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1901-08-22

Senate.

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

QUESTIONS

PARLIAMENT HOUSE

Senator Lt Col NEILD

-Col. NEILD asked the Vice-

President of the Executive Council, upon notice -

Has any agreement been entered into between the State Government and the Commonwealth

Government for the occupancy by the Federal Parliament of the Parliamentary Buildings, Spring-street?

Is it a fact that the negotiations for such occupancy have fallen through ?

Vice-President of the Executive Council

Senator O'CONNOR

- The negotiations have certainly not fallen through. The matter is still the subject of correspondence between the respective Governments. In the meantime, the members of this Parliament are not suffering any inconvenience, and there is no suggestion whatever of any cessation of the present occupancy.

ELECTORAL BILL

Senator STANI FORTH SMITH

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

Is it the intention of the Government to bring in an Electoral Bill this session ; and, if so, when?

Senator O'CONNOR

- The Bill is prepared, but it will depend upon the state of public business whether it can be passed during the present session.

GOVERNMENT BUSINESS

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Vice-President of the Executive Council

Senator O'CONNOR

.. - I move -

That so much of the Sessional Order of 5th June as gives precedence to private business on Fridays be repealed, and that on Friday next, and on each succeeding Friday, Government business take precedence of all other business, except questions and formal business, till otherwise ordered.

I take it that the desire to debate this motion does not necessarily mean an opposition to it, but that some honorable senators wish to make some observations as to the course of public business generally. The reasons why the motion is moved will be obvious. The condition of public business is such that, unless we have more sitting days for Government business, I am afraid that it will be impossible to get through the necessary machinery Bills which must be passed before the Tariff can be introduced. The introduction of the Tariff is, I think, the one event politically which is regarded with the greatest anxiety and interest all over Australia, and the Government, fully realizing that, are using every endeavour to bring about its introduction at the earliest possible date. It is in order to put the Government in a position to introduce the Tariff immediately it is ready, and to go on with it, that I wish the Senate to give up some portion of private members' time for the consideration of public measures.

Senator Lt Col Neild

- The Minister says "some portion of private members' time." He might amplify that statement, which is rather vague. He is asking for all the time.

Senator O'CONNOR

- No. The honorable senator will see that I am only asking that Government business shall take precedence.

Senator Major Gould

- "We cannot shut our eyes to the fact that it means taking up the whole of the sitting.

Senator O'CONNOR

- It may mean taking up the whole of the sitting. "What was in my mind was really a remark I mentioned to Senator Gould in answer to a question.]?or Instance, it might or it might not become important to deal

with such a measure as the Parliamentary Evidence Bill, and in some interval of public business it might be desirable to give time for that purpose. I do not say it will be necessary for the Government to take up all the time, but that was in my mind when I used the expression. The motion simply gives Government business precedence of private business.

Senator McGregor

- The Senate can adjourn Government business if it wants to get to private business.

Senator O'CONNOR

- I do not want to deny for one moment that I think it will be necessary to take practically most of the time now at the disposal of honorable senators for private business until we get our measures through. The whole of the business on the paper is public business. One portion of it is called private business, but it is all the business of the people of Australia. Honorable senators will recognize that there are degrees of importance in public business. And the Government business, being supremely important, I think I can appeal with confidence to the public spirit of honorable senators who have private business on the paper to allow our business to be carried on, at all events until the Tariff is introduced, and there is no further necessity for the call I am now making on the time allotted to private business.

