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1901-08-23

Senate.

The President took the chair at 10.30 a.m. and read prayers.

PETITION

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Senator WALKER

presented a petition from the ship-owners and shipping agents of the port of Newcastle engaged in the oversea carrying trade, praying that the Senate would amend the clauses of the Customs Bill relating to oversea ship's stores.

Petition received and read.

CUSTOMS REGULATIONS.

Resolved

(on motion by

Senator Puls-

ford)-

That it is desirable the Government should lay before Parliament at an early date after the passing of the Customs Bill the regulations it is intended to issue thereunder.

EXCISE DUTIES;

Ordered

(on motion by

Senator Stani-

forth Smith) -

That a return be laid upon the table of this Senate, simultaneously with the Tariff proposals, showing - Articles subject to duty of excise in each or any State, and the rates of such duties.

The revenue derived from every such duty of excise during the year 1900 in each State, and the total revenue derived from each of such duties.

The quantity of every excisable article, being the product of a State and ex- . ported to all other States for the year 1900.

The rate of every duty of excise as proposed in the Federal Tariff Bill.

The estimated revenue to be derived from every such rate.

In the event of the figures for 1900 not being available, that the figures for the previous year be. given.

LEAVE OF ABSENCE.

Resolved

(on motion by

Senator

McGregor) -

That one month's leave of absence be granted to Senator Dawson on account of serious illness.

LAPSED BILLS.

Resolved

(on motion by

Senator Barrett)

-

That the following new standing order be referred to the Standing Orders Committee with the view to its consideration as a standing order for this Senate - " When a motion to bring in any Public Bill is- agreed to, if such Bill bears a certificate from the Clerk of the Senate that it is identical with a Bill as last agreed to by the House, which passed its second reading in the previous session of the same Parliament, but was not finally disposed of by both Houses when the session closed, then a motion may be made that such Bill be advanced to the stage it had reached in the Senate in the former session, or to any earlier stage."

CUSTOMS BILL.

In Committee

(consideration resumed from

August 22, vide page 4050) :

Clause 149 -

When any duty is imposed according to value -

The value shall be taken to be the fair market value of the goods in the principal markets of the country whence the same were exported in the usual and ordinary commercial acceptance of the term, and free on board at the port of export in such country, and a further addition of 10 per cent, on such market value.

Senator Sir FREDERICK SARGOOD

- I move -

That the words "and free on board at the port of export in such country " be omitted.

This provision, if retained, would entail a very large amount of trouble. The charges on many classes of goods represent a few shillings, and are seldom received until a month, perhaps two months, after the goods have been shipped. Another difficulty is that some markets have no port of export in the country, as for instance the markets in Switzerland. The provision in the clause was drafted a good many years ago, but the course of trade - the mode of buying, paying, and exporting - has considerably altered of late years. Speaking from my own experience, and after consultation with those connected with other branches of the trade, it appears to me that these words must be omitted, because it would be absolutely impossible to carry them out.

Senator O'CONNOR (New South Wales - Vice-President of the Executive Council). - I must oppose the amendment which is much more important than appears on the face of it. The question is on what basis values should be fixed where ad valorem duties are imposed. It is on the valuation prescribed in paragraph (a) that the ad valorem duty is to be calculated. " Free on board " is a well-known commercial term. It means that the goods have to be delivered on board with all the charges for packing and transit paid up to that date. It is well known that according to mercantile usage the great bulk of the sales are " free on board."

Senator Sir Frederick Sargood

- No.

Vice-President of the Executive Council

Senator O'CONNOR

- A very large proportion of the sales are made in that way. If the figures are taken including these well known charges, there is no difficulty in the Customs determining the matter. But where an opportunity has been left to deduct the packing and the carriage to the ship it has been found by experience that all sorts of devices have been used for putting under the head of these charges what is really the value of the article itself. Supposing that an article comes in here which costs the importer £100 free onboard; If he is allowed to deduct these charges he immediately puts down some extravagant figure, perhaps 10 per cent, on the value, as the cost of packing and transit to the ship. There is nobody to contradict his statement, for no one is to know to the contrary. It is well known that in those places where such deductions are allowed, there is an enormous leakage of revenue always going on. The Customs officials, all over the States, have a very strong opinion - and one can see the reasonableness of it - that without this provision there would be a very great leakage of revenue. There is no hardship on the owner of the goods. The charges in themselves are not very large ; the ad valorem duty on them does not amount to very much, and it cannot be a matter of very much moment to the honest trader. On the other hand, if the amendment is made, it will give an opportunity which will be availed of by the dishonest trader to put all sorts of charges which really do not belong to free-on-board charges under the head of these deductions) thereby decreasing the revenue. For these reasons I must strongly oppose the amendment, which, though simple enough in itself, involves a very large amount of revenue.

Senator Sir FREDERICK

SARGOOD (Victoria). - I must take exception to the statement of

Senator O'Connor

that my amendment is not in accordance with the provision in many of the existing Acts. Packages were not included in some of the Acts for many years. Difficulties arose in consequence of that, and in section 9 of the Victorian Act, No. 1082, a special provision was inserted in order to avoid fraud in connexion with inside packages. I intend later on to move the insertion of a similar provision in this Bill.

Senator O'Connor

-What are inside packages?

Senator Sir FREDERICK SARGOOD

-Inside the case are goods, in packages, and these up to the passing of that Act were free of duty. There was such a very liberal mode deduction from the cost of these goods for what we called the inside packages that section 9 was passed. I would strongly urge the Minister to insert a similar provision in this Bill. It will not only save a considerable sum to the revenue, but will protect the honest trader. My amendment simply deals with the question of free delivery on board. It may be the practice not to deliver groceries and so on free on board, but that course has never been followed with softgoods, which represent a very large proportion of the imports.

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Senator O'Connor

- I think the honorable senator will admit that as to goods generally it is a very common practice.

Senator Sir FREDERICK SARGOOD

- Certainly not; more than half the imports are what we call softgoods, and it does not apply to them. On softgoods the transit charges from Manchester, Liverpool, or Birmingham to the port of export amount to only a few shillings. Those charges are not sent in by the railway companies sometimes until a couple of months after the goods have gone, and thus it will be absolutely impossible to carry out this provision. I do not wish to deprive the department of any duty on the contrary, I want to conserve all the duty I can, because I believe that so long as all are placed on the same footing it is better for the honest trader to have every necessary precaution. Unless these words are omitted it will simply open the door to innumerable disputes and constant delay.

Senator O'CONNOR

-It has been stated by Senator Sargood that it is not practicable to carry out the provision in the paragraph. In several States it has been carried out. In Western Australia, for instance, in section 70 of the Customs Act of 1892, we find this provision- \*-

The market value for duty of goods subject to an cut valorem duty shall be the fair and real market value of such goods in the usual and ordinary acceptation of the term, a.t the cash value of such goods, and so bond fide paid for in all the transactions in relation to such article ; and all invoices respecting cash values shall be subject to such Additions as to the collector appears just and reasonable to bring up the amount to the true and fair market value, as required by this section, and market value shall include the cost of picking and transit to the port of exportation.

That is exactly the same thing as free on board.

Senator Charleston

- Is it possible to give effect to it ?

Senator Sir Frederick Sargood

- No.

Senator O'CONNOR

- I understand from the Custom-house officials that there has not been the least difficulty in giving effect to the provision.

Senator Sir Frederick Sargood

- I can give cases to the contrary.

Senator O'CONNOR

- Perhaps the honorable senator may point to cases where difficulties have arisen, but the real question is that we want to devise some way by which the immense bulk of the business of the Customs shall go on smoothly, without any injustice to the honest trader, and with the greatest possible safeguards to the revenue. As Senator Sargood has admitted, there is an immense opening for fraud in regard to the cost of the packing of the goods, whether it is an outside or an inside package. There are also openings for fraud if we allow deductions to be made in respect .of these charges. We are in the hands of the importers, and there is no check ; whereas, if we take the goods as being free on board, the importer knows what the cost is, because that, as a general rule, is included in the price that is paid. Where the contract is free on board, it is in the price paid ; where it is not the importer himself will know these charges, and if he has to pay duty on them there will be some way of checking the adding of those charges.

Senator Charleston

- The Government will have to trust to his honesty even then.

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Senator O'CONNOR

- We must trust to his honesty to a great extent, but we want to be in a position to check his statements as far as we can. Where there is no check, the dishonest trader finds it out, and the revenue, as well as the honest trader suffers. There is a similar provision to this in the New Zealand Act of 1882. It is as follows : -

Such value shall be understood to be the fair . market value thereof in the principal markets of the country whence the same were exported, including the value of the case, cask, or covering of any kind in which such goods are contained with 10 per centum added.

Senator Sargood,

while admitting fairly enough the risk to the revenue, suggests that there ought to be, instead of this provision, one similar to section 9 of the Customs Act of Victoria. I am informed by the Customs officers that there has been a great deal of difficulty in working that section. It is found that the values that are put upon these inside packing cases entirely depend, in many cases, on the way in which the trader wishes to have the value estimated. He makes the value of the inside cases exactly what he likes, and it is very difficult to check him. With all respect to

Senator Sargood,

I do not see how section 9 of the Victorian Act, which is found to work badly, can in any way compare as a solution of the question with the simple method adopted in this Bill and in the Western Australian Act, that the value of the goods free on board shall be taken ; that is to say, the value of the goods including all packing of every kind and the cost of transit to the ship. There can be no difficulty in estimating that. In the Customs Act of Canada, passed in 1886, it is made very clear what the value is to be Section 58 provides -

Whenever any duty ad valorem, is imposed on any goods imported into Canada, the value for duty shall be the fair market value thereof when sold for home consumption, in the principal markets of the country whence and at the time when the same were exported directly to Canada.

Then section 61 of the Canadian Act says -

In determining the dutiable value of goods, except when imported from Great Britain and Ireland, there shall be added to the cost, or the actual wholesale price, or fair market value, at the time of exportation in the principal markets of the country from whence the same have been imported into Canada, the cost of inland transportation, shipment and transshipment, with all the expenses included.

So that it is put in two separate sections. Then in section 67 of the same Act there is this provision -

No deduction from the value of the goods in any invoice shall be made on account of charges for packing or for straw, twine, cord, paper, cording, wiring, or cutting, or for any expense incurred or said to have been incurred in the preparation and packing of goods for shipment, and all such charges and expenses shall, in all cases, be included as part of the value for duty.

So that the way they do it in Canada is this : They provide that there shall be added to the value of the goods the cost of inland transportation, and the cost of packing shall not be allowed to be deducted.

Therefore the Canadian provisions come to the same thing as this one clause. That is to say, in taking the value of the goods they insist that the value shall be value free on board after all these charges have been paid. The method which is adopted in this Bill puts in a very few phrases precisely the same provision as we find in the Canadian Act, the Western Australian Act, and the New Zealand Act. I think honorable senators will see how very important it is to the revenue, and I hope the clause will be carried as it stands.

Senator MACFARLANE

- My experience leads me to support the amendment of Senator Sargood, because I understand that in the trade he represents speed is the first element in getting goods out. They have to deal with season goods, which are shipped from England in the quickest possible manner. Invoices are sent out immediately after, but the expense of getting the goods on board is not always ascertained until after shipment. Therefore, it would be impossible in all cases to estimate the exact charges upon those goods at the time they are free on board.

Senator O'Connor

- That can always be arrived at.

Senator MACFARLANE

- In most trades free on board is the usual custom at present. But in the case of Manchester warehouse goods the price is not arrived at until after shipment. How the importer is to arrive at it without having all the charges before him, except by a rough calculation, I do not know.

Senator Sir FREDERICK

SARGOOD (Victoria). - I have a house in Western Australia, and can speak by the book. The section in the Western Australian Act, to which

Senator O'Connor

has referred, is a constant cause of delay in receiving delivery of goods, and of annoyance between Custom-house officers and the trade. Frequently letters have been sent by our house in Western Australia to the London house, complaining that such and such charges have not been delivered, and the London house cannot give them. It is really an absolute impossibility to give them. With regard to the honorable and learned senator's statement as to the inside casing, he has got hold of the wrong end of the stick altogether. It is because of the evasions which did take place with regard to these inside casings that the goods are charged a certain price including the inside boxes. The 10 per cent, ad valorem

is supposed to cover all the little charges, and it operates perfectly simply, and easily. As a matter of fact, the packages are generally put at the end of a firm's invoices, and the custom used to be to deduct the amount of the packages and pay simply on the exact goods.

