil proceeding ?

Mr Kingston

- To either.

Mr ISAACS

- In that case it will have the effect of exempting an officer from any proceeding, either civil or criminal, after the lapse of a specified time.

Mr Kingston

- A proceeding is not to be commenced against an officer under this clause, which only limits the time within which a proceeding may be commenced.

Mr ISAACS

- This . plainly says that every proceeding against any officer shall be commenced within four months.

Mr KINGSTON

- Civil proceedings are contemplated there. I move -

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

Mr. CONROY

(Werriwa).- The Minister has not dealt with such a case as I have mentioned, where goods may be detained by the Customs department for three months and it may be necessary, after the goods are released, to communicate with the people in England who are interested, before proceedings are commenced. I think that the period should be further extended, and I would be satisfied if nine months or even eight months were the period fixed.

Sir Malcolm McEacharn

- The owners of the goods could communicate with. England by cable if the occasion arose.

Mr CONROY

- Yes, but there should be no necessity for that.

Mr Kingston

- The Customs ought to know within six months whether they are to be sued or not.

Mr CONROY

- Yes, they would know ; but the clause says the period shall be calculated from the time the cause of action shall have arisen, and the goods which may be the subject of the action may not be handed over to

the owners for three months after the cause of action may have arisen. The extension of the time as I suggest would not be attended with any disadvantage to the Customs authorities, and I think that opportunity should be given for bringing an action within at least twelve months.

Mr. CROUCH

(Corio).- I wish the Minister would accept the amendment proposed by the honorable and learned member for Werriwa. I speak from experience in this matter, and I think the suggestion is a proper one. I know that in the case of the Railway department in Victoria, where a similar provision exists and the period is fixed at six months, although the affairs dealt with are entirely internal and local, six months has proved too short a time. A person who has a cause of grievance against the Customs department should not be deprived of his right of action for at least twelve months, and as no great harm could result from making the suggested concession, the Minister could wisely concede the point.

Amendment agreed to.

Sir Malcolm McEacharn

- I would like to know what the Minister intends to do with regard to the point that was referred to by the honorable and learned member for Indi?

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Mr KINGSTON

- I may say that I do not intend to put any limit upon criminal proceedings against a Customs officer extra the Act - I mean to say regarding anything he may do irrespective of the Act itself. I do not intend to fix a limit, but with regard to the penalties to which he is subject under the Act, I consider there should be a time fixed. I do not know what the law in Victoria is, but in some of the States provision is made that you cannot proceed by summary process, if six months have elapsed after the offence is committed.

Mr. ISAACS (Indi). - I hope the Minister will reconsider what he has stated. Clause 213 is prima facie not intended by the draftsman to apply to criminal proceedings at all.

Mr Kingston

- There are very few criminal proceedings against officers under the Bill.

Mr ISAACS

- A Customs officer may commit an offence under this Act as well as any one else, and the use of the word "proceeding" in its present form may lead to results that are not intended. I am sure that the clause is intended to apply only to civil matters, because of the use of the word "defendant" and other terms in connexion with it, and I think the Minister will be going beyond the intention of the clause if he says "proceedings" will apply to any offences which are committed under the Bill. An officer may make a false statement, or help some one else to commit a crime, and I do not think there should be any statutory limitation to the liability of the officer for proceedings in such cases where other people are not similarly protected. I do not think the Minister will adhere to that provision when he comes to consider it, but that he will limit the operation of the clause to civil matters. I do not think that an officer who commits an offence under this Bill should be favoured simply because he is an officer, as his duty really ought to impose a greater responsibility upon him than upon an outsider. I think the Minister will see that it is wrong to limit the officer's liability to proceedings being taken against him for criminal offences.

Clause, as amended, agreed to.

Clause 214-

The following ships shall be Forfeited to His Majesty : -

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

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

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

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

Any ship found within any port with cargo on board, and afterwards found light or in ballast, or with the cargo deficient, and the master of which is unable to lawfully account for the difference.

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

other device adapted for the purpose of running goods.

Sir MALCOLM McEACHARN

-I should like to ask the Minister for Trade and Customs what is meant by sub-clause (1). Suppose any one brings smuggled goods in a ship, the master of the vessel may know nothing about it ; and yet under this clause the ship might be forfeited. The same penalty might be imposed if the owner of the goods omitted to make some entry, or passed the goods informally.

Mr KINGSTON

- We might meet the criticism of the honorable member for Melbourne by striking out the- words "or in the unlawful importation, exportation, or conveyance of any goods." This would leave the sub-clause at the word " smuggling." I move -

That the. words "or in the unlawful importation, exportation, or conveyance of any goods " be omitted.

Amendment agreed to.

Sir MALCOLM

McEACHARN (Melbourne). - In sub-clause (3), it is provided that a ship hovering within one league of the coast shall be forfeited if it has not departed within twelve hours after being required to do so by a Customs officer. It may be very difficult for the ship to depart. The winds, for instance, may be contrary. There should be some definition. The penalties in this Bill are altogether too severe. The provision needs to be compared with clause 175.

Mr KINGSTON

- As regards the penalties on ships, I propose to introduce a clause, similar to the Imperial provision, that where a ship is above a certain value it shall not be forfeited, but a pecuniary penalty shall be inflicted.

Mr O'Malley

- Why forfeit a ship at all?

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Mr KINGSTON

- It is more with the object of producing a moral effect than anything else. A similar provision is found in all such Acts. With the modification I have referred to, which is based upon Imperial legislation, the objection that the penalty is out of proportion to the offence will be removed.

Sir MALCOLM

McEACHARN (Melbourne). - There is only one other matter to which I wish to direct attention in this clause. It is not of great importance, but the provision is evidently taken from Acts passed at a period when ships were constructed differently from what they are now. Sub-clause (6) provides that ships may be forfeited for having double bottoms. But every steamer that is built nowadays is built with a double bottom.

Mr KINGSTON

- I see what the honorable member means, but that is not intended. This is an old clause, drafted at a time when ships were often specially constructed to contain goods in false bottoms. It would not apply to such vessels as the honorable member for Melbourne has mentioned.

Sir MALCOLM

MCEACHARN (Melbourne). - The sub-clause would apply under existing circumstances. I shall have to move an amendment to get over the difficulty.

Mr Kingston

- This is the expression used everywhere.

Mr PIESSE

- A provision of this kind has been found useful during the last few years even in Australia.

Mr Kingston

- And it is the usual thing.

Sir MALCOLM MCEACHARN

- - I think the Minister might take out the word "double," and limit the provision to ships constructed with false bottoms or sides.

Mr Kingston

- The provision is qualified by the other clauses of the Bill. sir malcolm mceacharn.- it is "an obsolete clause altogether.

Mr Kingston

- It has all the sanctity of age.

Sir malcolm mceacharn

- i do not think it should have double the sanctity of age. I beg to move -
That the word "double," in sub-clause (0), be omitted.

Mr Kingston

- I do not think the omission of the word would achieve the object the honorable member has in view. It is a word of limitation. I do not wish to trip the honorable member.

Sir MALCOLM MCEACHARN

- I know that the omission of the word "double " would accomplish my object. The sub-clause would then read - "false bulkheads, false bows, sides, or bottoms."

Mr CONROY

- The omission of the word "double" would give a stronger significance to the clause than it has at present, as I think the honorable member for Melbourne will see if he looks at it carefully. Only ships having "some device adapted for the purpose of running goods " will come within this provision. The word " double," as here used, is a well known expression, and I would ask the honorable member not to press his amendment.

Mr KINGSTON

- I take up the New South Wales Act, and I find that it makes provision with regard to ships having " false bulkheads, false bows, double sides or bottoms." The section in that Act is similar to the provision which we have here.

Sir MALCOLM

MCEACHARN (Melbourne). - I wish the committee to know that I understand what I am talking about.

Because the framers of this Bill have adopted an obsolete term, that is no reason why we should perpetuate it. Every steamer that is now built is constructed with a double bottom. I wish to make this Bill as perfect as possible, and therefore I desire its provisions to be sensible.

Mr Crouch

- Could you have false sides to a ship '!

Sir MALCOLM MCEACHARN

- You could have false sides.

Sir EDWARD BRADDON

- I hope the Minister will accept the amendment, which will evidently strengthen the Bill. Possibly ships may be built with double bottoms without any sort of idea of defrauding the Customs. If, however, a ship is built with false sides or bottoms, evidently for the purpose of carrying smuggled goods, then the clause as it would read, if amended, would apply to them. The word "double" seems to me to weaken the clause from the Minister's point of view.

Mr G B EDWARDS

- I think the honorable member for Melbourne knows what he is talking about. He says that ships are now built with double bottoms. When the Act from which this clause is copied was originally framed the word " double "" was inserted, because ships with double bottoms were used for the purpose of conveying smuggled goods. If the word " double " be struck out, the bottoms will only be regarded as false, if there is an attempt to disguise the nature of the cargo by the construction of the ship. The intention of the department will then be carried out.

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Mr KINGSTON

- Probably we are spending double the time that is necessary on this matter. If the honorable member for* Melbourne feels so" strongly 'on the point I will offer no objection to the amendment.'

Sir Malcolm McEacharn

- But we want to help the Minister.

Mr KINGSTON

- Yes, and I am . reciprocating.

Amendment agreed to.

Mr. CONROY

(Werriwa).- It will also be necessary to make an amendment in subclause (4).

The CHAIRMAN

- We cannot amend that now. We cannot go back.

Mr CONROY

- Am I to understand that if an honorable member jumps up and proposes an amendment in the very last line of a clause the whole of the earlier part of the clause cannot be discussed at all.

The CHAIRMAN

- Yes.

Mr CONROY

- Then in order to avoid such a contingency all I shall have to do in the future will be merely to stand up, and without looking at a clause announce that I desire to amend the first line. Sub-clause 4 as it stands provides that the mere fact of goods being thrown overboard may lead to the forfeiture of a vessel, although the owner may have had nothing whatever to do with the act.

Mr Piesse

- The honorable and learned member is discussing the standing orders.

Mr CONROY

- Well, I think it is a great pity that such a law should be allowed.

Clause, as amended, agreed to.

Clause 215-

The following goods shall be forfeited to His Majesty : -

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

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

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

All goods not being passengers' baggage found on any ship after clearance and not specified or referred to in the Outward Manifest.

All dutiable goods concealed in any manner.

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

Amendment (by Mr. Conroy) proposed-

That the words "are smuggled," line 3, be omitted.

Mr KINGSTON

- I understand that the honorable and learned member is only moving this amendment as a protest against his treatment in connexion with the preceding clause. I would point out to the honorable and learned member that although the rule is that we cannot go back and make an amendment in an earlier part of a clause, there is no doubt whatever that any honorable member who had moved an amendment towards the latter part of a clause, would be only too delighted to withdraw it, in order that another honorable member might have an opportunity of tabling an amendment relating to the first part of it, if he received a notification of that honorable member's desire before the amendment was carried.

Sir Edward Braddon

- The only thing is for the honorable and learned member to have the clause recommitted.

Amendment negatived on the voices.

Mr Conroy

- Divide.

The CHAIRMAN

- Perhaps the honorable and learned member is not aware of the fact that unless more than one honorable member calls 'for a division, it cannot be taken.