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Senator Major GOULD

- I am perfectly sure that Senator O'Connor will not have to appeal in vain to honorable senators on this side to support the motion. They are quite as earnest and eager in their desire to see the business pushed on rapidly, so that we may have the Tariff introduced at the earliest possible date, as he is himself. "We recognise that one of the most important events in this Parliament will be the determination of the fiscal policy of the Commonwealth, and it, would ill become us to throw any obstacles in the way of the Government in endeavouring to push forward their business as quickly as possible. We have been in session for a considerable time, and have not made very great progress ; but while we are prepared - and I am sure all honorable senators are prepared - to give every possible assistance, it must not be supposed that honorable senators are to be precluded from discussing fully and effectually the whole of the proposals of the Government. Although at times there is a little irritation in the Chamber in consequence of lengthy debates, it must be recognised that such debates are inseparable from the consideration of important measures. The mere fact of a Bill having been thrashed' out in the other Chamber, as it has been put, is no reason why we should not fully and effectually criticise it. We might as well turn to another place and criticise them for the way in which they deal with any measure which has been thrashed out here. The Post and Telegraph Bill is receiving a very large amount of attention in the other House. It must, be recognised that we have a duty to the people of Australia just as the" members of that House have. The Parliamentary Evidence Bill, which is in the charge of Senator Neild is an important measure, and it may be possible for the Government some evening to finish their own business at a comparatively early hour and to allow that measure to be considered. But it will be in the power of the Government, practically, to monopolize the whole of the time, and any time we may get will be given to us as an act of grace. If the Government make a determined stand and say that they are going to have their business, and their business only, transacted, they will practically be in a position to dictate their own conditions. On this side, we do not object to the motion. We recognise the importance of it, and are just as anxious as the Government that the measures should be pushed on as rapidly as possible in order that we may know what our fiscal policy is to be.

Senator Lt Col NEILD

- It is very charming to see this great anxiety on the part of the Government to deal with the Tariff ; but, in view of the condition of public business, we are forced to the conclusion that if the Tariff is to be dealt with, some of the measures which occupy the attention of Parliament will have to go by the board for this session. There is a hugely contentious measure, apparently, before the other Chamber in the Post and Telegraph Bill. There is another hugely contentious measure before that Chamber in the Defence Bill. In the Senate we spent a couple of months on the Post and Telegraph Bill. And the Public Service Bill will take up, if not as much time in committee as the second reading debate in the other Chamber took, apparently a great amount of time. The Customs Bill is also in the way, and on the top of all "these many interesting items in the Government menu there is the Immigration Restriction Bill.

Senator Major Gould

- To say nothing of the Inter-State Commission Bill.

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Senator Lt Col NEILD

- That is doomed. Nobody thinks for a moment that the Government are idiotic enough to go on with that nonsense. There is only one possible object which could actuate the Government in going on with the Bill, and that would be the amount of patronage which they would be able to dispense under its provisions. It would be much more desirable to go on with the necessary legislation to constitute the High Court, before which will necessarily come some of the questions already discussed and recognised by both Houses as being outside their jurisdiction. In regard to the other numerous and important measures, I do not wonder at the Government wanting private members' time, and the only wonder is that the Government do not want continuous sittings, Sundays included, with intervals for prayer. In my anxiety to see the production of this long delayed Tariff Bill, I support the motion with the necessary proviso that, unless some very unforeseen circumstances occur, I shall be afforded an opportunity of passing through its final stages the Bill which was read a second time on Friday last.

Senator CLEMONS (Tasmania).- It is highly desirable that facilities should be given to the Government to get on as quickly as possible with public business. I desire to see that power granted to the Government, because I want to put the Government in such a position that the whole responsibility for any delay will rest on them. We cannot make the powers of the Government too full and ample, in order that public business may be proceeded with.

Senator O'CONNOR (in reply). - I quite appreciate the spirit in which Senator Clemons desires to give the Government further time. I do not for a moment wish the Government to be relieved of any responsibility which properly attaches to them for the conduct of public business, but, at the same time, honorable members ought to remember that that does not relieve them from the responsibility of exercising that self-restraint which is so necessary if we are to come to any conclusion. I should be very far from seeking to limit the right of debate in any way, but there are ways of exercising that right so as to have the fullest possible discussion without waste of time, while there are other ways which, without any intention to obstruct, have the effect of wasting public time. By merely giving the Government an extra day it is impossible for honorable senators to get rid of their individual responsibility of seeing that the business is carried on in the most expeditious way. I do not take Senator Neild's playful observations seriously, and I do not know that they were seriously intended. In regard to the Inter-State Commission Bill, whether he meant his remarks seriously or not, I do not think they ought to be so taken. The preparation of the Tariff is in itself a gigantic task. Unless the Tariff is prepared with the utmost care, and with the fullest knowledge of the various conditions in the different States, it cannot be successful; and it must be prepared in such a way as to be perfectly complete and coherent when brought before the Legislature. In order to bring the Tariff into that condition, the Minister of Customs has been devoting his time to it day and night, in a way which few men in Australia are capable of. He has devoted himself to that work ever since the formation of the Government, and now I hope that in a few days the Tariff will be in a condition in which it can be considered in detail by the Government. It is necessary that the Tariff should be so considered, and as soon as that has been done it will be introduced to the Legislature. It is because the Government wish to have every machinery measure ready for that time that we are anxious the business shall go on in the most expeditious way possible. Whatever delay may take place elsewhere, I hope honorable senators will recognise their responsibility to the public and to Australia, and will see not only that the Government perform their part of the duty of hastening legislation, but that individual members, whether on one side or the other, assist to that end.