Senator MCGREGOR

- I hope that honorable senators will support the clause as it stands, because it gives some definiteness to the matter. We have been told in discussing other clauses in this Bill that the importers want to know the position they are in, because very often goods are sold before they are landed. Will Senator Sargood tell me that a merchant who has imported goods, sells them immediately they are landed or before they are landed, and, does not know all the expenses he has been put to in connexion with them?

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Senator Sir Frederick Sargood

- I say that that is absolutely the fact.

Senator MCGREGOR

- Senator Sargood

is a manufacturer. According to his own statement he employs about 5,000 men. Would he not add the value of the oil that he uses for the lubrication of his machinery to the value of the goods he produced? What does the Government of the Commonwealth require here but that at some point of transit the value of the goods shall be ascertained? If the merchant does not know the exact cost of transit from Birmingham or Manchester to London or Liverpool then of course this clause will make him do business in a very much more precise manner than it appeal's from the statement of Senator Sargood

and

Senator Macfarlane,

merchants have been in the habit of doing it before.

Senator Sir FREDERICK SARGOOD

- They are in the hands of the sellers.

Senator MCGREGOR

- They would soon bring the sellers up to the scratch. The question of adding 10 per cent, has nothing to do with these little charges. The clause as it stands has a definiteness about it that is not favorable to dishonest traders. Senator Sargood must see that by striking out "free on board" he is leaving a loophole for dishonest traders who may possibly compete with him in the future.

Senator CLEMONS

- While I recognise that there is a very great deal in the contention of Senator Sargood, I am still more impressed by the arguments of the Vice-President of the Executive Council, with regard to the practical difficulty that will be created by the adoption of the pro- ' posed amendment. His arguments on that point are unanswerable. Therefore I shall support the clause. But, in regard to another part of the clause, I am

not so certain in my own mind that the Government deserve the support I am going to give them. That is in regard to the 10 per cent. Of course it is very refreshing to some of us to recognise that the Government, in this Customs machinery Bill, have given a clear indication that they will recognise what is meant by natural protection ; but they are undervaluing it in some cases. They ought to make it 50 per cent.

Senator McGREGOR

(South Australia). - I should not like a direct misrepresentation such as has been made by Senator Clemons to go to the public without challenge. He talks about the natural protection of 10 per cent. That would leave the public to believe that there was a 10 per cent. charge made on the value of the goods, while, as a matter of fact, there is only 10 per cent, added to the value of the goods, and then the Customs charges are made on that. If goods worth £100 in value come in, 10 per cent, customs duty would not be charged on them, but the 10 per cent, would be added to the £100, making £110, and the customs duty would be charged on that amount. But that is not the idea that Senator Clemons' argument would convey to the public.

Amendment negatived.

Clause agreed to.

Senator CHARLESTON

- I have an amendment to move on clause 149, but I was waiting until Senator Sargood had proposed his amendment.

The ACTING CHAIRMAN. - Clause 149 has been passed.

Senator CHARLESTON

- If things are to be rushed through in this manner, it will be impossible for honorable senators to do their duty.

Senator O'Connor

- The honorable senator has no right to make an imputation of that kind on the Chair. There was abundance of time given to any honorable senator who was on the look-out.

Senator CHARLESTON

- There was not. I had a list of Senator Sargood's amendments before me, and I was waiting for him to move them. The honorable senator did not move them, and, though I had got on my feet, the clause was declared passed by the Chairman.

The ACTING CHAIRMAN. - I paused before putting the clause, because I was at the time thinking of asking the committee whether I should put the clause in sections. The honorable senator will be able probably to have the clause recommitted later.

Senator CHARLESTON

- Then I shall claim it as a right.

Senator O'Connor

- I shall certainly not consent to it. The honorable senator can carry it against me if he likes, otherwise I shall certainly not do it.

Clause 150 -

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The genuine invoice means -

The original invoice prepared and issued by the seller in the country whence the goods were exported showing the true description of the goods and the actual money price paid or to be paid for the goods by the purchaser in the country whence the same were exported without any deduction ; or

In the case of goods consigned for sale in Australia the original invoice prepared and issued by the consignor showing the true description of the goods and the actual money price for cash at which such goods were saleable in the principal markets of the country whence such goods were exported at the date of the shipment of such goods free on board at the port of export in such country.

Senator Sir FREDERICK SARGOOD

- This is one of the most important clauses in the Bill. The amount of duty to be received is regulated by the value of the goods as stated in the invoice submitted, and everything depends upon the invoice being genuine. I want to assist the Government in insuring that the invoice shall be genuine. But I desire to point out that, under the wording of this clause, it is impossible that the clause can be carried out in a number

of instances. The clause refers to the genuine invoice as -

The original invoice prepared and issued by the seller in the country whence the goods were exported. As a matter of fact the city of London has become the commercial centre of the world. A large number of foreign houses have agents in London, and sales of their goods take place in London though the goods are exported from the Continent. I have before me an invoice of goods supplied by the firm of Max Manuel and Co., of Frankfort, but the invoice was made out in London by the agent, and not by the seller in the country whence the goods were exported, because they were exported from Hamburg. This is a frequent case and the practice is growing.

Senator Playford

-When the firm sent the goods to the agents in London, did they not send him an invoice?

Senator Sir FREDERICK SARGOOD

- No. This house has an agent in London with samples, and the goods are sold from those samples by the agent. The agent makes out the invoice, but the goods are shipped by Manuel and Co. from Hamburg. This clause could not be carried out in such a case. All that we want is a genuine invoice prepared and issued by the seller, and in this case the agent in London is the seller. What I propose will assist in every way, and will not interfere with the due protection of the revenue. Of course, where the seller supplies the invoice it will be all right. I move -

That the words "in the country whence the goods were exported," lines 2 and 3, be omitted.

Senator PULSFORD

- I did not see my way to support Senator Sargood in his first amendment, but I do see my way clearly to support him in the amendment now before the committee. The course of trade now, and the tendency is growing, is for buyers in Australia to send orders to buying firms in London. One indent may go home for 20, 30, or 40 different purchases. The buying agent in London sends the orders to the Continent, to Manchester, or to other manufacturing centres, and under such conditions it would be quite impossible, faithfully, to fulfil the obligations of this clause as it stands.

Senator O'Connor

- What we want to get is the original invoice.

Senator PULSFORD

- Yes ; but that is impossible. The original invoice is in the hands of the agent in London.

Senator Sir Josiah Symon

- There may be a difference between the manufacturer's invoice and the exporter's invoice.

Senator Sir Frederick Sargood

- That is met in the next clause.

Senator PULSFORD

- What the Customs want is the invoice of the firm that actually ships the goods. It is upon that that the importer should be required to pay, and not upon an invoice which may be in the hands of agents in London or elsewhere, and unobtainable.

Senator O'CONNOR

- Senator Sargood

has handed me the invoice to which he has referred, and I gather from it that it is the invoice of the agent.

Senator Sir Frederick Sargood

- The seller's agent.

Senator O'CONNOR

- What we want to get at is the original invoice that comes from the person who sells the goods.

Senator Sir Frederick Sargood

- That is it.

Senator O'CONNOR

- No ; this comes from the agent, and I presume that would be the invoice of the goods in the country where they were sold.

Senator Sir Frederick Sargood

- Not in the country whence the goods were exported.

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Senator O'CONNOR

- I see that in this particular case the goods were exported from Hamburg, surely they must have been accompanied by an invoice.

Senator Sir Frederick Sargood

- That is the only invoice issued by the seller.

Senator O'CONNOR

- The difficulty so far as the Customs are concerned is this : There are endeavours made in all sorts of directions by dishonest traders to evade stating the real value of the goods, and we have to meet that by every possible device. One of the greatest safeguards is to have the original invoice sent by the person who actually supplies the goods. The person who supplies the goods in this case is not the person who supplies this invoice.

Senator Walker

- He may be.

Senator O'CONNOR

- Yes, but in this particular case he is an agent who lives in London, and the goods are supplied by somebody else altogether. I take it that when these goods were sent from Hamburg there must have been some invoice or description of the goods sent with them.

Senator Sir Frederick Sargood

- This is the only paper sent with them.

Senator O'CONNOR

- There may be ways of carrying on this business, but whatever may be done in respect of this London agency it seems quite clear, as a matter of business, that there must be some invoice to go out with the goods from Hamburg.

Senator Millen

- There is the bill of lading.

Senator Playford

- How does the Hamburg man get paid ?

Senator Sir Frederick Sargood

- The goods are paid for in London.

Senator O'CONNOR

- I think Senator Sargood will see that the real difficulty is that in the course of dealings between the principal and the agent there will be opportunities for altering invoices, which may create a great deal of difficulty. There can be no mistake where the invoice is issued by the person who supplies the goods. I see no difficulty whatever in carrying out this clause. In this case which has been referred to for instance, is there any reason why the honorable senator, in dealing with these people, should not have an invoice sent direct to him from the seller ? There should be no difficulty about that.

Senator PULSFORD

(New South Wales). - This clause does not recognise that, in a shipment arriving here, there may be represented not only one, but two or three different sellers, and the only seller who need be recognised is the one dealt with directly by the importer in Australia. There ought to be no call upon the importer in Australia to go beyond his seller in London to get an invoice from the Continent. It is possible that the shipper of goods from Hamburg which have been sold by an agent in London might not have been the original seller at all, as the goods might have been produced in Vienna, and the first invoice might have been an invoice issued in Vienna. In the interests of fair trading the amendment should be accepted.

Postmaster-General

Senator DRAKE

. - It must be recognised that a provision of this kind is intended to safeguard the interests of the Customs, and also of the public in exceptional cases where there may be dishonesty. Ninety-nine cases out of a hundred would not come within the purview of the clause, but it is for the hundredth case where an attempt is being made to defraud the Customs that a provision of this kind is necessary. What the Customs desire to get at is the real value of the goods as shown by the price at which they were sold by the original manufacturer.

Senator Millen

- Is not that shown just as well if the invoice is made out in London as if it is made out elsewhere 1



Senator DRAKE

- Not necessarily. There may be an agent in London, who maybe acting under orders or in his own interests in not disclosing the truth to the Customs. There is a case within my knowledge where goods came out to Australia accompanied by three invoices - one to show to a possible customer, one for the importer, and one for the Customs. The person described as the seller here of course knows the exact price he got for the goods, and if we take the invoice of any other person we have less assurance that the price of the goods is being honestly stated. We want to get past all the agents to the original seller of the goods and find out what price he has got for them.

Senator MILLEN

(New South Wales).The amendment does not in any way remove the liability of the seller to supply the invoice. Assuming, with the Postmaster-General, that all honesty is centered in the original seller, and that every man dealing with the goods outside the seller is more or less given to roguery, we would be still in the same position under the amendment as without it. If the amendment is carried the clause would still provide for the original invoice prepared, and issued by the seller, and the only thing is whether we shall oblige the seller to be on the spot at which he sells his goods. If, while in Melbourne, agree with a butcher in this city to sell him a number of sheep depastured in New South Wales, must I supply a contract note prepared on the New South Wales run on which the sheep are depastured? That is a parallel case, and honorable senators will see how absurd it is to say that I could not give my invoice for the sheep, because I was not in New South Wales to prepare it. I am as anxious as Ministers to see that there shall be no loop-hole for fraud, but the clause as it stands insists upon an irritating provision which has no compensating advantages.

Senator Sir JOSIAH SYMON

- Senator Sargood points out that goods may be sold in one country and exported from another. For instance, where a sale of goods manufactured in Germany was made in London, if this clause were passed, we would have to get the invoice, not from London, where the goods were sold, but the invoice issued in Germany, whence the goods were exported. That would seem to be likely to cause inconvenience and difficulty. So far as that point is concerned, if no other redress can be obtained as regards the meaning and operation of the clause, I shall support the amendment. But I suggest to Senator Sargood whether it might not meet the case, and perhaps also meet the views of the Government, if, although it is a little inconsistent with the scheme of the Customs Regulation Bill, we put in the words "in the country where the goods are sold." Would that be sufficient?