Sir MALCOLM McEACHARN

- I should like to have a definition of the word "exported," as used in paragraph (a).

Mr Kingston

- It relates to goods exported without the payment of duties.

Sir MALCOLM McEACHARN

- Would that be smuggling?

Mr Kingston

- The honorable member asks for a definition. I would point out to him that this has in contemplation the possibility of export duties.

Mr CROUCH

- Does not the word apply to goods "intended" to be exported. They cannot be exported till they leave our jurisdiction, and as soon as they have left our jurisdiction then they are to be forfeited. Is it not repealing clause 105, which provides that no prohibited exports shall be exported? It means that the goods cannot be exported until they are "exports," and then the Bill prohibits their export. It looks something like an Irish bull.

Mr Kingston

- We get at them then if we can. ,

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Mr CONROY

- I desire to call attention to the state of the committee.

Notice taken that there was not a quorum present. Quorum formed.

Sir. MALCOLM

McEACHARN (Melbourne). - I would suggest to the Minister that the words - and not being accounted for to the satisfaction of the collector should be added to paragraph (m), and there should, I think, be the addition of the same words to paragraphs

(o)

and (p).

Mr Kingston

- Not to paragraph (o).

Sir MALCOLM McEACHARN

- Well, at least to paragraph (p), which will then read -

Any package having concealed therein goods not enumerated in the entry, or being so packed as to deceive the officer, and not being accounted for to the satisfaction of the collector.

Mr KINGSTON

- I am prepared to accept the suggestion with respect to paragraph (m), but not with respect to the other two paragraphs mentioned. I shall be willing to move, if the honorable member desires it, that the words - and not accounted for to the satisfaction of the collector should be added to paragraph (m).

Sir EDWARD BRADDON

- Is the Minister not taking any notice of the exception taken to paragraph (a) in regard to exported goods. If goods are exported, how is anybody to get hold of them; they are gone. It seems to me that some alteration of the clause is necessary.

Mr Harper

- They may be on board of some ship improperly, and be out of jurisdiction.

Sir Malcolm McEacharn

- A ship might put to sea and put back again.

Sir EDWARD BRADDON

- I think there should be some amendment of the clause which will give control over these goods.

Mr Kingston

- The clause gives full control.

Sir EDWARD BRADDON

- It is locking the stable door after the horse has gone.

Mr THOMSON

- Before any amendment is made in paragraph (m), I would like to ask the Minister something in connexion with paragraph (l), which seems an exceedingly strong provision. It says that -

All spirits, opium, tobacco, snuff, cigars, or cigarettes in packages of less than the prescribed size found on or attached to any ship or boat shall be forfeited. That appears to me to apply to any packages, and not merely to importations. It is a very strong provision.

Mr Kingston

- The honorable member must know how necessary it is to have these goods in packages of certain sizes.

Mr THOMSON

- I do not see why it should be necessary at all, myself.

Sir Malcolm McEacharn

- Clause 50 deals with that.

Mr THOMSON

- I know that was dealt with before; but this is the question of forfeiture. I had not an opportunity of calling attention to clause 50, but this clause deals with the forfeiture of goods, and says that they should be forfeited if they are found in packages of less than the prescribed size. Even if a vessel brings tobacco for the use of its own crew, and though it cannot matter to the Customs officers in what packages the tobacco is kept, it has to be forfeited.

Mr Kingston

- No; it is the imported stuff.

Mr THOMSON

- There is a penalty as well as forfeiture, and it is provided that any packages of less than the prescribed size found on or attached to any ship or boat shall be forfeited. I am not sure what is meant by attaching anything to a boat, but I suppose it refers to a case of smuggling. The provision is one, I think, which could not be enforced.

Mr Kingston

- It is enforced.

Mr THOMSON

- They would never surely forfeit the tobacco in a ship's stores because it was not kept in prescribed packages. I do not see any necessity for it myself.

Mr KINGSTON

- The honorable member surely sees that unless we have packages of a prescribed size as regards highly dutiable goods, they would lend themselves to concealment in a way altogether undesirable. In all Customs Acts there is a provision that these goods shall be in packages of a certain size and description, so that they may be readily discernible, and there may not be the same possibility of evasion of duty as there would be if they were allowed to be made up in packages of all kinds and descriptions.

Mr Thomson

- I do not think these forfeiture clauses are in other Acts.

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Mr KINGSTON

- I think so; I know I struck out one provision under which a ship might be forfeited where a package was not of the prescribed size. Some of the provisions were very severe; but I thought this was reasonable. It is recognised amongst traders that it is their duty to import these goods under these special conditions: and if they neglect to adopt these special precautions and lend themselves to fraud they must suffer.

Mr Higgins

- What is meant by spirits being attached to a boat?

An Honorable Member. - A keg of -spirits may be towed by a boat.

Mr KINGSTON

- Yes, that is one way of doing it, but there are a variety of ways.

Mr Thomson

- That would be smuggling.

Mr KINGSTON

- It might be smuggling and it might not. But the mere fact of having it in that position raises such a presumption that we forfeit the goods.

Mr McCAY

- I desire to draw the attention of the Minister to paragraph 1, which says -

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

The word "misleading" is a very wide one, and it does not necessarily mean "intentionally misleading." In

fact, any error -whatever in. any entry or invoice which represented what was not the actual fact, would be misleading, because it would lead people astray. An error of one pound in the weight of a package, as shown in the entry or invoice, might be held to be misleading. It would be better if the words "intentionally misleading" were used.

Mr Kingston

- That would raise the question of intention, and where would we be?

Mr McCAY

- Well, would not the word " false " be sufficient. I think " false " conveys the idea of wrongful intention better than the other word. A misleading statement is not one that is intentionally misleading, and it might be misleading through a pure accident. An invoice with the ordinary cabalistic letters " E. and O. E. " on it might turn out to be a misleading statement afterwards. I suggest to the Minister that we might omit the words " or misleading." They might refer to an answer, statement, or representation, which might be a verbal assertion made to a Customs officer in asking questions, and we know the wide sense in which an answer to a question is used in this clause. A false statement does imply some thing deliberate on the part of the person making it, but a misleading statement does not necessarily have the wrongful intent attached to it, and I ask the right honorable gentleman if he does not think he would be sufficiently protected by keeping the word "false" in, and omitting the word "misleading."

Amendment (by Mr. Kingston) proposed -

That the words " or misleading," in paragraph (i), be omitted.

Mr ISAACS

- Would it not be better for the Minister to put in the word " intentionally " before the word " misleading"?

Mr Kingston

- That would cause difficulty.

Mr ISAACS

- It is a matter for the Minister to consider ; but if there is an omission from the document it may not be said to be false, and yet it may be worse than false in the ordinary sense. I only utter this word of caution lest the Minister unthinkingly should strike out a word which might have the greatest effect in getting complete and true invoices. A thing may be false in respect Of what it states, and it may be misleading in respect of what it does not state.

Sir Edward Braddon

- Put in the. word " , wilfully."

Mr KINGSTON

- I cannot put in the word " wilfully," because that also would raise difficulties. There is a lot in what the honorable and learned member for Indi says, that the word "misleading" may cover an omission which would not be covered by the word " false " ; but still, at. the same time, from what I know of other clauses of the Bill, I think that the declaration will be bound to be full, and that there will be little chance of our suffering by an amendment of the character suggested. However, I would ask the honorable and learned member for Corinella to withdraw his amendment for the present.

Mr McCay

- It was moved by the Minister himself.

Mr KINGSTON

- Under these circumstances I ask leave to withdraw the amendment.

Mr McCay

- I ask the Minister to take a note of the point.

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Mr KINGSTON

- I shall, without fail.

Amendment, by leave, withdrawn.

Amendment (by Sir Malcolm McEacharn) agreed to -

That after the word " manifest," in paragraph (m), the words " and not accounted for to the satisfaction of the collector" be inserted.

Clause, as amended, agreed to.

Clause 216 agreed to. Clause 217 -

All persons to the number of two or more assembled for the purpose of smuggling, or for preventing the seizure of, or for reselling after seizure any smuggled goods shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding five years.

Mr V L SOLOMON

- The marginal note points to the punishment of "armed persons assisting in illegal landing of goods "; but the clause itself does not use the words " armed persons." The punishment is undoubtedly of such a severe nature that surely it was intended to deal with armed persons and no others. It may be a misprint.

Mr KINGSTON

- Of course there is a slip in the marginal note. I confess that I do not read the marginal notes very often. This clause is intended to provide for cases where persons are conspiring together actively for the purpose of smuggling or preventing the seizure of goods or rescuing smuggled goods. I venture to think that that is an offence of so serious a character that, independently of any question of arms, it ought to be attended with a penalty of a term not exceeding five years imprisonment.

Clause agreed to.

Clause 218 agreed to.

Clause 219-

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

Penalty : One hundred pounds.

Sir MALCOLM

McEACHARN (Melbourne). I wish to ask the Minister why he has departed from the Victorian Act in this case. Section 195 of the Victorian Act is virtually contained in clauses 214 and 219 of the Bill. The Victorian Act provides that a ship shall be forfeited, which is covered by clause 214. but the penalty would come under this clause: and it goes on to say -

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

That provision is really contained in clauses 214 and 219 of this Bill.

Mr Higgins

- " Use or suffer " imply intention.

Sir MALCOLM McEACHARN

- I ought to have dealt with this matter on the other clause, and I want to try and get an amendment in here if I can. I would like to know what the Minister has to say on the point.

Mr KINGSTON

- The reason why I did not copy section 195 of the Victorian Act was that I thought it was too stiff.

Sir Malcolm McEacharn

- So far as forfeiture is concerned the Minister has the power in clause 214.

Mr KINGSTON

- But just look at what it is. Somebody has talked of a brutal clause -I did not - and of a terror of a clause. I intended to make the Bill as effective as possible, but at the same time I did not want to insert anything that would be positively revolting to our sense of fair play. Section 195 of the Victorian Act says-

If any ship or boat shall be found or discovered to have been within any port, bay, harbor, or river of Victoria, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto - we may catch it in the act or we may catch it after the act - or having conveyed in any manner any spirits not being in a cask or other vessel capable of containing liquids of the size or content of 4 gallons at the least, or any opium not being in a cask or package containing 45 lbs. weight of such opium at the least, or being separated or divided in any manner within any cask or package, or any tobacco or snuff not being in a cask or package containing 60 lbs. weight of such tobacco or snuff at the least, or being separated or divided in any manner within any cask or package, or any cigars not being in a cask or package containing 60 lbs. weight, or . 10,000 in number of cigars at the least -

Sir Malcolm McEacharn

- The right honorable gentleman may have improved the clause, but he could improve it still further.

Mr KINGSTON

- Does the honorable member know what happens then?

Sir Malcolm McEacharn

- Forfeiture.

Mr KINGSTON

- Not only forfeiture of the goods, but forfeiture of the whole ship.

Sir Malcolm McEacharn

- That is what I say, and the Minister has the power in a previous clause in exactly the same terms. He could forfeit the goods under clause 215, and the ship under clause 214.

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Mr KINGSTON

- I can only forfeit a ship engaged in smuggling.

Sir Malcolm McEacharn

- Yes, a ship used in smuggling or in unlawfully importing or exporting.