Question resolved in the affirmative.

CUSTOMS BILL

In Committee (consideration resumed from August 21, vide page 3966) :

Clause 122-

The prescribed allowance of stores for the use of the passengers and crew and for the service of the ship may be shipped free of duty on board any ship of not less than fifty tons gross registered tonnage entered outwards for parts beyond the seas.

Senator Major GOULD

- It will be quite impossible to discuss this clause without reference to clauses 123, 124, and 184. This

clause is intended to meet the case of all vessels entered outwards for parts beyond the seas, and is really in favour of a certain amount of liberty being given to ships which require stores for the use of passengers and crew. The Government apparently consider that these provisions will be the means of securing a large revenue, which would not be obtained if they were not limited to vessels entered outwards for parts beyond the seas, and that it is necessary to insist that none of the stores shall be used until the vessels are clear of the last port of departure in the Commonwealth. While we appreciate the object the Government have in view, we want to see how far they have the power they are attempting to assume. The Government are responsible for the Bill in whatever shape or form it may be submitted to the Legislature, and subsequently submitted to the Governor-General for the Royal assent. We, on this side of the Senate, feel that it would be a very serious thing indeed, if, after all the labour bestowed on the Bill in this and the other House, the Royal assent should in consequence of an illegality be refused. I hope that whatever our legislation may be, it will never be necessary for a Bill to be returned for the purpose of amendment. We believe that we can pass our own legislation without its being necessary for suggestions to be made by the representative of the Crown, although there is always the reserved power to disallow Bills. We have to consider how this clause is to be made effective. The wording shows clearly that if a vessel is entered for a Commonwealth port it will not be possible for it to get the stores duty free. But a vessel entered outwards for parts beyond the seas may get goods duty free, though the master is not allowed to interfere with those stores until the vessel leaves the last port of departure. I take it that a vessel bound from Sydney to London, but calling at intermediate ports, would not be able to get goods duty free to supply passengers between those ports, and that the stores would have to be sealed up. It is proposed to prevent the breaking of the seals, and by that means it is thought the clause can be enforced. While we have undoubtedly jurisdiction over vessels coming into our own ports, and in our own territorial waters, it is impossible for us to keep an eye on what is done when vessels are beyond our jurisdiction. Even in the case of English ships we are only given jurisdiction, by section 5 of the Constitution, over those whose first port of clearance and port of destination are in the Commonwealth. It is perfectly clear that we have no jurisdiction beyond the three mile limit in regard to over-sea ships.

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Senator O'Connor

- That is the section which enables us to impose this law on our Inter-State vessels.

Senator Major GOULD. - It is said we are going to enforce this clause by means of clause 184, which provides that seals shall not be broken. But while the Customs officials have power to put seals on goods on board a ship in port, there is no power to follow those goods when the ship gets into the open sea beyond our territorial limits. Although it is provided in this clause that the punishment shall be inflicted upon a ship arriving with a seal broken, it is not constitutional to say that simply because a ship comes into port with a seal broken, therefore punishment shall be inflicted. The offence really is the breaking of the seal and the using of the dutiable articles in contravention of the customs law. A clause of this kind at once raises a difficulty with regard to the enforcement of it. We are surely not going to punish a shipowner not for committing an offence against our law, but for consuming dutiable goods outside of our territorial waters. Take the case of a man - who is charged with a breach of this proposed law. He may be a foreign ship-owner, or the owner of a British ship. All he has to do is to give evidence that the goods were consumed outside the territorial limits. Once he got outside the three mile limit, the breaking of the seal of the dutiable goods was perfectly lawful. How on earth are we going to enforce a conviction against him, simply because he has arrived in port with certain seals broken, the seals not having been broken while the ship was within our own limits? We cannot reasonably do a thing of that character. I would point out to honorable senators the strong position taken up by the shipping companies with regard to this matter. Yesterday I had the honour of presenting a petition protesting against this particular portion of the Bill. I find that there are attached to this petition names representing all the principal foreign trading lines. The lines represented are the P. and O. Company, Houlder Bros. and Co. Limited, the Tyser Line, the Eastern and Australian Steamship Company, the Anglo-Australian Company, Archibald Currie and Co.'s Australian and Indian Line, the Federal Company, the Ocean Company, Lund's Line, the Orient Pacific Line, the Norddeutscher Lloyd Company, the Aberdeen Line, the White Star Line, the Shaw Savill and Albion Line, the China Navigation Company, the Oceanic Steamship Company, the British India Company, the Gulf Line, Parbury, Henty and Co., the Messageries Maritimes Company, and the German