Senator Sir Frederick Sargood

- I should say so.

Senator O'Connor

- No; we want to get the original invoice.

Senator Sir JOSIAH SYMON

- The original invoice is the invoice of the seller. The objection that Senator Sargood points to is that, whilst he is quite willing that the Government should have the invoice issued by the seller, they say that it must be issued by the seller in the country whence the goods are exported. The seller is in London, and, therefore, the issue of the invoice in London is an ample compliance and -an ample security against fraud. I do not know what other invoice they could have. Qui facit per alium facit per se. If you want to get at the manufacturer's invoice, that is another thing, because there is always an intermediate profit between the manufacturer and the seller in London, but the actual value of the goods on which duty ought to be paid here is shown in the invoice issued by the seller in London.

Senator Drake

- No.

Senator Sir JOSIAH SYMON

- It must be so, because if there is a difference between the invoice issued by the seller in London and the invoice issued by the manufacturer who puts the goods on board ship in Germany, that difference must be in favour of the latter. As between the seller's invoice in London and the German invoice the Customs here have the benefit of the higher invoice, because if there is an intervening profit it will be added to the German invoice, and will be included in the London invoice.

Senator Lt Col CAMERON

- We do not want to have the revenue defrauded in any way, Or to run the risk of having false accounts presented to the Customs. I could illustrate the position best by a transaction which I entered into. I have an agent in London, who knows where to buy an article I require. He gets it in Germany. With his head-quarters in London, he acts as middleman for the German firm and for myself. He invariably furnishes me for the Customs of Tasmania with the invoice from that firm to satisfy me that he is acting honestly by me, and as a voucher to enable me to act honestly by the Customs in Tasmania. I admit that my agent is not absolutely independent, but he is practically in the same position as if the German house had an agent in London. He is buyer and agent at the sametime.

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Senator GLASSEY

- I do not feel strongly in regard to the clause or the amendment, but I think the balance of argument and of experience is with Senator Sir Frederick Sargood. I have had a little experience in commission work. Over and over again I have sold goods from sample. I sent the invoice direct from my place, but the goods were sent from the north of Ireland to the place where I sold them. Of course the Customs would only collect on the invoice issued by me, and therefore they would get a benefit. It is the usual thing for the London agent's of French or German manufacturers to sell on sample, and, while the goods are sent direct from Paris or Berlin, the invoice is issued from London. The invoice from London will be more profitable to the Customs than the manufacturer's invoice.

Senator WALKER (New South Wales). - A friend of mine who was travelling in Italy bought a lot of articles. He told me what they cost, and asked me to see that on arrival they were properly stored in Sydney. To my great surprise, the Italian house sent me an invoice for the Custom-house separate from the other, showing that one cannot rely on the manufacturer's invoice any more than on the seller's. I would rather trust the manufacturers in Great Britain than the foreign manufacturers to give the proper invoice. In another case, the manufacturer to my surprise sent me out an invoice for the Customs less than the cost I had paid.

Senator O'CONNOR

- What Senator Walker has said amounts to this - that importers, whether they live in Italy or other places, are often on the look-out to try and dodge the Custom-house. No doubt, the manufacturer did not know with whom he was dealing when he endeavoured to lead my honorable friend into temptation. Persons are continually trying to dodge the customs-duties in the estimates of value, and the more we multiply the agencies the more difficult it will be to trace out the real value. The object of the clause is to try and get from the fountain head the invoice which comes with the goods from the place of manufacture. The Customs authorities would gain much more largely from having a check on getting the real value in all cases than from perhaps making a little more money in isolated cases. There is no difficulty in getting the invoice which comes with the goods from the place of manufacture. The case put by Senator Cameron is precisely the case put by Senator Sargood.

Senator Millen

- No ; one was agent for the seller and the other was agent for the buyer.

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Senator O'CONNOR

- Does it matter in the least degree whether he was agent for the seller or agent for the buyer ? The point is that the person who sold to Senator Sargood in London was not the owner of the goods. The owner of the goods was in Hamburg, and Senator Sargood dealt with the agent only. In the same way Senator Cameron dealt with the agent or the seller and the buyer. In each case it was the agent who made the transaction, and the principal was in the country where the goods were manufactured. In the case of Senator Cameron, there appeared to be no difficulty in sending on the manufacturer's invoice. No doubt in that case it was necessary, because the provision in the Tasmanian Act is exactly the same as the provision we ask for. If it is enacted it will be complied with, just as it was complied with in his case. An agent will request his principal abroad to send with the goods the original invoice showing certain particulars. As we all know, that is constantly done. The merchants of other countries must have regard to the customs laws of the country they deal with. And accordingly, they prepare their invoices so as to give certain particulars. Where you are dealing with the agent, and you get only his statement of what the

value is, he sends the invoice out to the purchaser here, and the Custom-house finds that there has been some egregious mistake or attempt to defraud - what is the answer when a charge is made? The purchaser here says - "I dealt with the person in London. He is the seller so far as am concerned, and I got this invoice." The agent in London says - "I am sorry ; I did not see the goods when they were shipped, and therefore I had no opportunity of checking them. This mistake has occurred, and there is no fraud about it." I am not asking the committee to pass a provision which is new. It is the law in Tasmania, Western Australia, and, I think, in other places. No doubt in New South Wales my honorable friends are at a disadvantage in not having had much experience of ad valorem duties, but in all the other States I think they have had that experience. I only ask for that which is necessary to safeguard the revenue. The Custom-house officials say, and I can see it, that there will be a great deal of danger if we have not an opportunity to go to the fountain-head.

Senator Sir JOSIAH

SYMON (South Australia). - I think every one is desirous, whatever view he takes of revenue matters, to secure that every shilling shall be paid to the Customs. We are equally anxious that no possible opportunity for the perpetration of fraud or the presentation of salted or discounted invoices shall be permitted, and if I thought that the clause as it stands was essential to carry out those two objects, I should undoubtedly be found supporting it in its entirety. But I cannot come to that conclusion. I listened to the forcible arguments put by

Senator O'Connor,

and they convince me more firmly than ever that the clause as it stands is an absurdity. It assumes, to begin with, that goods are only sold in the country from which they are exported. That is the underlying assumption. If that were the case, then the clause, although it is perhaps inartistically framed - - if I may say so of a provision in a Bill which is altogether a model of drafting - would be all right. But if that is not so it involves this absurdity : That it compels the seller of goods, who may be the owner of them, selling them in London, to issue his invoice in Germany, where the goods may have happened to be manufactured - a country with which he has nothing to do, and with which his interests come to an end the moment he has completed his purchase of the goods from the manufacturer. If it means that the Customs want to get hold of the manufacturer's invoice that is a perfectly proper thing, because, by a comparison of that invoice and the London seller's invoice, the Customs might be able to check anything that went wrong or that they might suppose was likely to go wrong. But if a man buys goods in London, either from a person who is agent for the manufacturer in another country or is the owner of the goods himself, there is a difficulty, because a great amount of trade is done in London by persons who sell goods manufactured in other countries, but who never have those goods in their possession. They buy at a certain fixed rate, and re-sell at a profit, but they have nothing but samples to show the purchaser. One can go into hundreds of houses in London, where in a little room one can be shown collections of samples from all the countries in Europe. The man who has these samples in his possession is as absolutely the seller as if he had the actual goods in his store in the building. It is as plain as possible that it is his invoice the Customs ought to have. It is the original invoice, and the Customs should not compel that man to issue any invoice in another country. One concrete example in fact is worth any amount of theory, and I have listened to the instance put by

Senator Cameron

with interest. But it does not convey to me any analogy whatever to the illustration put by

Senator Sargood.

Most of us, I dare say, occasionally buy things in London. We buy them through an agent. We simply employ the agent for the purpose of buying the particular articles. Perhaps the agent cannot get them in London and sends to France or Germany for them. He charges us a commission. He is not the seller. If he chose to make out an invoice, it would be an improper one, and one that he ought not to send. Therefore the invoice that ought to be presented to the Custom-house is the invoice the agent gets from the manufacturer in France or Germany. Otherwise, if such agent in London were an agent of the seller, and were in fact and in law the seller, he is presenting a wrong invoice ; because the invoice in Germany ought to have added to it the commission the agent is paid, which is part of the price the customer in Australia pays for the article. But none of us would ever dream of presenting to the Customs the invoice of the manufacturer of the goods in a foreign country, plus the commission paid to the agent. If the agent

were the seller, we should be bound to do so. Instead, we send to the Customs the seller's invoice - the invoice from the manufacturer in Germany or elsewhere, and do not pay duty on the invoice of the agent in London. This clause, whatever its aim may be, has not really been understood as it would be by a practical man. The original genuine invoice is the invoice issued by the seller. If the seller is in London his invoice is the true invoice; if he is in Germany, and the man in London is merely the agent, the German invoice is the true invoice. But whichever it is, when we define it as the original invoice prepared and issued by the seller, we get at everything. The Customs people by their regulations will deal with everything necessary, and it will be perfectly easy to close every possible loop-hole for fraud, and to shut out every opportunity for the cooking or salting of invoices which we are all anxious to avoid.

Senator PULSFORD

(New South Wales). - All the Vice-president of the Executive Council desires, as a matter of security to the revenue, can be and is obtained by clause 152. The clause reads as follows : -

Whenever the collector has a doubt as to the accuracy of the declared value of dutiable goods, he may detain such goods, and assess the value thereof.

It is most unwise to penalize and put unnecessary trouble upon the whole trade of a country in order occasionally to catch a rogue, to deal with whom there is a special provision. In view of clause 152, to which I have no doubt the committee will assent, I would ask Senator O'Connor to accept Senator Sargood's amendment.

Senator Sir FREDERICK

SARGOOD (Victoria). -

Senator O'Connor

and also the Postmaster-General desire to get at the invoice of the manufacturer. That is about the last thing they should try to do. As a matter of fact the greatest swindles in the State of Victoria in connexion with Customs have been perpetrated where importers have claimed to submit the manufacturer's invoices. What we want to do is to secure for the Customs the payment of duty on the actual amount the buyer pays for the goods.

Senator O'Connor

- Look at clause 149. The duty is to be imposed upon -

The fair market value of the goods in the principal markets of the country whence the same were exported.

Senator Sir FREDERICK SARGOOD

- I thought I knew something about commercial matters, and that is not the ordinary acceptation of the meaning of those words.

Senator O'Connor

- I think I know something about the meaning of this Bill, and I say that the provision I have quoted, and which we have already agreed to, is that the value is to be taken to be the fair market value of the goods. That is to be taken in the usual acceptation of the words. It is not the value in London, but the value in the place from which the goods were exported ; and in order to get at that we want the invoices from the place from which the goods were exported.

Senator Sir FREDERICK

SARGOOD. \_ Suppose a German manufacturer has a branch establishment in London, and he instructs his agent that the price of his goods is so-and-so. The buyer of an Australian firm can go and buy those goods at those prices. The invoices will show the price paid. Moreover, the goods are paid for in London, not in Germany. But

Senator O'Connor

says that the Customs will require to see the manufacturer's invoice. I do not hesitate to say that two things will happen. First, the Customs will not get the price the buyer pays for them, because there will be a difference of from 5 to

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per cent. ; and, secondly, the Customs will get lower duties than would be got if they took the absolute original invoice, which represents the absolute price paid for the goods. I warn

Senator O'Connor

that if he seeks to get the manufacturer's invoice he will be opening the door to an immense amount of

fraud, such as has happened in the past. In a certain case in Victoria there was a fraud of something like £5,000, simply through the use of manufacturers' invoices.