Mr KINGSTON

- No, we have struck that out.

Sir Malcolm McEacharn

- Or a ship engaged in the unlawful conveyance of goods. That has not been struck out.

Mr KINGSTON

- We struck that out the very first thing this afternoon on the suggestion of an honorable member. Will it satisfy the honorable member for Melbourne if I take section 195 ?

Sir Malcolm McEacharn

- I do not want that, but the best part of it.

Mr KINGSTON

- We have done better than that. We have provided that there shall be no forfeiture of the ship in these petty cases, but that there shall be penalties on people who smuggle, or unlawfully import, export, or have in their possession any goods. And there is a further provision that no master of a ship shall suffer a ship to be used for smuggling or for the unlawful conveyance of goods. In order to sheet home the charge it will, have to be shown that the master practically knew the offence was being committed ; and to provide, under the circumstances, a maximum penalty of £100, with a possible reduction to £5, is not overstating the case.

Sir MALCOLM

McEACHARN (Melbourne). - I am sorry' I cannot accept the statement of the Minister. I fail to see why we should take away from the master of the ship the possibility of proving that he knows nothing about the offence. It is all very well to use the word " suffer," and say that that means the' charge must be proved ; but it is easy to make the statement and give the master a great deal of trouble in connexion with the matter. I grant that the provision in the Victorian Act, under the circumstances, is much more onerous, and I commend the Minister for having allowed us under this clause to escape, at any rate, with our lives. But it would be easy enough to put words in here which would give the Minister all he desires, and at the same time let shipowners feel that charges have to be proved against them, or, at any rate, that their explanation shall be received. This is a very important matter to ship-owners, who have difficulties enough as it is, and I really beg the Minister to let us have what I now ask.

Amendment (by Mr. Conroy) proposed -

That after the word "shall," line 3, the word " knowingly " be inserted.

Sir MALCOLM

McEACHARN (Melbourne). - I would be satisfied if the Minister would say he would look into this section 195 of the Victorian Act and see if he can meet us in this matter.

Mr KINGSTON

- With much pleasure. The only reason, I say again, that I do not think such a provision is wanted is that we have not used such strong terms, and the qualification is not required at the present moment in the same way as it is in the Victorian Act, seeing that we have not imposed the same responsibility.

Sir Malcolm McEacharn

- But we have certain responsibilities.

Mr KINGSTON

- I will look into the matter.

Amendment negatived.

Clause agreed to.

Clause 220 -

No person shall -

Refuse or fail to answer questions or to produce documents.

Mr CROUCH

- Under subclause (g), a man may refuse to answer a question which is, of course, some decided act on his part, but to fail to answer a question might mean not answering a question that had not been asked.

Sir Edward Braddon

- A question must be put before a man can fail to answer it.

Mr CROUCH

- Not only are the master and crew concerned, but any person on board the ship may have questions put to him. A passenger may be asked all sorts of questions as to the ship and cargo, and if he fails to answer he may be fined £100.

Mr KINGSTON

- A person cannot fail to answer a question until the question has been asked.

Mr Crouch

- A man who does not know cannot answer a question.

Mr KINGSTON

- That is provided for in the interpretation clause which sets forth that "answer questions" means that the person on whom the obligation of answering is cast shall, "to the best of his knowledge, information, and belief," truly answer all questions on the subject that the collector shall ask.

Mr Crouch

- If the word "neglect" were used, it would, perhaps, be better.

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Mr KINGSTON

- If a person fails to answer, he fails to answer to the best of his knowledge and belief. If a person says, he does not know, and he does not truly know, he will not be punished.

Clause agreed to.

Clause 221 -

Whoever willfully makes any false statement on oath under this Act shall be guilty of an indictable offence, and shall be liable to imprisonment with hard labour for any period not exceeding four years.

Mr ISAACS

- Does the word "oath" in this clause apply to declarations under the Bill. If the word does so apply, I would like the Minister to consider the matter; because, if it is intended that "oath" shall apply to declarations, I think the intention is likely to fail. The Acts Interpretation Act extends the word "oath" to a declaration rather in a judicial sense, as applied to cases in which an oath is prescribed, and a person is allowed to make a declaration in lieu of an oath. That is not the kind of declaration referred to in the Bill.

Mr KINGSTON

- There are special penalties connected with declarations under the Bill.

Mr Isaacs

- If "oath" is intended to cover those declarations, some other word will have to be used.

Mr KINGSTON

- I think the word "oath" is used chiefly in clause 203, in connexion with information in writing which must be given on oath. That is a protecting clause to a great extent.

Mr Isaacs

- That is quite immaterial.

Mr KINGSTON

- Yes; but the general idea is that false declarations shall be provided for by the minor penalties which appear in the Bill.

Mr Isaacs

- What does this clause apply to?

Mr KINGSTON

- To clause 203, which relates to the production of books for a series of years.

Mr Isaacs

- I think the matter had better be looked into.

Mr KINGSTON

- I will see whether there is sufficient justification for the retention of the clause, and if there is not, I shall be only too delighted to get rid of it, with a view to the further simplification of the Bill.

Clause agreed to.

Clause 222-

Whoever aids, abets, counsels, or procures, or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Act shall be deemed to have committed such offence and shall be punishable accordingly.

Mr THOMSON

- The Minister promised to consider "previous clauses which related to agents.

Mr Kingston

- We fought the agents' clause out to-day to a great extent.

Mr THOMSON

- But I think the Minister indicated that if he thought it desirable, he would consider those previous clauses and perhaps recommit them. There is also the question, of liability, which the honorable member for Melbourne raised just now. Would it not be well to consider this clause in connexion with the Other i clauses to which I have referred? This is a sort of drag-net clause.

Mr Kingston

- It ought to rake in all who are guilty.

Mr THOMSON

- But the Minister promised to reconsider some clauses under which individual inadvertence is punishable. This clause includes everything, and if the Minister is going to consider individual cases, it will be necessary to also consider this clause.

Mr Kingston

- I will consider the matter.

Clause agreed to.

Clause 223-

Any attempt to commit an offence against this Act shall be an offence against this Act punishable as if the offence had been committed .

Mr CONROY

- I think this is rather a severe provision, inasmuch as it awards the same punishment for an attempt to commit an offence as for an offence that has actually been committed.

Mr Kingston

- It is just as bad.

Mr CONROY

- I do not think that the Minister for Trade and Customs would argue in that way if anybody tried to kill him.

Mr Kingston

- It would be equally nefarious for any person to conceive the idea of killing me.

Mr CONROY

- I think the clause is rather too drastic.

Clause agreed to.

Clauses 224 and 225 agreed to.

Clause 226-

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

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Mr McCAY

- I should like to draw the Minister's attention to the effect which this clause may have in some cases. Of course I quite understand its object, but I would like the Minister to look at clause 87, which provides that - No person shall, except b3' authority, open any warehouse, or gain access to the goods therein.

It seems to me that if any person without authority opened a warehouse which contained £20,000 worth of dutiable goods, having himself in that warehouse £5 worth, he might be liable to a penalty of £60,000.

Of course that is not intended. If we look at other clauses we shall find some, in respect of which the maximum penalty is very high, and, as a consequence the minimum penalty becomes alarmingly large. I would draw the attention of the Minister to this fact.

Mr KINGSTON

- I notice the point. The more I look into the matter the more I am inclined to think that there is a lot in the objection raised by the honorable member for North Sydney, and that probably we shall have to give a larger discretion to our courts, particularly as regards the minimum penalty, when that minimum would be of the character referred to by the honorable and learned member who has just resumed his seat. I think that that matter, however, would be more appropriately dealt in connexion with the clause relating to the minimum. We need not be afraid of our courts in regard to the imposition of the maximum penalty, so long as they have the necessary power with regard to the minimum.

Mr Thomson. - A high maximum is often necessary.

Mr KINGSTON

- Tes, it is. But if we make the minimum penalty very high - the punishment being so severe - there will be a tendency to let off a man who is guilty.

Clause agreed to.

Clauses 227 and 22S agreed to.

Clause 229-

The minimum penalty for any offence against this Act shall be one-twentieth of the prescribed maximum.

Mr THOMSON

- This is a clause to which, on several occasions, I have called the attention of the Minister. While it may be necessary - and is sometimes desirable - to have a high maximum penalty, because an attempt may be made to smuggle a large quantity of goods, and the fine imposed might not be at all in proportion to the offence I do not see that it is necessary to have any minimum penalty.

Very minor offences are provided for in this Bill, and it has been held as a very reasonable principle that an offence, even if committed unintentionally, and of a minor nature, shall be made subject to a penalty, if, in the opinion of whoever has to determine the question, it merits it. Whilst that is so, there are offences for which a fine of £1 would be quite sufficient.

Mr Kingston

- We have graded them to some extent. There are penalties of £100, £50, £20, and £10.

Mr THOMSON

- Yes. But a fine of £1 would be ample for some of the offences under this Bill. The Bill contains some very strict provisions which do not take notice of error or inadvertence, or of the fact that there could be no disadvantage to the Customs revenue by reason of the error which has been committed. But for the purpose of accuracy, and so that no firm shall shield itself behind an error, it has been considered necessary to render the parties making an error liable at any rate to a penalty. The extent to which they shall be liable must in every case depend upon circumstances. In some cases £1 would be a sufficient fine to impose, but other cases might require the imposition of the full amount of £100. As the range is a very large one - we may go up to £20,000 or £30,000 under the maximum penalty - I do not see that there is any necessity at all to fix the minimum penalty.

Mr Kingston

- I think we might have some minimum.

Mr THOMSON

- I do not see it, because there is no relationship to the value of goods. The maximum penalty is fixed by the value of the goods. Of course there is a reason for that. If there was an attempt to smuggle or improperly pass a large quantity of goods, the advantage to be gained might be so great that an offender would require to be discovered ten times, and a fine of £100 imposed each time, before he lost the entire value of the goods. But three times the value of the goods is a very high maximum. There is an attempt

made here to fix the minimum in proportion to the value of the goods, because it is provided that the minimum penalty shall be one twentieth of the maximum penalty.

Mr Kingston

- I see the weakness there.

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Mr THOMSON

- What the minimum shall be may very well be left to* the decision of the courts, and in cases where offenders are dealt with by the Minister, he ought to be allowed to inflict a penalty that shall be a fit punishment for the offence. Where the offence is a mere trivial error which does not affect the Customs revenue in any way, I think that the imposition of a fine of £1 would be ample, and, therefore, in that case there would be no need for a minimum at all. If the Minister wishes to fix a minimum he might make it £1.

Mr Kingston

- Make it £2.

Mr HARPER

- It might be thought judicious to line a person £1 only.

Mr THOMSON

- Yes ; the offences are of a minor character, and everything is provided for, however slight the error may be. If an entry is being passed, and the wrong ship is named, it is considered an offence, and I do not think it would injure the Customs to reduce the minimum for such offences as those contemplated, so long as the goods pay duty.

Mr Kingston

- We only want to inculcate accuracy.

Mr THOMSON

- I do not mind a small penalty being imposed with a view to securing accuracy and keeping the Customs books correct as a record ; but I think there might be either no minimum at all, or that a minimum of £1 might be fixed to meet such cases as errors committed by clerks under circumstances where there could be no fraudulent intent or possibility of fraud. I would suggest that the minimum should be omitted altogether.