Australian Steamship Company. All the oversea companies are represented in the petition ; every important oversea company that trades with Australia at the present time protests against this provision. It may be said that these firms would perhaps be anxious that their ships should be placed in a better position than the colonial traders, certainly not in a worse position, than hitherto. But we have to look at the reasons assigned for their objection. They point out in the first place that -

Such legislation and regulations would largely affect the procuring of supplies for your petitioners' ships, as it would be vastly more to their advantage to carry supplies from ports of first departure in Europe or elsewhere out of Australia than such legislation to procure supplies in Australia.

They also point out that -

The effect would be that Australian traders would suffer largely by such legislation.

If it be true that the provision will largely interfere with our own traders it is a point for the serious consideration of the Legislature. I do not say that it is conclusive as to what we should do, but it is certainly important. Then the companies point out that such a provision has never been imposed by any other country whatever. I think I can safely challenge the Vice-President of the Executive Council to point out any case in which legislation of this character has been passed.

Senator O'Connor

- The conditions are altogether new. In most foreign countries coasting trade is not allowed to be carried on by foreign ships at all.

Senator Major GOULD

- That may be, but we have to consider whether it is wise to make this kind of new departure, If the Government want to make provision that no ships, except such as are registered within the Commonwealth, shall be permitted to carry passengers from State to State, that is a different matter altogether.

Senator O'Connor

- My remark was in answer to the honorable and learned senator's question whether I could point to any legislation like this. I say that the conditions are not the same.

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Senator Major GOULD

- I accept the explanation, but the fact remains that there is no provision in any State similar to the one we are at present considering. Then, again, we have to consider whether the clause would not involve great cost, and interfere materially with the trade along our coasts by punishing our own passenger and goods traffic. We have first to bear in mind that hitherto a foreign vessel could go from one port to another within the Commonwealth and be supplied with free stores. My own feeling with regard to this provision is that we should enable all vessels that are entered outwards to obtain free stores, because I am not prepared to place our own vessels at a disadvantage as compared with vessels from any other part of the world, whether they be foreign-owned or Imperial-owned vessels. I do not see how we are going to enforce provisions of the character suggested by the Government, making penalties applicable for certain breaches of the law on the part of foreign-going vessels, although I quite recognise that we can do it with regard to our own ships locally owned. "We have power under the Constitution Act to deal with them as we may think fit. But no one wants to handicap them as compared with ships owned in other parts of the world. The only way I can see of getting over the difficulty is - although this may mean a serious loss of revenue - that we should say that all vessels, irrespective of their port of destination, should be able to be supplied with free goods for use on the voyage, wherever that may be. Although we might lose on the one hand by that arrangement we would gain on the other. There could then be no question as to the fairness of the Government with regard to the respective parties. The objections to the clause as it stands are, that it is doubtful whether we can enforce it on foreign ships, even if we > can on our own ships ; and next, that it brings us face to face with the question of whether we can constitutionally pass such a clause, and whether it will not be the means of causing great difficulty in getting the Bill passed. The language of section 5 of the Commonwealth Act shows that the Imperial authorities were only prepared to give us power to deal with a limited class of vessels - only the vessels in our own waters that were purely conducting trade from one port to another. I do not suppose that provision would have been inserted in the Commonwealth Act unless it had been thought necessary by the Home authorities to make this limitation. I do not propose at the present moment to move an amendment, because it is just as well that

we should have the whole matter thrashed out. The amendment I have prepared is that we should omit the last five words of the clause. That would have the effect of putting all shipping on the same footing, forgetting free supplies of stores. I do not think we can constitutionally or legally pass a provision in this Bill compelling foreign ships to observe the condition that is attempted to be enforced under this clause, and which* is considered necessary in order to put our own ships on an equality with ships coming from other parts of the world and carrying passengers from port to port.