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Senator O'KEEFE

- It is clear that what we want to do is to get at the actual cash value paid by the purchaser for goods in the country from which they are exported. The object is that the duty may be paid upon the actual cash value, and not upon a false value which may be put upon the article in the invoice sent by somebody else. A few years ago a person living in Melbourne, acting as an agent for a person in another State, purchased a certain article, and sent to the person in another State an invoice made out by himself at a very much lower value than the price paid for the article. Clearly that was a fraud. The result was that- although the actual purchaser for whom the article was purchased did not know it - an incorrect invoice was sent to him; and an article of which the price was £26 10s. in actual cash was imported on an invoice for something like £15, duty being paid on the smaller amount. The Customs of the State in question were defrauded of about half the revenue which they should have got. I have studied this clause very carefully, and have been much interested in the debate. The instance I have given is applicable to the case. Suppose I send to a London agent for a certain article, upon which there is a duty of 10 per cent, under a uniform Tariff, and that agent sends me an invoice showing that he has paid £20 instead of £30 for the article. It is a very difficult thing to find out whether that is a correct invoice or not, unless we allow this clause to remain as it stands, enabling the Customs to get at the original seller's invoice. That is the only object sought to be obtained by the clause, and it would be unwise on the part of the committee to make any alteration in it. This is not an imposition of duty in any way whatever. It is simply a machinery Bill for enabling duties of Customs to be collected. The duties themselves will be imposed later on.

Senator PLAYFORD

- Of all forms of taxation the one that lends itself, so far as my experience is concerned, most readily to fraud is ad valorem duties. It is, therefore, exceedingly necessary to have stringent clauses and severe penalties for the prevention of fraud. We are all interested in checking fraud, and in protecting the honest trader who does his business on fair lines. The point in question is one of very little importance. It does not matter much whether we leave in the words under discussion or strike them out; though I agree to a large extent with Senator Sir Frederick Sargood, when he says that it would be better to take the invoice of a manufacturer's agent in London, from whom the trader purchases, than the invoice of the foreign manufacturer abroad. These foreign manufacturers are up to all the tricks for defrauding the Customs. I have known cases where goods have been purchased and paid for in London, and the manufacturer has been asked to send invoices out, whereupon the importer has found that upon the invoice the price was frightfully reduced by the manufacturer for the purpose of defrauding the Customs. The best check of all is to have as Customs officers thoroughly trained men, who will examine the goods, otherwise frauds of an extensive character will be perpetrated by dishonest traders without the slightest hesitation. Upon these men we shall have to depend a great deal more than upon invoices, which, in many instances, are waste paper: It is a well recognised fact that they are made up and "salted" for the purpose of deceiving the Customs right and left. We must depend upon our officers - who must have experience and knowledge - to prevent the unfair trader defrauding the Customs in the first place, and in the second place, having an unfair advantage over the honest trader. I expect there is a provision in this Bill which is to be found in other Customs Acts, under which the Customs authorities will have the right, by adding a percentage to the value of the goods, to take the goods themselves and sell them.

Senator Sir Frederick Sargood

- That is not in this Bill.

Senator PLAYFORD

- It is in the South Australian Act, and it has been resorted to on more than one occasion with very good effect. A percentage is added to the price stated in the invoice, the man is paid cash for the goods, and the Customs take them and dispose of them - that is, where they believe there is any attempt to defraud. We must depend in these matters upon the work of expert officers, and upon such a provision as I have just referred to, as the only means of stopping fraud, because these invoices are just waste paper.

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

AYES

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NOES

Majority ... .. 2

AYES

NOES

Question so resolved in the affirmative.

Amendment negatived:

Senator Sir FREDERICK

SARGOOD (Victoria). - I now move -

That after the word "price," line 5, the words " for cash " be inserted.

Those words are to be found in paragraph (b) of the clause which deals practically with the same thing.

Senator O'CONNOR

- I must oppose this amendment. Honorable senators will see that " paid or to be paid " means cash or credit. In the case of cash there is no trouble about it and the amendment would not be used ; but we have to deal with cases in which there has been a sale on credit at a certain price, and on the face of the invoice the price is stated at so much, being, a sale on bills having so many months currency. If the amendment were carried it would be open to the importer to deduct from the value of the goods some quantity, which is altogether uncertain, for the terms of credit.

Senator Sir Frederick Sargood

- Then why use the words in paragraph (b) ?

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Senator O'CONNOR

- Because it deals with a different matter altogether. We know that wherever deductions are allowed they are largely availed of for purposes of fraud, and we want to prevent anything of that sort. We should let the price paid or agreed to be paid be the measure of value.

Senator Sir Frederick Sargood

- I will not press it.

Amendment, by leave, withdrawn.

Senator Sir FREDERICK

SARGOOD (Victoria). - The clause refers to the -

Actual money price paid or to be paid for the goods by the purchaser in the country whence the same were exported.

I want again to point out that in a large number of cases the money is not paid, in the country whence the goods were exported. In the case I have already referred to, the goods were exported from Hamburg, and the money was paid in London.. I could have brought down a dozen such invoices. Japanese goods, for instance, are not paid for in Japan, but in London,

Senator Drake

- The Japanese merchant has to be paid for them.

Senator Sir FREDERICK SARGOOD

- He is paid in London for them. He does not receive the money at Yokohama, whence the goods are exported. In the same way American goods are not paid for in New York, but in London. Whoever drafted this clause could not have had much knowledge of modern commercial matters. I move -

That the words " in the country whence the same were exported," lines 6 and 7, be omitted, with a view to insert in lieu thereof the words " to the seller."

Senator DRAKE

(Queensland - Postmaster-General). - We have decided that the invoice is to be the invoice prepared by the seller in the country whence the goods are exported - that is to say, it is to represent the price paid for the goods in that country. Later on, we say that the price shall be the actual money price paid or to be paid for the goods there. It would be very absurd now to provide for an invoice to be made out by the seller in the country of manufacture, in which the price stated as having been paid or to be paid for the goods is not to be the price to be paid there, but the price to be paid somewhere else. If we go back to the expression used in clause 149 we find that the value is to be taken to be the fair market value of the

goods in the principal markets of the country whence they were exported. What we are discussing now is whether the price stated to have been paid is to be the price paid or to be paid in that country. Surely it must be so.

Sir Frederick Sargood

-i assure the honorable and learned senator that it is not so.

Senator DRAKE

- What I mean is, that the clause must remain as it is to preserve anything like consistency. It is so in a certain sense, because whatever financial arrangements may be made, the manufacturer of the goods has got to be paid, and is practically paid in the country whence the goods were exported.

Senator MILLEN

- The Postmaster-General can hardly have seen that this clause seeks to have something done which never will and never can be done, and to pass it under the circumstances is reducing the thing to an absurdity. The clause asks that the invoice shall show the actual money price paid in a country where it never is to be paid and never will be paid, and if it passes as it stands the result will be simply that it will be disregarded, because of the impossibility of carrying it out without reversing the whole course of business as carried on in England and in Europe.

Senator O'CONNOR

-I point out that the "price," and not the " price paid," is what governs the words "in the country whence the same were exported." It does not necessarily mean that the price shall be paid in that country at all. The basis of the whole thing is in clause 149, where the value is taken to be the value of the goods in the principal markets of the country from which they are exported. We are dealing now with the genuine invoice, which shows the price paid or to be paid, and it might be more or less than the market value.

Senator Millen

- That is what Senator Sir Frederick Sargood wants, but the clause goes beyond that.

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Senator O'CONNOR

- If the price is not paid in the country from which the goods are exported, the provision will not come into operation, but in a case where the money is paid or to be paid in that country the invoice will show it. We must trust the officials to administer this in an intelligent way, and not insist upon payment being shown to be in any country when it is not so.

Amendment negatived;

Senator Sir FREDERICK

SARGOOD (Victoria). - The clause further states in paragraph (b

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that -

In the case of goods consigned for sale in Australia, the original invoice prepared and issued by the consignor showing the true description of the goods -

That original invoice by the consignor will be the invoice prepared by himself, and if it is an honest invoice it will be for something more than he has given for the goods. In that case the Government will not lose anything. I think it is necessary to add some words to this paragraph which will give you two strings to your bow, and will be in the interests of the Custom-house as well as the honest trader. I move -

That, after the word " Australia," line 11, the following words be inserted : - " Either the original invoice as per the preceding sub-section, or if approved by the collector."

Senator O'CONNOR

- This amendment gives the option to the importer. If it is altered so as to give the option to the Customhouse officer, I shall have no objection to it.

Senator Sir FREDERICK

SARGOOD (Victoria). - We have already agreed as to what the original genuine invoice is to be. There is no question that if that provision is carried out you will get the genuine invoice, and more than that you do not want. But this alternative is the invoice prepared by the consignor, which is a very different thing. If this amendment is made it will cover the whole ground.

Senator Sir JOSIAH

SYMON (South Australia). - The two sub-clauses deal with different tilings. One sub-clause deals with

goods that are bought and imported, and are the property of the importer ; while the other deals with consignments. The definition of the invoice in paragraph (as) ought to be different from that of the invoice in paragraph (6). But the alternative which

.Senator Sargood

suggests is, that some kind of an invoice applicable to one set of goods imported by the owner may .be adopted instead of the invoice by a consignor. I am not sufficiently familiar with the intricacies - or what Senator Playford

would call the tricks - of the trade to know what possibilities there are ; but I think it will be very much simpler to keep to one tiling at a time, and not to mix up the definition of an original invoice, for the purpose of an importation of goods belonging to the importer with the definition of an invoice of goods simply consigned for the purpose of sale. Simplicity will be best served if the amendment is withdrawn.

Senator Sir FREDERICK

SARGOOD (Victoria). - Goods are shipped from the old country for sale here, and we want to make sure that we get the full amount of duty on them. Many consignors send out the original invoices as from the firms from which they buy, and these cases are provided for by my amendment. Other consignors do not send out the original invoice, but an invoice with perhaps 5 per cent, added to it on their own invoice form, and that would be met as it stands. I want to meet both cases, but as it stands it will open the door to fraud.

Senator Sir JOSIAH

SYMON (South Australia). - The intention of the Government is that goods may come to the Commonwealth in two categories. There may be goods purchased by the buyer here for the purpose of sale or disposal as he pleases, and there may be goods sent here only for the purpose of sale. The clause gives two definitions of original invoices subject to each of these things, and we had better keep them separate. No doubt they have been put in for a good purpose, and there is no need for limitation, because the consignor has a remedy in his own hands.

Amendment, by leave, withdrawn.

Clause agreed to.

Clause 152 -

Whenever the collector has a doubt as to the accuracy of the declared value of dutiable goods he may detain such goods and assess the value thereof.

Should the owner object to the value so assessed he may request that the value may be ascertained by experts in manner prescribed.

Should the owner refuse to pay the duty as assessed by the collector or ascertained by experts, the collector may sell the goods.

The provisions of this section shall not apply in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted.

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Senator Major GOULD

- I move -

That after the word "prescribed," line 7, the following words be inserted : - "and the value so ascertained shall be deemed to be the value of the goods."

If this amendment is carried I shall move the omission of the third paragraph. As the clause stands, there is a power to deal with dutiable goods which have been detained, and to assess the value. But it may happen that the goods are not required for the time being for home consumption, and after the value is assessed in the prescribed way, if the owner declines to pay duty there and then, he is liable to have the whole of the goods sold. I want to obviate that difficulty by providing that after having assessed the value of the goods, it will not be incumbent on the Government to sell them straight away.

Senator Playford

- He can warehouse his goods ; he need npt pay the duty at once.

Senator Major GOULD

- If the clause is altered in this way, then the goods can be warehoused, and another provision will enable the collector to sell the goods when the duty has not been paid within the prescribed time. My amendment is submitted after full consideration of it by the Chamber of Commerce in Sydney. It will place the



Government in no worse a position, because we provide not only that the goods shall be assessed, but that the assessment shall be deemed to be the value of the goods, and whenever the time comes round, if the owner will not pay the duty, the goods will be sold. An owner may wish to keep the goods for some time without the liability of their being sold. They may not be required for home consumption, and ultimately they may have to be re-exported.

Senator O'CONNOR

- I do not see the necessity for the amendment. Is not that what the clause means? A doubt arises when the duty has to be paid ; and I presume it is only when the goods are being removed from bond, and have to pay the duty, that the question arises. When a man puts his goods in bond he enters them either for home consumption or for warehousing. If he enters them for warehousing they can remain in the warehouse for twelve months, but when he wants to take them out there is the question of valuation ; and the third paragraph of the clause is a plain declaration that the value is to be ascertained by the collector.