Mr Harper

- Strike out the clause altogether.

Mr THOMSON

- Yes ; the clause might be omitted altogether.

Mr KINGSTON

- I confess that the clause is open to the objection which has been pointed out, and that in the case of an offence committed in reference to goods of great value, the punishment would not fit the crime. At the same time, I do not like the idea, when offences are committed against the Customs laws, of giving the courts power to inflict a merely nominal penalty of a shilling or so and then let the thing go. There is a disposition in some quarters to look upon infractions of the Customs laws with a too lenient eye - to regard them as venial sins. They are looked upon as matters in which if people manage to get off without detection they are to be considered very clever ; while if they are bowled out they are to be sympathized with. We all know that the public think that to get at the Government is one thing and to get at a private individual is another. To get at a private individual is highly improper ; but to get at the Government, and through the Customs especially, is looked upon as a legitimate exercise of acuteness.

Mr Knox

- The crime consists in being found out.

Mr KINGSTON

- Yes ; that is the way it is looked upon-; and I am afraid that if we take away the obligation which is cast upon the court to inflict some penalty, there will be a disposition to trifle with the matter and to deprive the law of the effect which it is intended to have.

Mr Isaacs

- Will this clause apply to penalties which take the form of imprisonment 1

Mr KINGSTON

- No : The only question, here is as regards the amount of the fine. It will be found as regards

imprisonment that no minimum is fixed.

Mr Isaacs

- The maximum is.

Mr KINGSTON

- Yes ; but this provision is intended to apply to the pecuniary penalties.

Mr Isaacs

- It does not say so.

Mr KINGSTON

- We can make that clear if necessary. I would like to meet the honorable member for North Sydney so far as his objections are well founded, but as for the pecuniary fixed penalties, if we keep to the suggested minimum, we shall not be going far wrong. The pecuniary penalties, are not so high as they have been in many cases. I think the highest here is £100, and the amount varies down to £50, £20, and £10.

Mr Thomson

- The sums the Minister names are not the maximum.

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Mr KINGSTON

- They are the maximum with respect to a variety of offences. £100 is the usual thing, and then come £50, £20, and £10, the latter amount being in regard to offences which are not otherwise provided for. That means that there is a minimum of £5, then another of £2 10s., then £1, and the lowest 10s. I do not think that is unfair. The point the honorable member makes is that in regard, to goods where the value is large, and the value regulates the amount of the fine, the minimum of one-twentieth might be a terrific amount. If we can provide that the minimum shall not be inordinately large I think it will meet the case.

Mr Reid

- It will be in the hands of the court.

Mr KINGSTON

- But there are varieties of courts.

Mr Reid

- But surely the Minister has confidence in the administration of justice.

Mr KINGSTON

- Of course, we all have. But it is the usual thing to provide for a minimum penalty for an offence. It is a more ordinary rule to provide in that direction than to allow the minimum to be absolutely under the control of the court.

Mr Higgins

- Any court of summary jurisdiction.

Mr KINGSTON

- Yes ; I am thinking about courts of summary jurisdiction, which will be chiefly occupied in the consideration of these cases. I am willing to provide that in cases of the character to which the honorable member for North Sydney has referred there shall be a minimum fixed, and I venture to think that £2 should be the amount.

Mr V L SOLOMON

- Would any court go below that amount?

Mr KINGSTON

- It is not the usual thing to give the courts unlimited power, and as the penalties in connexion with Customs Acts generally have been of an absolutely fixed character, I am loth to depart from the usual practice. At the same time, the objections of the honorable member for North Sydney seem to have so much to sustain them that I am prepared to go a good way in the direction of meeting them.

Sir EDWARD BRADDON

- Why should not the Minister be consistent ? He said in a former case that the maximum penalty might be safely left to the discretion of the court, and surely in this case the fixing of the minimum penalty might equally be left to the discretion- of the court.

Mr Kingston

- I do not think I said that. The maximum is limited by the Bill.

Sir EDWARD BRADDON

- Yes ; it is limited, but the court has power to impose a penalty within that maximum. Here we have the possibility of a man being" fined heavily for some trifling offence for which a mere nominal fine of a few shillings would be amply sufficient. Why should that not be left to the discretion of the court ? I hope we shall- not retain in the Bill this clause, providing a minimum penalty, or clause 242 which says that no minimum penalty imposed by this measure shall be liable to reduction under any power of mitigation. I hope the minimum penalty will be struck out altogether.

Mr ISAACS

- When the Minister looks at clause 229 he will see that that provision, relating to the minimum being one-twentieth, of the maximum, must refer to imprisonment for indictable offences as well as to pecuniary penalties. Division 2, Part 13, is headed with the word "penalties." If the right honorable gentleman looks at clause 218 he will find indictable offences provided for with imprisonment, not exceeding three years. Under clause 221 the penalty is imprisonment not exceeding four years. This provision is clearly applicable to punishments for indictable offences. In clause 243 a distinction is drawn, and pecuniary penalties are specifically mentioned. Undoubtedly under that clause the court would have no option, if it found a person guilty, but to inflict a penalty amounting to one-twentieth of the maximum penalty provided by the clause.

Mr. THOMSON

(North Sydney). Since hearing the Minister's explanation I am confirmed in my view that it would be better to strike out the clause altogether. I am specially convinced of that after the remarks of the honorable member for Indi. The Minister has argued that there are certain people who have such a low opinion of smuggling that, even when sitting on the Bench, they would be disinclined to impose a penalty at all, unless there was a minimum penalty which they must inflict. If that argument is a good one, it goes against allowing these cases to be tried in the courts at all. The court has first to find the offence before it can inflict a penalty ; and if the court has such an estimate of its duty and of the non-seriousness of smuggling, will it find the offence ? Surely if we trust the court to find the offence we may trust it to impose the penalty, in which case there is no necessity for the minimum. - Under the circumstances, and considering the trifling nature of some of these offences, and also considering, as the honorable member for Indi has pointed out, that the clause would refer to other than pecuniary penalties, it would be well to strike it out altogether.

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Mr McCAY

- I cannot agree with the honorable member who has just resumed his seat as to the view of their duties taken by courts of summary jurisdiction. Those who are familiar with such courts will know that as a rule they are careful in properly discharging their duty by finding the offence and coming to a decision of guilty or not guilty, but there are many offences as to which, where they have a discretion as to the penalty, they inflict a mere contemptuous punishment from the point of view of smallness. Every one who has experience of courts of summary jurisdiction knows that they have a tendency to inflict very small penalties in regard to such matters as licensing and factories act offences, considering that they have done their duty in finding the offence proved. I think it would be better to have a minimum.

Mr CONROY

- I think it, would be better to omit the clause. The remarks of the honorable member for Indi make it clear that the clause should come out. It should be left to the discretion of the court to inflict a penalty. Under clause 228, which has been adopted, it will be seen that any one twice convicted would be liable to imprisonment. It would be a very serious matter to permit this clause to pass as it stands. I would ask the Minister to reconsider it. Under clause 224, the minimum would be only 10s. That being . so, surely the minimum under the clause before the committee should not be more than 10s.; and why the Minister should endeavour to fix it at £2 I cannot understand.

Mr KINGSTON

- As to the point made by the honorable member for Indi, the clause could be made clearer by inserting the word "pecuniary" and saying the "minimum pecuniary penalty" for any offence shall be so and so. I would ask the committee to consider, however, whether it is not wise that there should be some minimum
1 As has been pointed out by the honorable member for Corinella, justices of the peace very often

approach a case in a spirit of opposition- to the law, or having sympathy with the nature of the offence. They will not so far forget their duty as to openly flout the law or disregard the evidence in face of the plainest proof, but they will record a verdict against the defendant, and at the same time manage to defeat the object and scope of the law by inflicting some ridiculous penalty altogether out of proportion to the nature of the offence, but merely expressive of their personal belief that the law should not be as it is, and of their sympathy with the character of the offence. We have heard of cases in which Judges have expressed themselves in the most curious fashion in regard to the nature of a law, forgetting that their duty is to administer it and not to make it.

Sir EDWARD Braddon

- That is a terrible charge to bring against them.

Mr Mauger

- Such cases have frequently occurred in Victoria.

Sir Edward Braddon

- All sorts of things happen in Victoria.

Mr KINGSTON

- I am not indulging in any reckless imputations. We have great reason to be proud of our unpaid judiciary.

Mr Reid

- Then I hope the Government will have some unpaid Justices for the High Court.

Mr KINGSTON

- The right honorable member knows perfectly well to whom I am alluding. We have to guard to some extent against the practical expression of judicial' views hostile to the enforcement of the enactments of the Legislature. We do that in a variety of ways. I think it will be found in the various States that in 90 per cent, of the Acts it is a general rule to provide a minimum' in order to prevent abuses of the character to which I have referred. It is notorious that the general public often improperly extend sympathy to offenders against the revenue laws. The provision is, therefore, particularly necessary in this connexion. I ask honorable members to insist upon the provision of a minimum, in order to give effect to a law which, owing to its special nature, and because of public sympathy with breaches of it, will be set aside if we relax any of the precautions ordinarily taken to give effect to other laws. The Government do not want to be stubborn in this matter.

Mr V L SOLOMON

- Of course not; no one would accuse them of that.

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Mr KINGSTON

- Well, we always try to give reasons for the faith that is in us. I do not think honorable members will blame ns for sticking to what we believe to be right, until we are satisfied that some better proposition is made. We ask the committee to assist us in getting within the four corners of the Bill something which will prevent its object being frustrated by public sympathy with breaches of the revenue laws.

Sir MALCOLM McEACHARN

- Make the maximum £1.

Mr Reid

- After- that peroration, the right honorable and learned gentleman might meet the views of those honorable members who object to the clause as it stands.

Mr KINGSTON

- I always like to hear the honorable and learned member talking. I think we should, at least, have a penalty of £2.

Sir Edward Braddon

- Split the difference.

Mr. McCAY

(Corinella). - I think I can suggest a way out of the difficulty. The chief objection is that, under clause 226, an increase of the maximum might mean an increase of the minimum. Could not words be added to clause 229, providing that any increase of' the maximum penalty, under section 226, should not imply an increase in the minimum penalty. That would mean that although the maximum might be increased in

clause 226, the minimum would remain as it would be if that clause were not in existence ?

Mr Thomson

- The Minister's object would be met by saying that, the minimum penalty shall be one-twentieth of the maximum provided in the clause.

Mr KINGSTON

- Suppose we provide that the minimum pecuniary penalty for any offence against this Act shall be one-twentieth of the maximum amount which is declared in this Act ?

Mr Piesse

- We might divide the clause, and declare that where any penalty in pounds sterling is provided, the minimum penalty shall be one-twentieth, and then go on with the other penalties.

Mr KINGSTON

- We might put in a general clause saying that the minimum penalty under this Act shall not be less than £2.

Mr Conroy

- But a minimum penalty of 10s. is already provided under clause 224 when read with clause 229.

Mr KINGSTON

- That is only in regard to a £10 penalty.

Mr Thomson

- That is what the Minister intended. .