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Senator CLEMONS

- I quite agree with the remarks of the Vice-President of the Executive Council in considering the clause we are now dealing with as being occasioned by novel conditions. But because those conditions are novel they are not in any degree less important. I ' wish to indicate what, in my opinion, is the reason for the appearance of the clause. We all know that prior to, federation any boat travelling from a port of one State to another in the same State had to pay duties on the goods consumed on board. The reason for that was obviously a common sense one - that those goods were practically being consumed within the particular State from which they were taken, and that a ship' sailing from one port in that State to another was practically speaking in -the same position with regard to consumption, as if the goods were consumed actually within the State. No one had any objection to that. But in consequence of federation the fiscal area has been enlarged. It is now obvious to all of us that if a boat departs from one port within the Commonwealth to another port within the Commonwealth, irrespective of the States, it is, practically speaking, brought under the same rule that governed its operations in respect of the consumption of dutiable goods, between port and port in the same port before federation. It is obvious that that new aspect has made the necessity arise for the insertion in our Customs Act of a clause like that before the committee. I am glad to be able to approach this subject quite apart from any party feeling. It has nothing to do with either free-trade or protection. We all understand that the ships' stores referred to are practically spirits and tobacco. On whichever side of the Senate honorable senators sit and whatever fiscal views they hold, we all agree we should get as much duty out of those articles as we are able to get. I as a free-trader cannot help welcoming any opportunity of getting such duties as we are able to get out of those articles. Therefore, in that aspect this clause has my sympathy rather than my opposition. I have seen an estimate made, and believe it to be on good authority as to the amount of duty which it is expected we can collect if a clause like this is inserted in the Bill. That amount has been divided. The total is given at £60,000. It has been asserted, I believe on- good authority, that £45,000 out of the £60,000 will be derived by reason of the trading on our own Commonwealth coasters. The balance, £15,000, will be lost to the Commonwealth Treasury if we do not apply this provision as rigidly to oversea ships as to our own. Therefore, the amount at issue is practically £15,000. The argument has been used in connexion with the clause that Ave should be extremely careful not to place our own coasters in an unfavorable position in regard to competition with foreign-owned ships. Unquestionably, we have full authority over our own boats. It is equally obvious to me that our authority over British ships is limited. If there were no limit we should not have section 5 of the Constitution Act framed in its present terms. In its final sentence section 5 says that -

The laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.

It is obvious that that section contemplates a limitation, and even without that section, that our power over British-owned ships coming here at the end of their journey would be limited. But a certain control has been distinctly given to us by section 5 of the Constitution,- and unfortunately, from the point of view of the Government, it has practically no application to the present case. We recognise that with regard to our own ships, if they sail from one State to any other State in the Commonwealth and call at ports on the way, we have control over them, and over the goods they consume, even if they get outside the three miles limit. We have power, if we choose, to say that duties shall be paid on all goods consumed on those vessels even when outside the territorial limit. The difference created under section 5 of the Constitution is this : we have no control over British or foreign owned vessels, whose first port of clearance is outside the Commonwealth, when they get outside the three miles limit. That is -the international law on the subject. The

Government, in framing this clause, haverecognised that position, because when weraise the question of

ultra vires, we are told, distinctly by the Vice-President of the Executive Council that the difficulty will be got over by clause 184, which refers to the: sealing up of goods. I can only regard, that as an admission that we have no control over British, and still less over foreign-owned vessels, when they get outside the three miles limit. Feeling that we have not that control, the Government propose to devise some scheme, by which we shall still be able to collect, customs duties, and that is provided for under clause 184. That clause gives power to place seals on goods, and it says that no seal -

Shall be opened, altered, broken, or erased except, by authority whilst the goods upon which the: fastening, lock, mark, or seal is placed, or which are intended to be secured thereby, shall remain subject to the control of the Customs.