Senator Major Gould

- My amendment contemplates the omission of that paragraph. I admit that if it is retained there is no necessity for the amendment.

Senator O'CONNOR

- Taking the clause as a whole it is absolutely clear, and we do not want the amendment. My honorable friend's object, I understand, is to insure that where the goods are stored under drawback the owner shall not be compelled to pay duty. He is not compelled to pay duty under this clause, because if the goods are re-exported there is no difficulty about the duty, and if the goods are sold in bond, it is only when he wants to withdraw them that he has to pay any duty. 12 n

Senator Major GOULD

(New South Wales). - Supposing that goods are imported and put into bond, am I to understand that they are not valued for

ad valorem

purposes until they are taken out of bond?

Senator O'Connor

- I do not know about being valued, but the duty has not to be paid until they are taken out of bond.

Senator Major GOULD

- Under another provision of the Bill goods may be reexported, and the explanation of that was, that possibly goods which had been for some time in bond might have deteriorated in value, or be less in quantity than originally estimated. It shows at once that there must be the power to value the goods immediately they come into the country, and then if the owner should refuse to pay the duty the collector would have power to dispose of them.

Senator O'Connor

- The time when this thing happens is when the owner refuses to pay the duty. It does not become due until the goods are being taken out of the bond.

Senator Major GOULD

- After the explanation given by Senator O'Connor I am willing to withdraw my amendment. I only wanted to get a clear understanding of what the effect of the law will be, more especially in view of the suggestions made to me by a body which knows a great deal more about Customs law than I can profess to know.

Amendment, by leave, withdrawn.

Senator Sir FREDERICK SARGOOD

- I do not see the object of the fourth paragraph of this clause. If there is a dispute between the collector and the importer as to the value of the goods, all the Minister has to say is that, in his opinion, there is an attempt at evasion, and then that provision is dead, and the importer has no opportunity of having the question submitted to experts. I shall be very glad to ascertain the reason why the paragraph is inserted.

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Senator O'CONNOR

- It is a very common provision, and is to be found in most of the Customs Acts. In other parts of the Bill, for instance in clause 160, there is a similar provision. Supposing that a person fraudulently puts an under-value on goods, and that when he finds that he is detected in his fraud, he applies to have an

assessment, surely he ought not to be in a position to have the matter adjudicated on as if he were an honest trader. He has attempted to act fraudulently and has been bowled out, and is the collector to pass by all that and deal with him as if he were an honest trader and have an assessment of value 1 With the dishonest trader it would be a case of " heads I win, and tails you lose." He would have the chance of getting in at an under valuation fraudulently ; but if it did not come off, he would still have the chance of having a valuation by experts.

Senator Sir Frederick Sargood

- I shall not press for its omission.

Senator MACFARLANE

(Tasmania).It occurs to me that the explanation of

Senator O'Connor

does not cover the whole ground. Supposing that there is a difference of opinion as to the real value; apparently under this provision the Minister has to sell. Why should not the importer have the right of appeal ? In other cases if in the opinion of the Minister the goods are undervalued, he forfeits them. Why should not the goods be allowed to go into bond for further inquiry ? There have been cases in which an opinion has been given by the Minister of Customs which was contrary to facts ; but it took some months to ascertain the facts, and, of course, an injury had been done before the inquiry was completed.

Senator O'CONNOR

- Right through this Bill in many places it has been found necessary to give the Minister the power of deciding questions of this sort. Something has to be done or the moment, and what are we to do with the goods while the question is being considered ? There is the question of whether the owner of the goods has been guilty of an evasion of duty. There cannot be an appeal in every case against an executive act of the Minister. It is to be assumed that the Minister will exercise this power with care and a sense of responsibility. It must be remembered that it is not the collector or the officer in charge, or even the comptroller, who has to decide the matter'. It has to go before the Minister.

Senator Sir Frederick Sargood

- The Minister can delegate his power.

Senator O'CONNOR

- Although there is a power- of delegation, I take it that no Minister would delegate a "power of that kind except to a high and responsible officer. In the case of distant places it might have to be-delegated, but always to a high officer, who would exercise his discretion with a sense of responsibility. Honorable senators may rely upon it that when there are certain importers dealing with the customs day after day the Custom-house officers will not unnecessarily make a charge of fraud. The ordinary tendencies of human nature will induce people to work amicably together when they can do so. If a large amount of difficulty is made about a Customhouse officer carrying out his duty in this respect, the result will be that the officers will naturally shrink from the responsibility. If a Customhouse officer, whenever he endeavours to have an evasion of duty punished, has to face an appeal, in nine cases out of ten he will, if possible, avoid taking action, with the result that the fraudulent importer will be put in the same position as the honest importer. If we begin to cavil at the power given to the Minister, half the clauses of this Bill may be struck out. It is necessary for the protection of the revenue to give large powers to the Minister and his officers, and the remedy for the exercise of those powers improperly is. to take good care that the Customs officers who are appointed are chosen with a due regard to the responsibilities they have to exercise.

Clause agreed to.

Clause 153 -

No person shall send or bring into Australia, or have in his possession without reasonable excuse, any blank or partly blank invoice form capable of being filled up and used as. a genuine invoice.

Penalty, Twenty pounds.

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Senator Sir FREDERICK SARGOOD

- This clause deals with blank invoices, one of the most serious features in connexion with the importation of goods. It is of the utmost importance to the honest trader that these blank invoices should be prohibited under very heavy penalties. We know the facility with which blank invoices can be obtained. In the old country I have been offered, quite openly, false invoices for customs purposes to fill up as I liked.

Parliament should protect the honest trader and the revenue against such frauds. I hold that clause 153 will not prevent them effectually. It does not go anything like far enough, and the penalty of £20 is paltry. Those who use blank invoices would laugh at it. We suffered from this cause in the past so severely in Victoria that in 1896 the sections were passed which I have circulated in the form of new clauses. I have made inquiries, and have ascertained that since the passing of these sections in Victoria, the practice of using blank and false invoices has been absolutely stamped out. Whatever legislation we pass, we should prevent the recurrence of these frauds. It may be possible that, in consequence of the very high duties in Victoria, our experience has been of a more unsatisfactory character in this respect than that of other States has been-; but as I have said, the four sections which we passed have stopped this nefarious system of robbery not only of the Customs, but of the honest trader. I appeal to the Minister to assist me in passing either the clauses I have circulated, or something that would be equally efficacious. If Senator O'Connor thinks these clauses unnecessarily voluminous, I suggest that before finally taking a stand upon the matter he might consult Dr. Wollaston, the head of the Customs department, who has necessarily had a considerable amount of experience in this matter. To put myself in order, I now move - That the word "no," line 1, be omitted, with a view to inserting the word "any."

Senator O'CONNOR

- I quite recognise the spirit in which Senator Sir Frederick Sargood has proposed this amendment. We are all willing to acknowledge also that his very large experience in dealing with questions of ad valorem duties justifies us in listening to his suggestion with a very considerable amount of respect. But the clause as it stands really gives all the power that is necessary, though I quite agree that the penalty should be very much larger. As regards the description of the offence, and the giving of opportunities to Customs officers to examine into breaches of the law, the clause will do as it stands. The first of the sections of the Victorian Act which Senator Sir Frederick Sargood has circulated in the form of new clauses does not carry the matter any further than what is proposed in this Bill. The object of the clause may be stated in a few words to be, that it is such an immense aid to the fraudulent trader to have blank invoice forms ready for filling up, that it is necessary that the mere possession of them should be made an offence. The gentleman from the Customs department who is giving me information tells me that in one case in a State where he had occasion to make a search, he discovered that in an office drawer of a certain importer who was attempting to defraud the Customs there were billheads, invoice forms, and other similar documents with which this person was in the habit of carrying on operations. Everything was ready to be filled up by him. In the correspondence, this officer found that merchants at home wrote out to say - "You will have to do your own dirty work ; we send you the invoice forms, and you can fill them up as you like." They seemed to salve their' consciences in that very easy way, thinking apparently that they were not doing any harm in giving the importer the opportunity of doing a wrong, so long as they did not do it themselves. That is the way the thing is worked. Merchants on the other side of the world can facilitate the commission of outrageous frauds by sending out their invoice forms, which a dishonest person on this side fills up. We, therefore, make it an offence for a person to have in his possession these blank invoice forms, and all that is necessary in that respect is covered by the clause, which we consider to be sufficiently comprehensive. It must be remembered that the Customs have very large powers of making regulations. They can prescribe the different ways in which these forms are capable of being filled up and used as genuine invoices ; and I think it will be quite possible to provide in the form of regulations all that will be necessary for dealing with such cases. In addition to that, clause 225 of this Bill provides - That no person shall..... prepare, pass, or present any document purporting to be a genuine invoice, which is not in fact a genuine invoice.

The penalty for that is £100. So that under this Bill we have power to prevent any person from having such blank invoices in his possession ; and if a person uses them he is subject to a heavy penalty under clause 225.

Senator Sir Frederick Sargood

- That, I think, only touches genuine invoices, and not does touch the original invoices mentioned in paragraph (a) of clause 50. Probably the insertion of a word would meet that point.

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Senator O'CONNOR

- For these reasons, although I am alive to the necessity of making the law as stringent as possible, and

would welcome any amendment having that effect, it seems to me that the provisions of the Bill as it stands give all the power that is requisite, and are expressed in shorter terms than in the amendments proposed by the honorable senator.

Senator MAJOR GOULD

- If the Minister is perfectly satisfied that under this clause he will have full power to deal with the cases proposed to be met by Senator Sir Frederick Sargood's amendment, it may be as well to allow the clause to pass with only such amendments as may be required to make it perfectly clear. I thoroughly indorse what has been said as to the necessity of making fraud as difficult as possible, and, if I felt it was necessary to amplify the Bill in the way proposed by Senator Sir Frederick Sargood in order to meet that, I would be prepared to do so. I have no doubt that this clause especially is one which must have had the very careful consideration of the Government in consultation with the officers of the department, having full knowledge of all the matters dealt with. So far as regulations are concerned, unless they are strictly within the provisions of the Act under which they are made, they are a dangerous form of legislation, in that they are legislation by the Executive, against which I have already protested. I think, however, that the Government may be trusted in the framing of regulations to deal with these matters. It is my intention, therefore, to support the clause as it stands. The clause provides that no person shall "send" or bring into Australia, or have in his possession, without reasonable excuse, any of these blank invoices. Now, a man on the other side of the world may "send" into Australia these blank invoices, and I do not see how we could get at him, as he would be beyond our jurisdiction.

Senator O'Connor

- Suppose he comes inside ?

Senator Major GOULD

- In that case the offence would have been committed outside our jurisdiction and he could not be punished. If a man brings these forms into the Commonwealth there is no doubt he will be liable to the penalty. We might consider whether it is desirable to retain the word "send" as well as the other words used. If the Minister considers that they will be of any value I do not propose to submit an amendment, but I think they are unnecessary and meaningless.

Senator O'CONNOR

- It is not necessary to make any alteration. There may be some cases in which a person who "sends" these blank invoices will never be within the jurisdiction of our courts, and therefore cannot be punished. On the other hand there may be cases in which a man who is an agent, or traveller or merchant, may go outside of Australia, and actually himself send these invoices, or cause them to be sent, and why should he not be punished ? If for the purpose of punishing him it is necessary to have these words in, the necessity for them is not affected by the fact that they will not be applicable in other cases. I think we had better leave the clause as it is.

Senator Sir Frederick Sargood

- I understand the honorable and learned senator believes that all the necessary powers are contained in the clause?

Senator O'CONNOR

- I think they are fully covered by the clause, but I am prepared to agree to an amendment increasing the penalty from £20 to £100.

Senator Sir FREDERICK

SARGOOD (Victoria). - I do not wish to interfere with the honorable senator in his conduct of the Bill, and, though I still think that the clause is not sufficient, I will not press my amendment. I would like the honorable senator to agree to recommit the clause, if, on further inquiry, I find it necessary to have a further discussion upon it.

Senator O'Connor

- I can hardly agree to that ; I want to be done with it once and for all.