Mr KINGSTON

- I applied a rough and ready rule, I think it would be better to make the clause read in this way -

The minimum pecuniary penalty for any offence against this Act shall be one-twentieth of the prescribed maximum where the amount is stated in pounds sterling in . this Act, and in other cases shall not be less than £2.

Mr. CONROY

(Werriwa).- It must not be forgotten that we have passed clause 228, where it is provided that for a second offence against this Act a person may be imprisoned with hard labour for a period of not less than six. months. Cases may arise in which the court, although the man may be guilty of an offence under this measure, will not wish to convict him. They may not wish to inflict any minimum at all. A man may be imprisoned for not less than six months in -respect of offences which might have been mere errors or misdescriptions.

Mr Mauger

- There is no fear of an innocent man being punished.

Mr CONROY

- A case might look black against a man at the first and he might be summoned before the court. He might then be shown to be perfectly innocent. That, however, would not excuse him at all. When we bear in mind the serious consequences that follow the infliction of even a minimum penalty I think we might decide to leave it to the court to say whether a man has been guilty of an offence or not. I think it would be better to omit the clause.

Mr KINGSTON

- This penalty, in relation to the value of goods, only takes effect as an alternative to a maximum penalty prescribed in pounds sterling. Unless there is a prescription of the maximum in pounds sterling, there is no possibility of the operation of the provision raising the amount to twice the value of the goods. What we want to do is to declare that the minimum in all cases shall be one-twentieth of the maximum as declared in pounds sterling.

Mr. Isaacs. - Why limit it to that? If it is a good rule in one case why not apply it all round ?

Mr Higgins

- It is not much.

Mr KINGSTON

- It sounds somewhat large.

Mr Isaacs

- If the goods are worth £10,000, then the minimum penalty, as I understand it, is £1,500, and if a person tries to defraud the Customs in respect of goods worth £10,000 he should be prepared to take the risk of

having to pay that penalty.

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Mr KINGSTON

- No doubt, but there might be something in the nature of a minor offence, to which this would apply, and the objection is pretty well founded in that respect. It seems to me that the clause might be amended so as to read -

The minimum pecuniary penalty for any offence against this Act shall be one-twentieth of the maximum in pounds sterling as declared by this Act.

Mr. THOMSON

(North Sydney). - I think that what the Minister desires to get at could be reached by an amendment in another form.

Mr Kingston

- Let this apply to a maximum which is stated in pounds sterling.

Mr THOMSON

- That is rather a clumsy way of doing it. In clause 5 it is provided that the penalty referred to at the foot of a section is the penalty to be inflicted for breaches of that section. In order to get at what the Minister desires, I would suggest that we should say that the minimum penalty for any offence against this Act shall be one-twentieth of the penalty referred to at the foot of the section.

Mr Kingston

- The penalty is not stated at the foot of every section.

Mr THOMSON

- That is so. I thought they were. The honorable member for Indi just now asked why should not the penalties have some relationship to the value of the goods. For this reason : That the offences here specified may be simple errors. For instance, making any entry which is false in any particular is one of the offences which may be made in connexion with goods of very high value. It may be admittedly an error caused through inadvertence, and still the minimum penalty for that in the case of goods worth £10,000 would be £1,500, which would be absurd. There is, therefore, no relationship ; and, as the Minister says, the punishment cannot be made to fit the crime in dealing with a minimum penalty on a basis of the value of the goods. I am willing that the Minister's proposal should be accepted in the clause, and then when we come to divide upon the clause, as amended, we can strike it out altogether if we think fit to do so. My opinion is that in some of these cases in which a penalty of £1 00 is provided, while that might be a reasonable penalty where there is a deliberate attempt to evade duty, it would not be reasonable where there is simply an ' error made. The error is no worse in a case where £100 penalty is provided for than it would be in connexion with an offence for which only £10 penalty is provided. If the offence is a deliberate one it is worse in cases in which the higher penalty is imposed to make the distinction, but if it is only an error it is no worse in some of the cases in which maximum penalties are provided for than in cases where only a minimum penalty is provided for. I would prefer to see the clause omitted altogether, and next to that I would prefer the Minister's proposal for a minimum of £2.

Mr KINGSTON

- I think the best way would be to make the clause read as follows -

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

Sir Malcolm McEacharn

- Then the ' right honorable and learned member would have to amend the penalties right through.

Mr Thomson

- What about the £2 mini mum?

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Mr KINGSTON

- The honorable member for North Sydney is not laying so much stress upon the extravagance of the minimum in reference to cases where the amount is specified, but he has pointed out that the minimum in cases where the goods are of very considerable value might be so high as to have a disastrous effect. If we agree to the clause in the way I propose I think the difficulty will be entirely removed, and the question of the value of the goods will not -interfere in the slightest, because although the maximum is raised on

account of the value of the goods the minimum will still remain one-twentieth of the penalty as expressed in pounds sterling within the four corners of the Bill. I move -

That after the word "minimum," line 1, the word "pecuniary" be inserted.

Mr. V. L. SOLOMON (South Australia). This clause has been twisted about until one hardly knows what it is intended to convey. In spite of what the Minister has said about the unreliability of some courts in Australia, and their sympathy with certain classes of offences, I still think that if we are going to give these courts jurisdiction in regard to this Customs Act, it would be better to strike out altogether this clause referring to a minimum penalty. The Minister told us he was quite willing to reduce the minimum to £2, but in the alteration of the clause now under consideration he proposes to provide in the bulk of the cases for a minimum of £5. For instance, take the penalties which may be imposed for offences under clause 220. We have under that clause a penalty of £100 provided for, and what are the offences?

Any person who shall make any entry which is false in any particular.

It was suggested when the clause was before the committee that we should put in some word to signify that it must be a wilful making of a false entry, and that there must be some improper intention. That was fought, if I may so describe it, tooth and nail by the Minister, and now if a false entry is made, without any intention to defraud, and as a mere mistake, the minimum penalty that can be inflicted by the courts under this clause 229, as the Minister now proposes to amend it, will be one-twentieth of £100, or £5. That will be the fine for a mere error in an entry which is false in even the smallest particular, some simple error for which probably a fine of £1 would be sufficient in order to make the importer a little more careful in future in his Customs work. Then we come to another offence described as "misleading any officer in any particular likely to affect the discharge of his duty." It is not a wilful misleading of any officer, but if in answering interrogations by a Customs officer, something is said which misleads him, the minimum penalty will be £5.

Sir Malcolm McEacharn

- Giving him too much whisky would, under that clause, be misleading him so as to render him unable to discharge his duty.

Mr Kingston

- That would be the worst way of misleading him.

Mr V L SOLOMON

- Then we come to another clause to which I direct the special attention of the Minister. Under paragraph (h) of clause 220 it is provided that no person shall -

Sell or offer for sale any goods upon the pretence that such goods are prohibited imports or smuggled goods, and the penalty for the offence is £100. I only mention this to ask the Minister if he has considered if that offence is properly included in this Customs Act, and whether it is not rather an offence provided for by our common law - misrepresentation in the sale of goods. Has it really any place in this Customs Bill at all? I direct the attention of the honorable and learned member for Indi and other legal members of the committee to that particular point. I know that in some of the States something similar has been adopted.

Mr Kingston

- In all the States.

Mr V L SOLOMON

- I am perfectly aware of that, and it has never been questioned; but I doubt very much whether it has any right in this Customs Bill. I merely direct the Minister's attention to that in passing. I think it would be most unjust to limit the power of the court in such a way that it must inflict a fine of at least £5 for making an entry which is false in the slightest particular, whether it is wilfully done or not. I would suggest to the committee that the easiest, best, and safest way is to strike out the clause, for which there is no necessity. If we can trust the courts to inflict penalties up to £100 - penalties up to three times the value of the goods, which may mean thousands of pounds - we can surely trust them also in their discretion to inflict extremely light fines without fixing the amount of the minimum which they shall be bound to impose.

Sir MALCOLM MCEACHARN

- As the Minister seems desirous that there should be a minimum penalty, and that the clause should not be omitted, I would urge him to fix the penalty at what he offered a little time ago to adopt, namely, £40. There is one case I spoke about privately to him. Under clause 175 a vessel hovering within one league of the coast is bound to depart; and if the captain, who may not know that he is required to do so, does

not get away within twelve hours - and he may not be able to get away in consequence of the wind - he is liable to a penalty of £100. There are the instances which were mentioned by the last speaker, with which I quite agree, and for which clause 220 provides a penalty of £100. I would point out to the Minister that, under clause 224, where any penalties are not provided for in any clauses, the parties offending are liable to a penalty of £10, so that he may find very much more heinous offences committed which are not provided for under this clause, and for which the maximum penalty provided under that is £.10.

Mr Kingston

- The minimum.

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Sir MALCOLM MCEACHARN

- The Minister is quite right. The matter would be met by the suggestion made earlier in the day by the Minister, that the minimum should be fixed at £2. It would be very acceptable to the whole committee.

Mr. CONROY

(Werriwa). - I would remind the Minister that when many of these clauses were read, and the penalties inflicted at the end were pointed out - and clause 22-9 was also pointed out to him - he practically promised that this minimum would be done away with.

Mr Kingston

- Did any other honorable member understand me to do that 1

Mr CONROY

- I think so, because otherwise we should have had a fight over the maximum which was put in. I certainly was under that impression.

Sir Malcolm MCEACHARN

- The Minister said he would look into the matter, and would, in all probability, reduce them - not do away with them.

Mr CONROY

- The Minister will remember that I drew attention to- very many of these clauses at the time, and pointed out the nature of the penalty. I was under the impression that he was going to do as I have stated. If I had not been under that impression I would have -taken exception to very many of the clauses. I have a lot of the clauses marked where the penalty is £100 ; in fact, I think the Minister got rather annoyed because I brought up the matter so many times. For instance, as regards one clause, it was shown that the penalty was £100, and when I understood that the minimum was to be £100, because the man might wilfully commit the offence, I was willing to allow it to stand, but where it was shown that it was done through some error, although it might only be shown afterwards, then, of course, it would be quite unfair to exact the minimum penalty of £5. Again, under clause 37, which provides that the entry shall be passed by the collector signing the same, we find that the slightest mistake involves a penalty of £100. Now the minimum penalty is to be £5. Again, clauses 47 and 50 provided for a minimum penalty of £100. I certainly understood that it was the intention of the Minister to consider all these penalties. I ask him to consider whether he did not lead honorable members to the supposition that there was no necessity to go on discussing the minimum penalties in that way, from the fact that he intended to deal with clause 229 ? I ask him to consider whether he did not say something which led to the formation of that idea 1 He will remember how often I called attention to them, otherwise I should have debated many of them most strongly. I have marked clauses 67, 69, 105, 107, 112 and 117, where the penalty is £100. For instance, such a thing as the exportation of an article worth 10s. in value would lead to a minimum penalty of £5, and if exported in a ship of less than 50 tons register, under clause 107 the minimum penalty is £5. It was intended- to get at gross cases which might occur, and even in those cases it was thought that a penalty of £100 would be sufficient where it was wilfully done. And in a mere case of omission, where the Minister was first satisfied that there might be something in the charge and started an action, and it was clearly shown in court that was not the case, the clauses have been drawn so strictly that there can be no escape from them. I have similar clauses marked. I have not marked clauses 50 and 60 as ones I have called attention to. I have half-a-dozen clauses marked which I called attention to and which the Minister promised to reconsider ; and it was done in connexion with clauses 224 and 229. I think that the Minister having got all the clauses through on that understanding - certainly but for that a debate would have taken place upon them - ought now to accept the suggestion of the honorable member for North Sydney. I think

the honorable member for Melbourne himself drew attention to clause 224.