Then it goes on to say that if any seal is broken on the arrival of the ship at another port, an offence has been committed. I know it is the contention of the Vice-President of the Executive Council that if the Customs authorities, by virtue of this Bill, seal up any goods on any of these overseas vessels on their departure from one port, and if on their arrival at another port the seal is found to be broken, an offence will have been committed and the penalty will follow. I would point out that clause 184 has been worded infelicitously, if the honorable and learned senator wants to secure that object, because the words used are that the seal must not be broken "while the ship shall remain subject to the control of the Customs." I take it that when a ship has gone outside the three miles territorial, limit it no longer remains in the control of the Customs. I am afraid that even if I were arguing on behalf of the Government, whose desire to see these clauses passed intact, I should have to recognise that as a strong argument. There is no question that directly a foreign boat, and that in this instance includes a British boat, gets outside the three miles limit, it is no longer, for the purposes of this or any other Bill, under the control of the Customs, and therefore the seal may be broken. The condition is laid down that it may not be broken while the ship remains under the control of the Customs, and it may therefore be broken when the ship is no longer under the control of the Customs. I have stated frankly that I do not believe that the Government will secure their object by this method of sealing, and I have considerable doubt about the desirability of having any clause proposing by such means to secure the object aimed at. Speaking purely personally, I am distinctly of opinion that this matter is ultra vires. In spite of the opinion I have heard from Senator O'Connor, I believe that the Commonwealth has no power by a Customs Act to inflict a penalty upon any foreign-owned vessel if the seal has been broken outside the three miles limit. In saying that, I do not wish to take advantage of the wording of clause 184, because my contention is that if the wording was such as to meet the views of the Government, they would even then be unable to effect the purpose they are aiming at. I want to draw the attention of the committee to clause 122. I did believe for some time that the words of that clause admitted of some doubt; I no longer do. The words I refer to are these - "Entered outwards for parts beyond the seas." We all know what is contemplated by this clause, and that it is really meant to deal with the P. and O., Orient, Messageries, and German lines of boats. It is desired to secure revenue by means of duty on all goods consumed on those boats so long as they are anywhere, to use the phrase vaguely, within our jurisdiction. I am concerning myself at present merely with the contemplation of their return journey, because there is no longer any doubt that when one of these boats leaves Sydney for parts beyond the seas, although she may call at other Australian ports, she comes in the purview of this clause 122. I am clear that when such a boat leaves Sydney on her return journey she may take in stores for the use of passengers and crew free of duty, although she may call at Melbourne, Perth, or Fremantle on the way.

Senator O'Connor

- Does the honorable and learned senator mean at present, or under the Bill?

Senator CLEMONS

- I mean under the Bill.

Senator O'Connor

- Clauses 122 and 123 must be read together.

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Senator CLEMONS

- I admit that. Still, I say with regard to clause 122 there is nothing whatever to prevent those stores being taken on board duty free.

To summarize what I have said, no one is more desirous than I am of collecting every penny of duty we

can possibly get from the consumption of spirits and tobacco anywhere within Commonwealth jurisdiction. I therefore say that, in my opinion, we can at once decide, if we choose to do so, that we shall issue stores to no ship, no matter where she is bound for, duty free. I admit we shall not in that way get over the whole difficulty ; that is to say, a certain amount of revenue will escape us, because boats coming from London or elsewhere will bring surplus stores with them, and may leave here on a return journey with such an amount of surplus stores as to be under no necessity of replenishing their stock anywhere within the confines of the Commonwealth. From my point of view that is a difficulty that cannot be got over ; but that is no reason why we should not do our utmost to collect duty upon all goods consumed on board ships, no matter what may be their port of clearance. To that extent I am prepared to heartily support' the Vice-President of the Executive Council. I am not going to indicate by what method I propose that the Vice-President of the Executive Council shall secure that. With regard to the argument as to unfair competition, I admit that if we could put our own Commonwealth boats on exactly the same footing as boats from any other parts of the world coming here within our seas, I should support it gladly. I am honestly of opinion that we cannot do that, but I hesitate to say that, because we cannot do that, we should consent to the Commonwealth losing something like £45,000 a year in revenue. I see no injustice whatever in trying to get every pennyworth of revenue we can, and I object to the argument that because we cannot get every possible pennyworth of revenue from ships, we ought to refuse to take any at all. That is an argument that does not appeal to me. I think undue importance is attached to the preferential rights we shall be giving these oversea ships. I do not think for one moment that the freights either on coasting steamers or oversea steamers would be influenced to any extent whatever simply by the consideration that passengers as well as crews would have an opportunity of consuming certain goods duty free. Yet if we come to analyze it, that is exactly what the preference comes to, and we have to imagine the public practically refusing to travel in our own