Senator Sir FREDERICK SARGOOD

- I should like to see the penalty made £250, as in the Victorian Act, because this is an interference not only with the Customs but with every honest trader, and the penalty of £100 I do not hesitate to say will not stop it. Prior to the introduction of this provision I have myself seen cases addressed to our firm, and on the lid of a case being removed there have been found on the top of the goods a lot of blank invoices

which we could have done what we liked with. It is not that merchants have asked for them - they have been actually pitched at them. I will agree to move that the penalty be £100, though I think it is not sufficient.

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Senator CHARLESTON

- I have no doubt that the Minister, in considering this matter, has had the assistance of the Comptroller of Customs, and if, with his large experience, he has considered a penalty of £20 sufficient, we shall be doing remarkably well in the interests of the Government if we increase the penalty to £100.

Senator O'Connor

- The penalty under the Victorian Act is £100 for having these forms, and £250 for fraudulently using them.

Amendment, by leave, withdrawn.

Amendment (by Sir Frederick Sargood) agreed to.

That the word " twenty," line 5, be omitted, with a view to insert in lieu thereof the words " one hundred." Clause, as amended, agreed to.

Clause 159 -

If any practice of the Customs relating to classifying or enumerating any article for duty shall be altered so that less duty is charged upon such article, no person shall thereby become entitled to any refund on account of any duty paid before such alteration.

Senator Sir FREDERICK SARGOOD

- I agree that it is necessary to put some bar upon claims for a refund, but I think there should be some qualification as to time. It is not unreasonable that where the Customs authorities have made a mistake in classification - for that is what it amounts to - where it is found they have been for a longer or a shorter time charging a higher duty than ought to have been charged, the merchant should claim to have a refund of duty paid upon goods within six months prior to the date of the alteration. If that is not done it will be seen he is placed in a serious position with regard to competitors who may come in the day after the new classification, and get goods cleared at the lower rate of duty, while he has a full stock of goods on which the higher duty has been paid. I move -

That after the word " paid," line6, the words " prior to six months " be inserted.

Senator O'CONNOR

- This amendment involves a much more serious matter than appears on the face of it. In the interpretation of any Tariff, no matter how clear it is, there must be questions of doubt and difficulty as to the headings under which certain articles are to come. The Customs officials will decide in the first instance, and there may be a number of goods in respect to which it may subsequently be found necessary to alter the duty originally fixed, through articles in one class having to be removed to another class. To show the absurdity of the proposal I need only point out that if it is to be fair all round, where any alteration has been made making the duty upon an article higher, any person dealing in that article for six months previously ought to pay the difference between the higher duty and what he has paid. There is another difficulty, that it would cause a great deal of confusion in the accounts of the Customs if they were put into such a position that they could not make any amendment of classification which would alter a duty without being prepared to make a refund on all transactions for the previous six months. The amendment would put the department in a position it ought not to be placed in. It would open the door to the possibility of fraud in dealing with these matters. Another important question is as to who is to get the benefit of the refund. The goods upon which the higher duty has been paid may have passed on into the hands of persons who have bought them retail at a price fixed on the basis of the higher duty, and in that case the actual consumer of the goods would not get the benefit of the refund due to the alteration. From every point of view the proposal seems to be open to so much possible evil and injustice that it is far better to lay down the hard and fast rule provided in the clause.

Senator Sir JOSIAH SYMON

- I ask Senator Sargood why he fixes six months, and not six years? Courts sometimes disagree, and a court one day may decide in 'a particular fashion, and twelve months afterwards decide in another way, with the result that the unfortunate plaintiff who lost twelve months before ought to have won. We cannot help that; it is due to the fallibility of human nature. The honorable senator might say why he fixes six

months.

Senator Sir Frederick Sargood

- That is a fair question to ask, and I shall answer it. In nearly all cases the goods have their seasons, and the seasons last for six months, and we are supposed to clear all the season's goods in the six months. That is why it is suggested that the term should be six months.

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Senator Sir JOSIAH SYMON

- That shows exactly that if the season's goods have been cleared out the customs duty has already been paid back to the importer in the price he has received for the goods. That brings us to the fact that we are not being asked to do justice to the right man.

Senator Sir Frederick Sargood

- It is open to that objection, and I will withdraw the amendment.

Amendment, by leave, withdrawn.

Clause agreed to.

Clause 160-

If any dispute shall arise as to the amount or rate of duty, or as to the liability of goods to duty, the owner may deposit with the collector the amount of duty demanded, and thereupon the following consequences shall ensue : -

The owner upon making proper entry shall be entitled to delivery of the goods.

The deposit shall be deemed the proper duty, unless by action commenced by the owner against the collector within six months after making the deposit the contrary shall be determined, in which case any excess of the deposit over the proper duty shall be refunded by the collector to the owner with five pounds per centum per annum interest added.

The provisions of this section shall not apply in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted.

Senator Sir FREDERICK SARGOOD

- I have an amendment upon this clause very similar to the amendment I proposed on clause 152. This is practically the appeal clause of the Bill. Under it, if any dispute shall arise as to the amount or rate of duty or as to the liability of goods to duty, the owner may deposit with the collector the amount of duty demanded, and he may thereupon take certain steps which are provided for. There are frequently honest differences of opinion existing between the importer and the Custom-house officer as to classification and various other matters. The first portion of this clause fairly deals with the matter, but it is further provided that the provisions of the clause shall not apply in cases where the Minister is of the opinion that any evasion of the Bill has been committed or attempted, and that appears to me to be a monstrous injustice. That is the very time at which I would fight to the last if the Minister charged me with being guilty of an evasion of the Act. I cannot see why that should be done. There is some little reason for it under clause 159. Surely if we mean to give an appeal to a man where there is a difference of opinion between the department and the importer, we ought not to attempt to stultify that appeal by allowing the Minister to say to the man-" In my opinion you were guilty or were trying to be guilty of an evasion of the Act, and therefore you shall not have an appeal." move -

That the clause be amended by the omission of the words "the provisions of this section shall not apply in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted."

Postmaster-General

Senator DRAKE

. - It will be apparent from the heading of this division that the clause relates simply to cases where there is a bona fide dispute as to the amount of duty which should have been paid. Clause 158 deals with a case where a duty has been short-levied. If it has been short-levied, then the collector may charge the duty according to the calculation which he considered the correct one. Then clause 159 provides for a case in which there has been an alteration of the classification and enumeration, which has increased certain of the duties. In those cases the additional amount may be refunded. Under both clauses we can contemplate a number of cases in which there will be a bona fide dispute as to what amount of duty should have been paid without suspicion of wrong-doing, and clause 160 provides for that.

Senator Sir Frederick Sargood

- It is not limited to that.

Senator DRAKE

- It is not limited to that, because it provides for the settlement of any dispute with regard to a duty.

Senator Sir Frederick Sargood

- Look at the disputes under clauses 149 and 150. Those are the chief disputes.

Senator DRAKE

- There are a great number of others. They are all cases in which there is a bona fide dispute as to the amount of the duty which should have been paid ; but there are cases in which there is no suspicion of any attempt to evade the law. Where there is a suspicion that an attempt has been made to defraud the revenue the clause is not to apply.

Senator Major Gould

- Because there is a suspicion in the mind of the Minister he will not allow the man an inquiry.

Senator DRAKE

- If it is a case in which, in the Minister's opinion, there is an attempt to defraud the Customs, it should be dealt with in another way.

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Senator Major Gould

- Is there a provision to deal with it in another way ?

Senator DRAKE

- The Bill is full of provisions for the action which the collector may take in cases where he believes that there has been an attempt at fraud.

Senator Major Gould

- When it cannot be proved the Minister is to have the power to refuse to allow the man to have the benefit of an inquiry 1

Senator DRAKE

- No. Where there has been an attempt to defraud the revenue, those cases may be dealt with under other clauses, which provide penalties for such offences. But a person who is under suspicion of having attempted to defraud the Customs cannot get away from the consequences of his act, by simply representing it as an innocent dispute as to the amount of the duty. This clause only provides a way in which a dispute which is entirely free from any element or Suspicion of fraud shall be dealt with.

Senator Major GOULD

- Senator Drake is rather unfair in his argument. The Minister is of opinion that an evasion of the Act may be committed, and therefore, he says, that if, in the opinion of the Minister, there has been an evasion by an importer, the importer shall not have the benefit of this inquiry as to a dispute. Where the Minister prosecutes the man for evading the law, and gets him convicted, by all means retain this provision. But do not let the Minister, where he thinks that a man has been guilty of an attempt at evasion, 'decline to allow the question to be remitted to a court to be tried. If a man has been guilty of an offence and has been convicted, we should refuse to give him this right; but until that conviction is obtained, a power of this kind ought not to be placed in the hands of any Minister. It really, makes him the arbiter.' He can settle the dispute without obtaining a tittle of evidence, and he is not called upon to give any reason for his decision. It is a 'monstrous power to place in the hands of any Minister. I would give the fullest possible powers to punish any man who was guilty of an evasion of the law ; but I would not place in the hands of any Minister a power to find him -guilty without getting any evidence and without giving him an opportunity of rebutting it.

Senator MACFARLANE

(Tasmania).I rise to ask the Postmaster-General why, if a man pays the proper duty in accordance with the demand of the collector, he should be precluded from going to the law courts ? Is not the effect of the last part of the clause to preclude a man, who has paid the proper duty as demanded, from getting redress, because in the opinion of the Minister a sufficient amount was not asked for?

Senator DRAKE

- It is only where there is a bona fide dispute as to the amount of duty that it can be collected in this way.

Senator MACFARLANE

- The effect of the last part of the clause is that if the man begins an action, the Minister may change his

mind and prevent that action from going on. How could an evasion of the Act have been committed if the man had paid the duty demanded ?

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Senator STANFORTH SMITH

- This clause is one of the most important, if not the most important, in the Bill, because it defines the rights of the people as against an arbitrary decision by an official. There can be an honest doubt as to what classification many items come under. Very many cases have been reported in the newspapers where differences of opinion have occurred as to how certain goods which have never been imported before were to be classified. This clause provides exactly what shall be done in such cases. The merchant is to deposit the full amount of the duty which the customs official demands, and then if he considers that an injustice has been done to him he has, under one provision, the right of appeal. But that right can be abrogated under another provision, which says that the Minister may refuse to allow an appeal if in his opinion an evasion of the Act has been committed or attempted. That is putting the importer under a very unfair disadvantage. It seems to me a most monstrous thing, to put that addendum to sub-clause (2) of the first paragraph. If a man has been guilty of an endeavour to evade payment of duty, there are other provisions which apply to the case. But if he lodges the amount of duty which he thinks the customs official is not entitled to receive, surely he should have the right of appealing to a court of law to decide. I hope that the committee will strike out the latter part of the clause.

Senator DRAKE

(Queensland - Postmaster-General). - This provision does not deprive a man of the remedy he has against the collector. If the collector refuses to give up the goods except on payment of an amount which he has no right to demand, then the importer has a right of action at common law. There is no necessity to give that power in the Bill. This clause simply provides a very easy way in which a dispute as to the amount of duty may be settled. The effect of the last paragraph is to prevent a man, against whom there is a suspicion that he has been engaged in evading the customs, getting out of the liability for his action simply by coming in and getting a certain amount of duty fixed, and saying - "I have paid the duty, and there is an end to, any possible action against me." If there is a suspicion of fraud or wrong-doing against a man, then the collector has his remedy against him ; or if the goods are detained, then the consignee has his remedy at common law against the collector.

Senator MILLEN

(New South Wales). I would ask

Senator Drake

to inform the committee whether this provision is contained in any State Act. It appears to me that the owner of the goods is fairly entitled to make this demand : either that he shall be given the benefit of the machinery, instituted here for arriving at the settlement of disputes, or that if he is denied that benefit the Minister shall at once proceed to take the matter before the law courts.

Senator Drake

points out that an aggrieved owner has his remedy at common law, We do not want, if possible, to multiply the necessity for appeals to the law courts. The suggestion I have to make is that the paragraph should be altered to read in this way -

The provisions of this section shall not apply in cases where the Minister has instituted proceedings for an evasion of this Act and has obtained a conviction.