Sir Malcolm McEacharn

- There is not much difference between £2 and £5. The Minister has been very good, and let him have his way.

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Mr CONROY

- I do not think it is a question of letting the Minister have his way. If the thing is right, he ought to have his way, but if it is not right he ought not to have his way simply because he is the Minister. It may be very well for honorable members on the other side, who may be under subjection, to take that view. I can quite understand them responding to the crack of the whip. When I allowed so many clauses to go through under what I thought was a distinct promise from the Minister, I feel, and he himself knows it, that he is going back on his word. I will put it in another way, and say that the Minister has forgotten what he himself stated. But I have known him to do it so many times that there ought to be no excuse for him. I have over twelve or thirteen clauses marked, to which I drew the attention of the Minister, and if that is not calling attention to the matter often enough, I would like to know what is. The Minister having got all these clauses through, and we not being in a position to reconsider the penalties, he now says - "Very well, I shall stick to this," and puts in a penalty of £5, possibly. But the Minister would not have got those maximum penalties through had he asserted his intention of retaining clause 229. If the Minister is going to treat the committee in this way, it will behove us to be very careful when he again brings measures forward. If what he has done has the concurrence of the Ministry, it will be for us to watch everything carefully, and not allow a postponement, but discuss every line and every clause of a measure. The Minister knows what that means. I consider that I, at all events, have been distinctly misled in this matter.

Mr KNOX

- I am quite sure the committee will rise to the sense of their responsibility after the statements we have heard from the last speaker. AVE are particularly anxious to get on with the business, and also anxious that the responsibility for these amendments suggested shall rest with the Minister. I would suggest that the Minister should take a vote of the committee, if necessary, when I think he will find the committee will support him.

Mr KINGSTON

- An accusation of misleading the House is a very serious one, and if I thought I deserved it, I should indeed be sorry ; but I do not think that any honorable member, other than the honorable and learned member for Werriwa, would for a moment support such an accusation. Under the circumstances, I shall best consult my own dignity by saying nothing further on the point. I assure the honorable and learned member that he is mistaken. The promise I gave to the honorable member for North Sydney, I have most faithfully performed. The idea was that when we got to this clause, we should fight the matter out on the general question of whether there was to be a minimum. We are now fighting the matter out, and I trust the Government are not doing, and never will do, anything to merit censure of the description suggested by the honorable and learned member for Werriwa.

Mr. THOMSON

(North Sydney).- I may say at once that I quite acquit the Minister of having deceived me in any way.

Mr Reid

- The Minister could not do it.

Mr1. Kingston. - The Minister would not try, which is better.

Mr THOMSON

- Then I acquit the Minister of even having tried to deceive me. I raised the question at an early stage, during the second reading debate, and subsequently on some of the clauses, and I always understood that when we came to the minimum penalty clause, the Minister would take it into consideration, with the view of arranging that there should not be anything like the tremendous penalties for which the clause provides. Under the circumstances I thought of going to a division to test the question of leaving the matter entirely to the courts, but now I shall let the matter pass, if the Minister introduces his proposed amendments.

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Mr REID

- I really feel quite touched by the way in which the committee has vindicated the Minister in this matter, but I have some degree of hesitancy in allowing the clause to go without expressing my regret that the Minister in charge of the Bill should have made so many serious charges- against persons engaged in the administration of justice. It is very easy for us to be on our dignity and stand by one another in this Chamber when there is the slightest suspicion of any conduct as affecting the Minister, but I am not one of those who can sit here and listen to imputations on persons sworn to administer justice in the public courts of the country. I look on that as a much more important matter than the delicate interchange we have just witnessed. I consider that the Minister has made statements which will seriously undermine the confidence of the people in our courts. That is, if the people pay the slightest attention to those statements - I wish my right honorable friend to quite understand that. No fashion should be set by Ministers of the Crown in this Chamber in the way of disparaging the honest discretion of persons acting in a judicial capacity. It is a very easy thing to do, and, at the same time, it is a thing to avoid. My right honorable friend was very much in earnest in the opinion he expressed, and I know his thoroughness too well to believe that he otherwise would have consented to the very large surrender he has made in this matter of penalties.. If the benches who deal with these matters are capable of, or show a disposition to take a side against constitutional authority with a view to looking leniently on offences, some of which amount to fraud, against the Customs, is it not a pity that the Minister should not have taken upon himself the whole of the jurisdiction as the one righteous person who could administer everything from a high standard of justice? Would it not be much better if the Minister, who has taken nearly everything on himself, had also taken the somewhat unpleasant duty of fixing the amount of the penalties? We should then have had a satisfactory administration. May I point out that if the tribunals are so unreliable, we place a tremendous power in their hands, when we allow them to reduce to a nominal sum the penalty for an offence which the legislature looks on as so serious as to justify a maximum penalty of £100. If the tribunals are not trustworthy, why give them the extraordinary discretion of being able to reduce, even for a most serious offence, the penalty to one-twentieth? The fact of the matter is that it would be well to abstain from expressing the views to which I have referred. Whilst Customs officers look on everybody in the community who has any business with them as being engaged in a huge conspiracy to defraud the revenue, we must remember that in the course of these very nice and delicate operations a large number of perfectly honest people fall into all sorts of perfectly innocent errors. I do not allude to regular traders, because they are competent, from their experience, to do business in a straightforward way; but there are a large number of persons who have to transact their own business with the Customs, and who are bound to fall into mistakes. I must say I regret that the minimum penalty was maintained. I should like to see the fullest scope given to the tribunal, whatever it may be, and let it be one in which we have confidence. I believe courts of summary jurisdiction were mentioned, but there, again, was a special qualification in favour of honorary magistrates. I must deprecate drawing distinctions between the paid and unpaid magistrates who administer justice in this country. Of course, unpaid magistrates are a very influential body. They are not public officers, and they often form a very large part of an electoral army in a political engagement. But I do not think that can make them more capable of administering justice purely than are the persons who are sworn and paid to administer justice in a more permanent capacity. I think my right honorable friend has allowed himself, by his close association with Customs officials, to rather take a bias from their point of view- a bias which is somewhat foreign to the open and generous manner in which he generally deals with large public questions. I know there are some who would like to prevent any operations of commerce at all in Australia. There are some fanatics of that sort, but certainly that is not the spirit in which a Bill of this kind ought to be conceived. I merely rose to express my regret that any doubt should have been cast upon judicial tribunals - however humble they may be - by my right honorable friend.

Mr KINGSTON

- I am obliged to the right honorable and learned member for his lecturette. He has been slumbering calmly. Now he wakes up when the discussion is all over, and proceeds to lecture the Government generally, and myself in particular, for doing goodness only knows what, but certainly something which we never did.

Sir Edward Braddon

- Impugning the credit of the Bench.

Mr KINGSTON

- Impugning the credit of the bench, indeed ! Further, my right honorable and learned friend goes to the length of saying that I drew comparisons between honorary justices and paid magistrates to the detriment of the paid magistrates. I never did anything of the sort, and never dreamt of it.

Mr Reid

- I heard the Minister use the expression.

Mr KINGSTON

- The right honorable and learned member was in his dreams. He has given in the course of the afternoon some outward and visible signs that he was asleep. Now we know that though he appears to be awake he is still asleep.

Mr Reid

- The right honorable member would get out of a lot, but I distinctly heard him make use of the expression.

Mr KINGSTON

- Somebody must have been whispering soft nothings in the right honorable and learned member's ear. Just fancy attributing a preposterous notion of that sort to me ! I spoke most highly of the honorary justices-

Mr.V. L. Solomon. - After having previously said that their sympathies were frequently with the persons charged.

Mr KINGSTON

- I spoke generally most highly of the honorary justices.

Mr Reid

- Why not of the regular men?

Mr KINGSTON

- Does the right honorable and learned member seriously contend that I reflected on the other men?

Mr Reid

- Your remarks clearly did.

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Mr KINGSTON

- Some men have a capacity for misunderstanding. The way in which anything I say is distorted across the volumes on the table to the right honorable and learned member almost impels a silence which I do not intend to indulge. The honorable gentleman gets up for the purpose of reproving me-

Mr Reid

- The " right honorable gentleman."

Mr KINGSTON

- I can assure the right honorable gentleman that I did not intentionally drop any portion of the title which it is our good fortune to mutually enjoy. But still, he lectures me for casting reflections on justices - an important and highly respectable class of the community - of whom I spoke in the highest terms. They have their prejudices, though not such unwarrantable prejudices as the right honorable and learned member indulges. "What does he do for the purpose of giving force to his observations in this connexion? He proceeds himself to disparage a most deserving class of the community - the Customs officers throughout the length and breadth of Australia - by saying that they are incapable of taking a fair view of things, and look upon the rest of the community as conspirators attempting to defraud the public revenue. Let me apply the same lesson to himself that he intends to apply to me. I do not require it ; he does. Let me invite him to extend that fair play which he asks for as regards justices - and which I did extend to them - to the officers of the Customs department.

Mr Reid

- Will the right honorable gentleman explain what he meant by those persons who administer these Acts, and who look leniently at offences against the Customs, and give ridiculously small penalties ?

Mr KINGSTON

- I meant what I said.

Mr Reid

- Why did the right honorable gentleman run away from his statement? Why does he not face it like a man

?

Mr KINGSTON

- I said that a certain percentage of them could not help doing it.

Mr Reid

- Stand to your guns.

Mr KINGSTON

- The right honorable and learned gentleman will get enough of the guns. We both will in due course.

Mr Reid

- Twenty per cent. ?

Mr KINGSTON

- I think that five per cent, would suffice, so far as the right honorable member is concerned. I must apologize for wasting time on a subject which hardly deserves it, find as we are agreed upon the point the sooner we get on with the work the better.

Amendment agreed to.

Amendment (by Mr. Kingston) proposed -

That the words "prescribed maximum" be omitted, with a view to insert the words "maximum, which is prescribed in pounds" in lieu, thereof.

Mr. V.

L. SOLOMON (South Australia). - Before that is done I would like to point out that the clause says that the minimum penalty for any offence against this Act shall be one-twentieth of the maximum. I understood just now, by interjection from the honorable member for Melbourne, after he had had an interview with the Minister, that it had been decided that the minimum penalty should be £2. That was the suggestion upon which we agreed not to take a division.

Mr Reid

- We are all wrong over here.

Mr V L SOLOMON

- The Minister . said distinctly that he was willing to reduce the minimum penalty to £2.

Sir Malcolm McEacharn

- That is so.

Mr V L SOLOMON

- Under this clause, however, he is simply going to reduce the minimum pecuniary penalty in many cases to £5. '

Mr Kingston

- And in some cases to 10s.