Commonwealth boats, not because of any change in the rates, but simply because once they are on board the oversea boats they will be able to consume tobacco and spirits at prices which will represent the cost of those articles duty free. That is really and truly all that is involved in this question of competition, and I earnestly ask the Senate to consider it. If the Senate, in order to deal with the possibility of unfair competition, decides that we shall lose £45,000 of revenue, it can do so, but it must do so with the object clearly in view. If, on the other hand, this Parliament endeavours to secure this object at the risk of enacting legislation which may be decided to be ultra vires, it will have to take that risk. I entirely dismiss any question of getting the Bill suspended. I shall not allow my free-trade tendencies to lead me in that direction. I absolutely refuse to attribute to the Government any motive of that sort. I refuse to consider the possibility of the Government benefiting by such a thing.

Senator Downer

- It has nothing to do with free-trade at all.

Senator CLEMONS

- If there is any provision in the Bill which results; in the Royal assent being refused, the Tariff is postponed. In all legislation we ought to consider first and primarily - can we effect what we intend? Until we ascertain definitely that we have the power, we ought to refuse absolutely to attempt to legislate. We should never attempt to do anything unless we feel quite sure, that we can succeed, not partially, but entirely, in our object. Any legislation which can only be partially successful is bad. Feeling that there is very great doubt as to our power - doubt so grave that it has been openly declared to us by the Government, who of course have fully considered their responsibility - we should all hesitate before we attempt by the combination of these various clauses to do something which we have no power to do.

Senator O'Connor will admit that he has grave doubts as to our power to legislate with regard to the collection of customs duties outside the three-mile limit, and because he has those doubts he has attempted, and believes he can succeed in the attempt, to get over the difficulty by this provision relating to the breaking of the seals. That is a method of legislation which I distinctly do not like. It is obviously by his own contention a substitute. In the opinion of many of us it may be a very poor inadequate substitute. If we have not the power to collect these duties openly by ordinary methods when the ships get outside the three-mile limit, we ought not to attempt to do it by any sort of penalty attached to the commission of some act which the Bill creates an offence. These clauses affect chiefly oversea boats, but other boats are also affected. I allude to boats which depart from a port in the Commonwealth to New Zealand via

ports. The Union Steamship Company for instance sends boats from Melbourne to New Zealand via Tasmania. Under clause 122, if they choose they can take on board stores free of duty because they are bound for ports beyond the seas, and as we have already agreed, the fact that they are going via ports does not prevent them coming within the purview of clause 122. All these New Zealand boats, practically owned in the Commonwealth, that leave any federal port for New Zealand via any other port, are enabled to take on board stores duty free, and I question very much how far the operation of this clause which refers to seals can be enforced against them. A very great difficulty immediately arises there. You may seal up the stores, but before the boats get to New Zealand they have ample opportunity to do all sorts of things, and certainly they have a further opportunity on the way back to the Commonwealth.

Senator Playford

- After they have left Hobart they will have free stores. The honorable senator's special case does not apply.

Senator CLEMONS

- I contend that it does apply. I have simply indicated that boats going to New Zealand - boats owned in the Commonwealth - are, for the purposes of this Bill, on exactly the same footing as oversea boats. I know that every honorable senator who supports these clauses thinks that he is doing something which will relieve our Commonwealth boats from undue competition with foreigners; and in that term I include British boats. But the competition is not narrowed to foreigners only. It will also arise in the case of boats, owned in the Commonwealth, that go to New Zealand and come back.

Senator Lt Col NEILD

-Col. Neild. - What is to prevent Commonwealth boats being registered in New Zealand?

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Senator CLEMONS

- I shall expect many simple evasions of the Bill if it is passed as it stands.

Senator O'Connor

- That would not evade the clause.