If that amendment is made, the Minister will have to give the owner of the goods the benefit of this method, or to take the case before the law courts. I do not want the Minister to say to an owner - "I shall not allow you to arrive at an agreement with me as to the proper value of the goods, and on the other hand, I shall not take you before another tribunal." My suggestion is, I think, a very fair way out of the difficulty and in no sense could it hamper the Government.

Senator DRAKE

(Queensland - Postmaster-General). - I have been asked to quote the corresponding section of the Acts of the States. The provisions in the Victorian Act are sections 35, 36, and 37. The substance of this one clause forms the subject matter of those three sections of the Victorian Act. Section 35 says that in case of a dispute the importer may pay the duty. Section 36 says -

In case no action shall be brought within the time, such deposit shall be applied to the use of Her Majesty,



and so on. This section practically provides the same as the second sub-clause of the clause before the committee - that a deposit may be made, and that that deposit, unless an action is brought, shall be regarded as being the correct amount of duty. Then the 37th section is as follows: -

The provisions of the last two preceding sections shall not apply to any goods which may be detained or seized for under-valuation, or in respect to which any attempt to evade the payment of duty may have been made.

Senator Sir Josiah Symon

- Not " in the opinion of the Minister." The point of the objection is that this clause makes the Minister the judge.

Senator DRAKE

- Somebody has to be the judge in a matter of this kind, because it is a case where there is a dispute as to duty, and when no action has been taken against a consignee at the time ; it is a case that may be said to be in a sense pending. It is where the goods have not been delivered and the duty has not been received, and there is a dispute as to the amount of duty to be paid. This clause simply operates where there is a bond fide dispute as to the duty, but if there has been an attempt to defraud the Customs the Minister may say - " No, that short and easy mode of settling the amount of duty is not open to the importer." The clause is not intended to be a means of meeting the case where there has been an evasion of duty, but merely affords a means of settling a simple dispute where there is no suspicion of fraud whatever. If there is such a suspicion, the Minister says - "I cannot accept payment of duty under the conditions provided in that clause, because I believe that there has been an attempt to defraud the Customs."

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Senator PEARCE

- The clause should, I think, stand as it is, for the reason that it provides that, where there is a dispute as to the amount of duty, the matter may be settled as between the owner of the goods and the Minister. But there may be disputes of another character.

The goods may be landed and attempts may be made to evade the Act. That may lead to the forfeiture of the goods. It is provided in those cases that the matter shall be settled not by the Minister but by the court, through a prosecution. Where in the opinion of the collector there has been an attempt to evade the duty, if the person had the benefit of this clause, it would amount to this - that the feasibility of the forfeiture of the goods would be done away with, because the first paragraph of the clause says that the owner shall be entitled upon making a proper entry to the delivery of the goods. It would, therefore, be impossible if it were subsequently decided that the owner had endeavoured to defraud the Customs, to forfeit the goods, because he would have made a proper entry. If the amount of the fine were considerably more than the value of the goods there would be no means of enforcing the fine.

Senator Sir JOSIAH SYMON

- I agree that where there has really been an attempt at an evasion of the Customs Act such cases should be dealt with by the courts of the land, and it is because this clause violates that principle that I think it is better to adopt Senator Sir Frederick Sargood's suggestion, which is taken from the section of the Victorian Act which the Postmaster-General has quoted. It is a very excellent principle, and I am quite willing to see it adopted. The vice of the provision at the end of the clause is in the words " where the Minister is of opinion." The clause is intended to apply to cases where there is a dispute as to evasion of duty. If the evasion is part of a fraud this provision should not apply at all. A guilty man should not have the benefit of legislation which is intended for the protection of innocent men. It should not be left to the Minister or any officer to decide a case of guilt or innocence.

Senator McGregor

- He does not decide that.

Senator Sir JOSIAH SYMON

- Indeed he does, under this clause. The clause is not to apply where any evasion of the measure has been committed or attempted, if the Minister decides that it shall not apply. In that respect it is a monstrous provision. The words of the Victorian Act are exactly what are wanted. I would therefore suggest that Senator Sir Frederick Sargood should not propose to strike out the whole of the provision, because it is salutary in so far as it excludes from a beneficial enactment a man who is guilty of an

evasion. It would be sufficient to strike out the words "where the Minister is of opinion."

Senator O'CONNOR

- We are all agreed that the object we have in view is not to give the benefit of these provisions to a person who has attempted a fraud upon the Customs. The matter in dispute is as to whether we should put it in the power of the Minister, at his own discretion, to decide that there has been an evasion of the Act, or leave that to the court. There are cases in which it is a question of fraud from the beginning. There is no doubt that the Minister should have the right to determine that, where it is a mere question of omission of payment of duty, and where that may be the sole dispute, the case should not be treated as one of fraud. I admit that there may be cases in which it might be hard to leave the matter to be determined by the Minister alone. The Victorian Act provides precisely the same thing, but leaves out the discretion of the Minister. The process under the Victorian Act is that if, in the opinion of the court, there has been an attempt to evade the Act, or the goods have been seized for undervaluation, the Act does not apply at all, and the owner of the goods has to prove his case before the court. The Government are quite satisfied with that provision. Therefore I am willing to adopt the Victorian section, which provides - The provisions of the last two preceding sections shall not apply to any goods which may be detained or seized for under-valuation, or in respect to which any attempt to evade the payment of duty may have been made.

Amendment, by leave, withdrawn.

Senator EWING

- Of course, the Minister knows his own business best. But it seems to me that the Victorian section is much more cumbrous than the present provision. Under this clause the goods may be detained until legal action has been taken. If the Minister is of opinion that there has been no evasion of the Act, surely that is quite sufficient. There was something of the kind in the Postal Bill, under which the Postmaster-General might, with the consent of the parties, impose certain penalties without going to the court.

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Senator O'Connor

- The reason that induces me to consent to this suggested amendment is that this is the only clause which gives the right to a party to take the case into court.

Senator MCGREGOR

- I would prefer that the Minister left the clause as it stands. It is much more effective than the Victorian section. Suppose a merchant were attempting to evade the customs in the opinion of the Minister or the collector. As soon as the individual found that there was a shadow of suspicion, although he might be conscientiously guilty, he would, under the proposed amendment, simply say, "I will pay the duty," and then the goods would be delivered. The object is to prevent fraudulent individuals from taking advantage of their opportunities, and I think that the clause is preferable to the Victorian section.

Senator Major Gould

- It is more autocratic.

Senator MCGREGOR

- We should be autocratic with rogues.

Amendment (by Senator O'Connor) agreed to -

That the following words be omitted, "in cases where the Minister is of opinion that any evasion of this Act has been committed or attempted," with a view to insert in lieu thereof the words "but any goods which may be detained or seized for under-valuation, or in respect to which any attempt to evade the payment of duty may have been made."

Clause, as amended, agreed to.

Clause 161 (Drawbacks allowed).

Senator Major GOULD

(New South Wales). - Why should not drawbacks be allowed upon spirits, wine, beer, tobacco, cigars, cigarettes, and opium? I do not see why these articles should be specially exempted.

Senator O'CONNOR

- This is a provision that is very necessary. It is to be found in all the Customs Acts. It is not usual to allow drawbacks on such goods, because it is extremely difficult to identify them.

Clause agreed to.

Clause 166-

The person claiming drawback on any goods shall make a declaration upon the debenture that the goods have been exported and have not been relanded.

Senator Sir FREDERICK SARGOOD

- I have an amendment here which is really consequential upon the amendment which has already been agreed to with regard to exports, in a clause in which it was sought to provide that there should be security taken that goods would be landed, and proof given that they had been landed, at the port for which they were entered. We struck that out, inasmuch as it was impossible for the merchant to insure that. Exactly the same difficulty arises under this clause, in which a person claiming drawback on any goods is expected to make a declaration upon the debenture that the goods have been exported, and have not been relanded. It is utterly impossible for him to make such a declaration. All he can say is - "I put them on board such-and-such a ship. I can say it was not intended they should be relanded ; but I can make no declaration that they have not been relanded."

Senator O'Connor

- Considering the amendment, which has been agreed to already, there is no objection to putting in the words "to his knowledge" in this clause after the word "not," line 3.

Senator Sir FREDERICK SARGOOD

- I move -

That after the word "not," in line 3, the words "to his knowledge" be inserted.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 167-

No drawback debenture shall be paid except with the consent of the Minister -

Unless presented for payment within one year from the date of the shipment of the goods for export.

And the Minister may

Prohibit the payment in whole or in part of any drawback debenture.

Senator PULSFORD

- The power given to the Minister under this clause is a little too autocratic. He is not only given power to refuse payment of a drawback debenture unless it is presented for payment within one year from the date of the shipment of the goods for export, but he is given power to prohibit payment altogether, and, so far as I can see, without any right of appeal. I would like to hear some explanation of the clause.

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Senator O'CONNOR

- When we look at what this drawback debenture is, it will be apparent that this clause is essential; The drawback debenture is a note which passes from hand to hand wherever the goods go. It is really an acknowledgment by the Government that this amount of money shall be paid. It will be agreed that it is reasonable that no drawback debenture should be paid, except with the consent of the Minister, if it is not presented for payment within one year. Then the clause provides that the Minister may prohibit the payment of a drawback debenture, and what that means is, that the Minister may have some knowledge of transactions- in connexion with the goods which would make it clear that it ought not to be paid. This is one of the powers which must be given for the purpose of enabling fraud to be punished, if it is discovered after the goods are gone, and there is no opportunity of dealing with the persons who have been guilty of swindling in any other way than by refusing to pay the debenture. It is only like stopping the payment of a cheque, and it is still left an open question whether the person presenting\* it is entitled to have it paid by the Customs or not. There may be something suspicious about a debenture which may be presented in a hurry, and the Minister may have some circumstance brought to his knowledge which would render it inadvisable that the debenture should be met in the ordinary way. I think the clause ought to be preserved.

Senator STANFORTH SMITH

- Might the clause not be amended so as to read -

The Minister may, if he is of opinion that any evasion of this Act has been committed or attempted, prohibit the payment in whole or in part of any drawback debenture.

Senator Sir Josiah Symon

- That would still leave the judgment with the Minister.

Senator STANFORTH SMITH

- The clause as it stands gives the Minister absolute power without any safeguard for the importer, and he may refuse to pay any drawback debenture presented to him.

Senator EWING

(Western Australia). The clause takes away none of the rights of the holder of the debenture, but merely allows the Minister to refuse to pay the debenture if he considers there are any suspicious circumstances connected with it, just as I may refuse to honour my cheque. The person who holds the debenture can still bring an action against the Crown to make the Minister pay, just as the holder of my cheque may bring an action against me.

Senator Major GOULD

- If the argument of Senator Ewing is correct, there would be no necessity for the provision at all. But let us see what the clause really means. It says in the first paragraph that no drawback debenture shall be paid, except with the consent of the Minister, unless it is presented for payment within one year from the date of the shipment of the goods for export, and in the next that the Minister may " prohibit " the payment of any drawback debentures.

Senator Sir Josiah Symon

- And that would be an answer to any action by the holder of the debenture.

Senator Major GOULD

- Of course, that is what I desire to point out. The Minister would be able to say, "I have power under the law to prohibit the payment of the debenture." How much more serious will the case be if a drawback debenture may pass from one person to another and may get into the hands of an innocent holder for value.

Senator O'Connor

- As to the innocent holder, I am informed that the document is simply an acknowledgement of indebtedness by the Treasurer and does not pass from hand to hand.

Senator Major GOULD

- Provision is made under the Bill for payment of drawback under certain circumstances on a prescribed scale. But there is no protection in that provision if the Minister may prohibit absolutely the payment of the drawback debenture. The Victorian Act simply provides -

No debenture for any drawback allowed upon exportation of any goods shall be paid after the expiration of two years from the date of the shipment of such goods.

There is no provision there to enable the Minister to prohibit the payment of the debenture.

Senator Sir Josiah Symon

- Nor is there in the South Australian Act.

Senator MAJOR GOULD

- Nor is there, I believe, in the New South Wales Act, and unless some stronger reasons are given for the retention of the second paragraph, I think it would be a fair thing to ask that it should be eliminated.