Mr V L SOLOMON

- Only in one case, I think - only in the case of a trivial offence not otherwise specifically provided for under clause 224. I merely wish to say that I am sure the honorable member for North Sydney was under the impression that the minimum was to be reduced to £2. It was distinctly put and agreed to by the Minister for Customs.

Mr Kingston

- I offered to do it, but we could not agree to it.

Mr V L SOLOMON

- That was in regard to the question raised under clause- 226. The honorable and learned member for Indi and the honorable member for North Sydney pointed out that in some cases three times the value of the goods would represent very much more than £100. The difficulty arose as to how that matter was to be got over. Then the debate diverged on that point, and the question of the minimum was left out altogether. Evidently the Minister has forgotten that he did make the promise.

Mr Kingston

- I did offer £2, but afterwards we discussed the matter, and we put the other provision in.

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Mr V L SOLOMON

- What other provision have we got at all that in any way affects the argument used by many honorable members on this side of the House, that one-twentieth of £100 is a great deal too large a minimum

penalty for many of the offences under this Act 1 It was pointed out that even the making of an entry that was false in any particular, irrespective of whether it was intentionally so or not, would entail a penalty of one-twentieth of £100 as a minimum, and I am sure that honorable members will agree that that is far too large a fine. I do not want to delay the committee, but I would ask the Minister to stand to his previous decision. There was no necessity to draft this clause to-night.

Mr Higgins

- Let us go on - we have all made up our minds.

Mr V L SOLOMON

- I have no objection to the honorable member going on, but I object to the clause being passed in its present form after the distinct offer made by the Minister that the minimum should be reduced to £2, and unless we have some assurance that the promise of the Minister will be adhered to, I trust that the debate will be continued.

Mr. REID

(North Sydney).- I hope the Minister will pay some attention to the remarks that have been made by the honorable member for South Australia

(Mr. Solomon).

He has shown a very intelligent interest in the progress of this Bill ; and, although I may have been dreaming, I am sure the honorable member for South Australia has not been.

Mr Kingston

- I think there must have been a pan- of sleeping beauties.

Mr REID

- I would like the Minister to recall the fact that he did make a promise - he may not be able to keep it - to make the minimum £2. I think my right honor.able and learned friend will admit that he did; although it is just possible that this is another misunderstanding. Of course if my honorable friends opposite are satisfied everything is over, but I must claim some consideration for honorable members on this side, and if the Minister does not deny that he promised to reduce the minimum penalty to £2 I think some explanation is due.

Mr KINGSTON

- I suggested an all round minimum of £2, but it was pointed out that a £2 minimum was too high in cases where the maximum penalty was fixed at £10, so what we did was to provide for a reduction proportionate to the maximum. That was accepted by the committee, and the matter ended.

Mr Reid

- It may have been accepted by your friends, but not by members on this side.

Mr KINGSTON

- It was accepted by the committee. The honorable member for North Sydney was chiefly interested, and he expressed his willingness to accept that alteration.

Sir MALCOLM

MCEACHARN (Melbourne). - I have been dragged into this matter in some way. The position was that the Minister did suggest a £2 minimum, but it was a suggestion, and not a promise. Upon that being offered, opposition was raised, and a desire expressed to strike out the clause altogether. Between the time of the offer and the discussion taking place on the question of omitting the clause, the Minister, I suppose, found out something, and thought it advisable to alter what he had originally suggested. I still think the Minister was wrong, but being an easy-going individual, and seeing that the Minister has been very good during the discussion on the Bill, I thought it was not wise to press the matter.

Mr. V.

L. SOLOMON (South Australia). - I propose to move an amendment affecting a portion of the clause prior to that in which the Minister's amendment will occur, and I hope the Minister will temporarily withdraw in order to enable me to put my proposal before the committee.

Mr Kingston

- I will withdraw.

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Mr V L SOLOMON

- I propose that after the word "be," the words "£2 or" should be inserted. I am sure that many members

of the committee are of the same opinion as myself that the £5 minimum is very much too high, and what I am proposing is what I think the Minister could justly agree to. The effect of my amendment, together possibly with the insertion of the words, " whichever may be the lesser amount " at the end of the clause, will be that the minimum will be fixed at £2, or one-twentieth of the prescribed amount of the fine, whichever amount may be the lesser. That is to say that, in the case of a £100 fine it will be perfectly competent for the court to reduce the penalty to £2, but, in the case of a £20 maximum it will be quite competent for the court to reduce the penalty to one-twentieth of that amount. I would ask the Minister if he cannot see his way clear to accept this amendment, especially after his having agreed to what I am now practically proposing.

Amendment, by leave, withdrawn.

Amendment (by Mr. V. L. Solomon) proposed : -

That the words "two pounds or" be inserted after the word " be."

Mr. REID

(East Sydney).- I really hope that my honorable and learned friend will not press his amendment. It will not read with the clause. "Two pounds or one- twentieth of the prescribed maximum," would not be a provision which I could ask the Minister to accept. I think my honorable friend ought not to push the proposal now. It is clear that there is a majority of the committee against him.

Amendment negatived.

Mr. CONROY

(Werriwa). - I move : -

That the words "one pound or" be inserted after the word " be."

My reason for this amendment is that I am perfectly certain that the Minister for Trade and Customs made a distinct promise to me with regard to these clauses. He led me to understand that there would be a reduction of the minimum penalty. That is why I am willing to accept the minimum of £2 - I will give way to that extent. But the Minister having got the clauses through up to this point, I do not think he is entitled to ask us to agree to this clause as it stands. If the right honorable and learned gentleman carries his memory back he will recollect that he made a distinct promise to me.

Mr Reid

- Did the Minister promise that he would agree to the minimum of £1?

Mr CONROY

- No ; but he promised that he would reduce the minimum, and I think that under those circumstances he is bound to reduce it. I thought the right honorable gentleman would make a greater reduction, but some reduction there must be if the Minister intends to keep faith with me. He cannot expect me to accept any statement whatever from him if he does not reduce the minimum.

The CHAIRMAN

- Order. The honorable and learned member must know that a statement of that kind is disorderly. He must not impute improper motives to the Minister.

Mr CONROY

- I imputed no motives. I said that the Minister cannot expect me to accept any statement of his if no reduction is made in the minimum. After what the right honorable gentleman said to me when he led me to believe that the minimum would be diminished - he did not say by how much, it is perfectly correct, but that some reduction would be made - he cannot expect-me to believe any future statement of his if he does not reduce it. I should have raised objections to many of the clauses, and should have moved that reductions be made, but I did not discuss them, because of this promise which the Minister made to me. I let the clauses go on this assurance from the Minister, which he gave to me not once, but half-a-dozen times. As the clauses came up I said, "I expect there will be an amendment with regard to this," and the Minister said he would consider them all. I am sure honorable members must- recollect how many times I mentioned the matter. Now the clauses have all gone through, and I cannot get at them. They are to stand as they have been passed. The Minister himself knows how often I appealed to him about them. Now, however, he says that he will not go back upon them. That is what it means. We cannot have that kind of thing done by Ministers of the Crown. Honorable members opposite who laugh apparently believe that no one should accept the word of a Minister of the Crown. Those honorable members have had a great deal more experience of one or two of the Ministers than I have had. It is perfectly clear that the .

committee are not with me on this point, and are determined to have a minimum of £5. If that is so, there is no more to be said ; but the next time the Minister for Trade and Customs wishes to have the discussion on any clause postponed, I hope that some one else will make the remarks which are necessary. I may then be able to accept them.

Amendment negatived.

Amendments (by Mr. Kingston) agreed to-

That the word "prescribed" be omitted.

That the words " which is prescribed in pounds " be inserted after the word " maximum."

Clause as, amended, agreed to.

Clause 230 -

Proceedings by the Customs for the recovery of penalties under this Act or for the condemnation of ships or goods seized as forfeited are herein referred to as Customs prosecutions.

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Mr McCAY

- I wish to ask the Minister why the words "by the Customs" are inserted? The word " Customs" is defined by clause 4 as " the Department of Customs," which is neither an individual nor corporation, and so far as I know has no legal status. As the Customs prosecutions can only be initiated in given ways, I do not think the words "by the Customs" are necessary. The Minister is anxious to strike out words if he can do so. It seems to me that these words can do no good, and they may do some harm. They should, therefore, be struck out.

Mr KINGSTON

- I will look into the matter a little further, but at present I like these words. I 'ask the honorable and learned member to let them stand.

Clause agreed to.

Clause 231-

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

In the High Court of Australia ; or

In the Supreme Court of any State - and when the penalty does not exceed £500 or the excess is abandoned the Customs prosecution may be instituted in the name of the collector in

Any court of summary jurisdiction.

Mr McCAY

- I would ask the Minister whether this clause does not give rather large powers to courts of summary jurisdiction? The clause says that where the penalty does not exceed £500 the prosecution may be instituted in any court of summary jurisdiction. Does that mean the maximum or minimum penalty ?

Mr Kingston

- The maximum ; but it is fairly high.

Mr McCAY

- Besides that, there is a later clause, 247, in which a conviction carries forfeiture of the goods. That might mean a considerable amount.

Mr KINGSTON

- The penalty is fairly high, I confess, but at the same time I should be. sorry to drive the parties into the High Court unnecessarily. The penalty is what we thought was a fair thing under the circumstances, but I do not mind admitting that it might be reduced.

Mr Reid

- A penalty of £500 is quite above the range of a court of petty sessions. Why not substitute district courts or county courts ?

Mr KINGSTON

- A court of summary jurisdiction is defined by the Interpretation Act.

Mr McCay

- How could the excess be abandoned ?

Mr KINGSTON

- In the same way as it is done when a case is brought within the local court. I do not think that a

defendant would complain if some portion of the claim were abandoned.

Mr McCay

- How could the department abandon the excess of a fine which cannot be fixed until the court determines it on making the conviction ?

Mr KINGSTON

- If it is stated, as it is stated here, that the department has to go to a superior court unless it abandons its claim beyond a certain amount, that can be given effect to.

Mr Reid

- And this clause will be the authority for doing it.

Mr KINGSTON

- And this is the authority. In regard to the question of the amount, I may say that we fixed this limit after a good deal of doubt and difficulty as to what ought to be the correct sum. Unless honorable members see some special reason to the contrary, I do not think it is an unfair thing. There are two ways of looking at the matter. By enlarging the jurisdiction of the small, courts, whatever justice you get will be obtained speedily.

Sir Edward Braddon

- And cheaply.

Mr KINGSTON

- And cheaply, we hope. There ought to be some limit in the jurisdiction of an inferior court.

Mr Reid

- The Customs department will have a discretion, and they would not take a case into a Lower Court which they thought ought to be tried in the High Court.

Mr KINGSTON

- Exactly. The power will be exercised by a public department which has no desire to do anything unjust.

Mr V L SOLOMON

- But it is proposed to give the justices' courts much higher jurisdiction than they now possess.

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Mr KINGSTON

- The local courts in South Australia go up to £490. The words "court of summary jurisdiction" undoubtedly include courts of inferior jurisdiction. The definition given in the Acts Interpretation Act is as follows - "Court of summary jurisdiction" shall mean any justice or justices of the peace or other magistrate of the Commonwealth or part of the Commonwealth, or of a State or part of a State, sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Commonwealth or of a State or by virtue of his or their commission or commissions or any Imperial Act. This is the general jurisdiction of a justice, but it does not necessarily mean an honorary justice. We know that in large centres where Customs officers, are generally placed, the justices' courts are mostly presided over by special magistrates, who have either legal training or special knowledge.