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Senator O'CONNOR

- I do not see anything in what the honorable and learned senator has said to alter my view of the subject. I would like to correct a mistake I made in saying that a debenture passed from hand to hand like a promissory note, a bank note, or a cheque. I have the form of the document here. It is simply an acknowledgment by the Customs to the individual that so much is due, and it would give no right to any one but the person in whose favour it was made out. That gets rid of all questions about innocent holders of drawback debentures for value. The 'point is that in the interval between the time the drawback debenture is given and the time it is presented for payment, something may come to the knowledge of the Minister which would make it unreasonable' that he should pay the money, and why should he be forced to pay it because for want of knowledge of the circumstances, this acknowledgement of indebtedness has been given? Under the clause the Minister is given power to revoke the acknowledgement if he finds it expedient in the interests of the public to do so. But the power does not in any way affect the right of the holder of the drawback debenture to bring an action to recover payment, It is a very necessary power to enable the Government to stop payment of an acknowledgment which they have given, just exactly in the

same way as a man has power to stop payment of a cheque he has given. If a man stops payment of his cheque, the holder cannot sue on the cheque ; but 'there is no reason why he should not sue on the consideration which was given for the cheque. So in this case there is nothing to prevent a man from suing to recover the duty. I hope that the committee will leave the clause as it is, because otherwise the Customs authorities might be put in this exceedingly foolish position, that although some circumstances had come to their knowledge which made it extremely doubtful whether the whole transaction on the goods was not a swindle, they would be bound to pay drawback on their acknowledgment.

Senator Ewing

- It simply means that the Minister should not be prejudiced by the issue of the drawback.

Senator O'CONNOR

- Exactly.

Senator Pulsford

- Can the Minister quote any Act containing a similar provision ?

Senator Sir JOSIAH SYMON

- :If the effect is only what Senator O'Connor says it is, there is no need for these words, because the Minister can stop payment of the debenture. The debenture facilitates proof so far as the man who is suing is concerned. He puts in this, acknowledgment, but accompanying it he gives the notification that payment of the debenture was stopped. But, apart from that, if the words remain in the clause, and they have not the effect, which some of us think they have, of absolutely barring the remedy on the debenture, and on the subject-matter of it too, I suggest, in order to make it clear, that we add these words - But so as not to deprive the person entitled thereto of any remedy he may have for such drawback. This provision does not appear in the "Victorian or the South Australian Act. It is a new provision. It is very drastic, and it is unnecessary if it merely means stopping the debenture. If it means more than that, we ought to be very careful 'that we do not deprive a man who is entitled to drawback of an opportunity of suing for the money which he is entitled to, if he has done nothing to forfeit his rights.

Senator EWING

- The Western Australian Act has this provision -

It shall be lawful for the Minister at any time to direct that any debenture for drawback shall not be passed for payment, and to refuse to pay any claim for drawbacks made thereunder, or any portion thereof.

Senator O'Connor

- There is a similar provision in the Tasmanian Act.

Senator EWING

- The clause in this Bill refers only to the payment of the debenture. It says that the debenture shall not be paid, but it does not say a word about taking away a man's remedy if he has a remedy. I admit that the words which Senator Symon suggests would make it absolutely clear if clearness is necessary ; but I think the words as they are are ample.

Amendment (by Senator Pulsford) agreed to-

That the clause be amended by the addition of the words "but so as not to deprive the person entitled thereto of any remedy he may have for such drawback. "

Clause, as amended, agreed to.

Clause 168-

AH ships trading or plying or going from one "port or place in Australia to another port or place therein, and not trading, plying or going to any other port or place, shall be considered .is engaged in the coasting trade, and such ships shall be deemed to be coasting ships for the purposes of any Customs Act.

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Senator PULSFORD

- As the clause stands, if a vessel is going between Melbourne and Sydney she is considered to be in the coasting trade ; but if she goes on to Brisbane, a third place, she is not considered to be in the coasting trade. The original draft of the clause contained the words "beyond the limits of Australia " ; but an alteration was made in the other House, and in the making of that alteration the error I point out arose.

Senator WALKER

- I rise to ask Senator O'Connor whether a steamer trading between Cooktown and New Guinea would be considered to be going beyond Australia. Many steamers are now trading to New Guinea.

Senator Major GOULD

- When the Bill was reported from committee of the whole in the other House, it contained the words "beyond the limits of Australia." It would make the clause very much clearer if the words were reinserted. Amendment (by Senator Pulsford) proposed - that the words "beyond Australia" be inserted after the word "place," line 4.

Senator EWING

- I think that the question asked by Senator Walker should receive more consideration at the hands of the Minister. As we contemplate having certain dependencies - New Guinea, and perhaps one or two other places - to which our coasters will probably trade, should not the words "beyond Australia or its dependencies" be inserted? No doubt we shall acquire control over certain islands, and it will be desirable to treat our vessels as coasters, even if they trade to New Guinea.

Senator O'CONNOR

- The question raised by Senator Walker has a very large outlook from one point of view. Probably very soon we shall have some sort of relations with New Guinea; but it will not be part of the Commonwealth, so far as I can see, unless it is included as a part under the power we have to admit territory. We may engage, as probably we shall, with Great Britain to administer New Guinea, but that will not make it a part of the Commonwealth. The administration of Norfolk Island may be handed over in some way to us, but it will not be part of the Commonwealth. I hope that as time goes on, and the Commonwealth increases in population and importance, a certain control of a very large area of the Pacific will be vested in Australia. We cannot legislate now so as to put all those places within the limits of the coasting trade. I admit the importance of the question, but the only place we are likely to have very intimate relations with for some time to come is New Guinea, and as it will not be part of the Commonwealth it is very much better to leave the clause as it is, because in regard to all these vessels trading to Australia, although they are not coasters, they will come under the provisions for Inter-State traffic, as regards ship's stores and Customs duties and other matters very much in the same way as our own steamers. The decision we have come to in regard to ship's stores will insure that. I do not see my way at the present time to include as coasters vessels which trade to New Guinea, Norfolk Island, or the New Hebrides. That is going very much beyond the necessities of the position.

Senator PULSFORD

(New South Wales). - I shall be quite satisfied if

Senator O'Connor

will consider the desirability of inserting in the interpretation clause such definition of the term "Australia," as, on consideration, he may find to be necessary.

Senator O'CONNOR

- A provision in the Acts Interpretation Act defines "Australia" to be any place within the Commonwealth. If I should be of opinion, on looking into the matter, although I do not think it is at all likely, that that is not sufficient, I shall consider the point when I am going through the definitions.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 171 -

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

Senator PULSFORD

- I move -

That the words "consisting of Australian produce or manufactures" be omitted.

That provision would be exceedingly difficult of fulfilment, and it would really limit the information which the Customs authorities would have the power of asking for. Without these words, the clause in every way would be stronger for the Customs and much easier for the captain.

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Senator O'CONNOR

- No doubt in one sense it would be quite sufficient for the Customs authorities to have a manifest or an account of all the goods without distinguishing them. But it would be very useful and essential for our statistical purposes to have this division made. It would impose no additional trouble on the owner of the

goods or the ship-master, and certainly it would be very beneficial for the Commonwealth to have a record in this way. I take it that the manifest will show what the captain has on board his vessel.

Senator Pulsford

- It will show the goods, but not where they were produced.

Senator O'CONNOR

- Probably he will know what they are.

Senator Major Gould

- Supposing that it is potted meat, it will not be stated on the manifest whether it is Australian or imported.

Senator O'CONNOR

- Supposing that a captain takes in a cargo of potted meat at Rockhampton, I should think he would not assume that it came from America. There is really no practical difficulty in carrying it out. It will be an exceedingly useful collection of statistics for the purpose of the Commonwealth.

Senator PULSFORD

(New South Wales). - I assure the Minister that it is absolutely impossible for any master to fulfil the conditions required by this provision. Orders are constantly sent for all kinds of packages of goods. There will be sometimes ten or twenty different lots of goods in one packet, some of them English, some of them American, and some of them Australian goods. How is the master to tell ?

Senator O'Connor

- It has to be done as prescribed. There will be regulations enabling the provisions to be properly carried out. It is already done in New Zealand under section 190 of the Act of that State.

Senator PULSFORD

- The New Zealand Act may contain such a section, but it must be obvious to any one that the return is of very little value, and must be treated in the most contemptuous manner by those who know its uselessness. If a man is asked to do what is impossible he may do his best to meet the wishes of those who ask him, but he cannot do that which is beyond his powers.

Senator O'CONNOR

- Section 190 of the New Zealand Act not only provides for what this clause endeavours to secure, but gives the reason for it. The section says -

For the purpose of taking an accurate account of the produce and manufactures of the colony, and other goods carried coastwise, the Commissioner, if he thinks fit, may order that the particulars of all produce and manufactures of the colony, and other goods laden on board any coasting vessel, be delivered by the master to the collector at the port at which the same shall be laden or unladen, in such form as the Commissioner may prescribe.

Senator Millen

- Has that ever been carried out ? It is entirely at the option of the collector.

Senator O'CONNOR

- The Minister will make regulations in such a way as to endeavour to carry out the provision.

Senator Millen

- Once the regulation is made it must be carried out.

Senator O'CONNOR

- It will be of great advantage to the Commonwealth to have statistics with regard to the quantity of Australian products carried on coasting steamers. It is of immense importance that we should have these statistics when we can get them, because in perhaps one case in a hundred the master may not be able to give the information, why should we forego the opportunity of getting it in the other 99 cases. It is to be supposed that the Act will be administered reasonably by men who know their business and have a fair regard for those with whom they are dealing day after day.

Senator Sir FREDERICK SARGOOD

- I entirely agree that if this information is obtainable it will be very useful indeed. But, if it is not obtainable with a fair amount of accuracy, the statistics will not be worth anything, but will be misleading. I can well understand that the masters of vessels will not have the information. All a master knows is that he has a case of goods, but he does not know the contents of the case. I should say that the manufacturer of the goods would be the better person to give the information. The Minister says that the provision will be administered by officers anxious to carry it out satisfactorily, and thoroughly conversant with the workings

of the department and the Act. I need hardly remind him that after the Commonwealth was established the Custom-house promulgated certain regulations with respect to imports and exports, and that those regulations caused such an uproar that they had to be withdrawn. That occurred only within the last few weeks.

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Senator McGREGOR

- It is odd that Senator Pulsford, who is something of a statistical register himself, should object to getting more information which may be of the greatest service to himself in the future. A motion has already been carried by the Senate for the purpose of obtaining such information as will be secured under this clause. It is said that the masters of ships will not know what their packages contain. Are we going to have packages of goods going from one port to another, containing cigars, tobacco, moleskins, flannelettes, spirits, and other commodities all packed together ? The Customhouse officers should have their eyes open to prevent anything of that kind. No doubt . this clause will be judiciously exercised for the purpose of getting information that will be not only for the benefit of the Customhouse, but of all Australia.

Senator MACFARLANE

(Tasmania).I can well understand the difficulty that

Senator Pulsford

sees in the way of getting this information. In New Zealand the information is obtained under the transire system. There would be no difficulty about getting the information from the Commonwealth under that system.

Senator PULSFORD

(New South Wales). - The value of information depends altogether on its accuracy. I would rather have a small amount of information, if it were accurate, than a warehouse full which was inaccurate. The inclusion of the words to which I have taken exception would be likely to lead to inaccurate information being supplied. There should be schedules for all descriptions of goods so far as the information is obtainable, and not only with regard to Australian goods.

Senator O'Connor

- That will be provided for in the regulations.

Senator PULSFORD

- Why limit the information to Australian products and manufactures t

Amendment negatived.

Clause 174 -

Any officer may require from any agent the production of his written authority from the principal for whom he claims to act, and in default of the production of such authority may refuse to recognise the agency.

Senator Sir FREDERICK SARGOOD

- I move -

That the following' words be added to the clause: - " provided that this section shall not apply in the case where written authority has been duly registered with the collector. "

It is the practice for the authority to be sent down to the collector and registered with him: It is not necessary to produce it again.

Senator O'CONNOR

- I think the amendment is not necessary - it is real y provided for. The officer would not demand the production of the authority when it was actually in the office.

Amendment withdrawn.

Clause agreed to.

Progress reported.

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4:36:00

Senate adjourned at 4.6 p.m.