Mr V L SOLOMON

- Not necessarily. A justices' court which at present only has a jurisdiction up to £100, could under this clause try cases up to £500.

Mr KINGSTON

- I am speaking offhand, but I think there are very few justices' courts whose jurisdiction is limited to that extent.

Mr Reid

- In our State they are limited to £30.

Sir Edward Braddon

- But the provision in the clause is not mandatory.

Mr KINGSTON

- It is not mandatory ; it is permissive. It gives an option to be exercised at the discretion of the Customs department, which has no object to serve except to get a fair decision, and which possibly has more to expect from instituting proceedings in a superior court than in an inferior court.

Mr ISAACS

- I think the question as to this power, being given to courts of summary jurisdiction is much more serious

than the Minister appears to consider it. It is quite true that clause 230 defines certain proceedings for the recovery of penalties - it does not say whether they are pecuniary penalties or not - as " Customs prosecutions," and -they are the only prosecutions referred to. If the Minister will look at clauses 239 and 240 he will find that "Customs prosecutions " include prosecutions for indictable offences. Surely, it is not intended that courts of summary jurisdiction should, at the will of the Minister, be appealed to for the trial of indictable offences. . The only cases excluded from courts of summary jurisdiction however are those in which the penalty is over £500.

Mr Kingston

- No; it is the reverse.

Mr ISAACS

- When the penalty does not exceed £500 the case may be instituted in any court of summary jurisdiction.

Mr Kingston

- In all cases, except it is for a pecuniary penalty, we go to the higher court.

Mr ISAACS

- Customs prosecutions, in all cases, may be taken to the High Court ; but when the penalty does not exceed £500, or the excess is abandoned - -

Mr Kingston

- They will not run to indictable offences.

Mr ISAACS

- There is no penalty exceeding £500.

Sir George Turner

- Three times the value of the goods might exceed £500.

Mr ISAACS

- That is possible ; but in the case of an indictable offence we cannot say it is in regard to a penalty exceeding £500.

Mr Kingston

- It cannot be said that this is a penalty which does not exist. However, I think we can make the clause clearer.

Mr ISAACS

- That is quite sufficient for me. As the honorable and learned member for Corio has said the provision as to summary jurisdiction in relation to monetary fines applies with greater force to other penalties, and I think that the right honorable and learned gentleman should consider whether it would not be well to insert in clause 230 the word "pecuniary" before "penalty."

Mr V L SOLOMON

- Under this clause it is entirely at the option of the Customs authorities in instituting proceedings to reduce their claim if it is larger than £500 in order to bring it within the scope of a court of summary jurisdiction. A court of summary jurisdiction includes a justices' court, such as we were told by the Minister, a little while ago, was in some cases hardly trustworthy in questions affecting the revenue. Thus, these cases in which a penalty of £500 is sought, may be tried by a court consisting of justices who cannot, in some instances, be relied upon to inflict a minimum fine, and provision for a minimum fine has to be set down in the Bill in cold black and white without even stipulating that it shall be a £5-note. The Minister of Customs is to have the power - and as an important point turns on this I would invite the attention of my honorable and learned friends, the member for East Sydney and the member for Indi - to institute proceedings involving a penalty of £500 before justices in courts which under the present State legislation are not in some instances permitted to have a jurisdiction up to. £100.

Mr Kingston

- Does not the honorable member think it more merciful to the people concerned to take them into the cheaper courts ?

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Mr V L SOLOMON

- I had the idea that the Supreme Court and the High Court of Federal Australia was going to be a court that would dispense speedy and cheap justice. I had the notion that when this federation was accomplished, that was going to be one of the good points, and one of the improvements which people

were looking forward to. Although it may suit the Customs authorities to bring cases of this description, involving a penalty of £500, before one of the very inferior courts we have heard about, the defendant who may be made liable for such a sum should undoubtedly have the discretion of removing his case to a higher court if he pleases. If there is anything in the argument as to cheapness and speediness, and that it is for his protection, the defendant should at least have the right, if he chooses, to elect that his case shall be tried by a Supreme Court or by the High Court if the amount is £500 or anything like it. I would ask the Minister whether he sees any objection to provide, either as an addition to this clause or in another clause after it, that a defendant may have the right to elect to have his case tried in a higher court if he is not satisfied with the court of summary jurisdiction? While the Customs department as prosecutors may retain the right provided here to bring the case in a lower court, the defendant should have the absolute right, with as little expense and trouble as possible, to remove the case and have it tried by a court of higher jurisdiction, such as the Supreme Court of a State or the High Court of Australia.

Mr Kingston

- I do not know that I like it, but I will get a clause of the kind drafted for the honorable member.

Mr O'MALLEY

- I have given undivided attention to the honorable member for South Australia, Mr. V. L. Solomon, and I have carefully weighed his expressions on this matter. He has dealt out a sledge-hammering to the Minister for Trade and Customs for even casting the slightest bit of reflection upon the honorary magistrates. Is it not clear to the committee that the honorable member, who is himself a magistrate, is impliedly siding with the law-breakers in inviting us here to make this change? I leave it to my honorable friend, and ask how he can explain his own conduct in delaying the committee at such a late hour, when we are all anxious to get home, and in keeping me here when I ought to be in bed.

Mr KINGSTON

- With respect to my promise, I do not like the idea of a compulsory power of removal, but I will prepare a clause for the honorable member, and he may move it if he desires to do so. To meet the objection of the honorable and learned member for Indi, I move -

That the words "penalty does not exceed," in line 6, be omitted, with a view to insert in lieu thereof the words "prosecution is for a pecuniary penalty not exceeding."

Mr. V.

L. SOLOMON (South Australia). - I accept the offer of the Minister for Trade and Customs to draft a clause giving the defendant the power I have suggested. I will have an opportunity at a later stage of the Bill to test the feeling of the committee upon it.

Mr CONROY

- I point out that under section 245, where the penalty inflicted is over £200, the person fined may, where the penalty is not paid, be imprisoned for one year, and this clause 243, therefore, will practically allow a court of summary jurisdiction to imprison a man for a year. With regard to costs, I point out that in all Customs prosecutions the court may award any costs against any party or claimant, and if people are willing to go to a higher court, I think there is every reason why this liberty should be granted to them. The difficulty with me is that the honorable member for South Australia, Mr. "V. L. Solomon, has accepted the statement of the Minister for Trade and Customs. I had a statement before from the Minister, and I do not know how far it goes. However, as the honorable member, Mr. "V. L. Solomon, is willing to accept the offer of the Minister to draft a clause, I will now let it go.

Sir EDWARD BRADDON

- I hope we shall pass this clause, because it provides for what I think is very proper - a cheap and speedy form of obtaining justice on the part of the Customs department. The procedure as laid down here will enable the Customs department when they think fit, and only when they think fit, to take prosecutions up to £500 in these lower courts. It is not absolutely mandatory, it is permissive, and no doubt the Customs department may be trusted, where there is not a good and sufficient reason to prosecute in the lower court, to go to a higher.

Amendment agreed to.

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Mr KINGSTON

- It has been pointed out to me that the definition of a summary court of jurisdiction might prevent

recourse being had to county courts, district courts, and local courts. I think it would not be a bad plan at all, when we give this power to a summary court of jurisdiction, to give it to the other courts to which I have referred.

Sir Malcolm McEacharn

- That is the law in Victoria at present.

Mr KINGSTON

- I move-

That after the word "any," line 9, the words "county court, district court, local court, or" be inserted.

I am not fully informed as regards the practice of courts in all the States, but I think it is desirable that the courts I have mentioned should have this jurisdiction. I venture to think that the description I have given will include all the courts to whom it will be desirable to give this jurisdiction.

Mr. V.

L. SOLOMON (South Australia). - I would suggest to the Minister as a mode, perhaps -of meeting some of our objections to any court of summary jurisdiction, that it might be met by inserting after the word "jurisdiction" the words "presided over by a special or stipendiary magistrate." Evidently we are in a bit of a fog as to the different courts. Sub-clause (c) uses the words "any court of summary jurisdiction." To a very great extent it will get over the difficulty as to such an important case being relegated to a court, consisting of perhaps only two unpaid justices of the peace with somewhat limited local knowledge, if we insert the words I have suggested.

Mr Kingston

- I would rather not.

Mr. CONROY

(Werriwa).- Do I understand the Minister to say that the reading of this clause will be that the prosecutions will be followed up in those courts to the amount which they have control over ?

Mr Kingston

- Not necessarily.

Mr CONROY

- I think not, too. I suppose it is really a matter of administration.

Mr Kingston

- It will be a matter of administration.

Mr. V.

L. SOLOMON (South Australia). - I would ask the Minister if he will consider that position. I would appeal to the honorable and-learned member for Indi as to whether the insertion of the words I suggested would make the court what we term in some of the States a full court ; whether it would not have a good effect in providing for a higher court than is provided for in the words "any court of summary jurisdiction"?

Mr. ISAACS

(Indi).- I do not know exactly what is meant by a full local court. We have not such a tribunal in Victoria. We have many Acts of Parliament in which it is provided that jurisdiction is given to justices of whom the magistrate shall be one, and some such idea, of course, could be carried out in this Bill, if desired.- If it is desired, I should think that the introduction of; words such as of whom a police magistrate or stipendiary magistrate or special magistrate - whatever may be the case - shall be one, might do. I do not think it will be complete to use the words "presided over by a police magistrate," because there are some courts - in Melbourne and Geelong, for instance - where the police magistrate, though present, does not preside; The mayor of the city presides. I do not know how far that would carry it out.

Mr Kingston

- It would lead to some troublesome inquiries in commencing the proceedings as to who is constituting the court.

Mr ISAACS

- The idea is carried out in Victoria ; but I do not know that it is necessary in this case.

Mr KINGSTON

- I am reminded that where Customs prosecutions are held we have a court with a resident magistrate in 99 cases out of 100, so that the difficulties anticipated will not occur. We shall always have a court with a resident magistrate.

Mr V L SOLOMON

- Not necessarily so.

Sir Malcolm McEacharn

- In Melbourne, the chief magistrate is the mayor of the city.

Mr KINGSTON

- That I expect is the invariable rule. I do not think it desirable to put in the condition suggested, because the result will be generally what is wanted.

Amendment agreed to.

Clause, as amended, agreed to.

Progress reported.

ADJOURNMENT

Order of Business

Motion (by Mr. Barton) proposed -

That the House do now adjourn.

Mr CROUCH

- May I ask the Prime Minister what business is to be taken to-morrow ?

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Minister for External Affairs

Mr BARTON

. - The business for tomorrow will be the consideration of the committee's report on the Audit Bill and the consideration of the committee's further report on the Public Service Bill. The Customs Bill will be further proceeded with and, I hope, there may be an opportunity of moving the second reading of the InterState Commission Bill. With reference to the State Laws and Records Recognition Bill, which is in the hands of the Attorney-General, I do not think he will be able to attend to-morrow's meeting.

Question resolved in the affirmative.

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22:28:00

House adjourned at 10.28 p.m.