Senator CLEMONS

- I am not quite certain of that. It is quite possible that by changing the registration the object might be effected. You ought, under no circumstances, to issue stores on board any ship duty free. And if you will do that you will only lose an infinitesimal part of this revenue, which has been computed at £60,000 a year. If you refuse to allow any boats going anywhere to take on board stores duty free you will secure nearly the whole of that sum, and avoid any international complications. There is no honorable senator who will not recognise that if the Customs authorities have to enforce this clause on a French or German boat, difficulties will arise. I do not suggest that we should be afraid of any nation, but I do recognise, as I must, the force of international law and the great responsibility of precipitating international complications with any power. Those complications must arise. They may possibly be smoothed over in the case of British-owned ships, but I do not think any one of us who gives the matter five minutes' consideration will imagine, however sanguine he may be, that a French or a German boat will readily accept the position that is forced upon it, so far as we can force it, by clause 184.

Senator O'CONNOR

- I am glad that Senator Clemons has been able to approach this question in such a moderate manner, and I am quite certain that he has given the committee a good deal of assistance in the speech he has made. But the difficulties which he seems to think surround the carrying out of what is admittedly the object of the Bill do not exist, and I shall be able to show him that this is not a mere question of the duty, but a very much larger question involving the fair treatment of our own ships, our own crews, and our citizens who are connected with our own ships in a hundred ways. It will be useful if I explain in a few words in what way clauses 122, 123, and 154 have a bearing on the question of free stores. It must be remembered that in Australia, as in a great many other countries, ships coming from abroad to Australia, and either going on round the coast or going out of Australia, have by usage been allowed free stores. The expression "ship's stores" has a technical meaning. It does not mean anything which may be on board a ship. But, as an authority on the English Customs Act says -

The word "stores" is a term which has a large technical meaning in Customs phraseology. It relates to vessels going to or from a -

foreign voyage, and means articles of food or consumption on board such vessel.

We must remember that we are dealing only with articles of food and consumption on board these vessels. I make that reference because an attempt has been made to alarm the public by suggesting that ship's supplies such as ship chandlery, spare ropes, anchors, and spars come under the designation of ship's stores. They do not. " Ship's stores " is a well-known technical expression, and it means nothing more than I have indicated. How does the necessity arise for a statutory provision 1 All the States in their Customs Acts - and I take the Customs Act of Victoria as an example - find it necessary to provide that free stores, shall be allowed to ships coming here from foreign ports and sailing away or calling at other ports in the Commonwealth. That provision is necessary for this reason. It is assumed that every ship which brings goods to this port is importing goods. Every ship has goods on board, and whether those goods are ship's stores or merchandise, they are all brought into the port and prima facie are liable to the control of the Customs. It is to enable the Customs authorities to meet the case of ships so circumstanced that it is provided that the free issue of goods for ship's stores may be allowed from the warehouses. The practical operation, therefore, is that when a ship brings her own stores, those stores, when she comes into port, are sealed up, except a portion necessary for the supply of the passengers and crew while in port. If the vessel has not enough stores for this purpose, she is allowed under the Victorian and other Acts to have a free issue from the bonded warehouse sufficient to meet her requirements. Without such a provision there would be no authority to allow a vessel to have free stores.

Senator Clemons

- I do not see why a vessel should.

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Senator O'CONNOR

- The only reason is that the issue of free stores is a custom which has grown up in Great Britain for the encouragement of foreign shipping, and has been handed on to British colonies. I suppose that is the way the custom has grown up, and it is necessary ' to make a provision of the kind in regulating the collection of customs in the Commonwealth. Clauses 122 and 123 unitedly provide that although there shall be an issue of free stores as before, that issue shall apply only for use after the ship has left the Commonwealth. "We cut out the power of giving free stores while the ship is here, though there may be an issue of free stores from the bonded warehouse when once the vessel has entered outwards for parts beyond the sea.

Senator Clemons

- Does Senator O'Connor agree that that covers by-ports 1

Senator O'CONNOR

- It is only right that the vessel should be able to lay in her stores at any port she thinks fit. If she is coming from Perth via Adelaide and Melbourne to Sydney, she may, if she thinks fit, lay in her stores at Perth or Adelaide ; but, in any case, she lays them in because she is entered outwards, and by clause 123 she can only use them after leaving her last port of departure. When a vessel is entered outwards she may at any portion of her voyage in Australia get an allowance of free stores, but she cannot use these stores until she has finally left Australia. . That being the provision, it is obvious that the Government are called on to justify a departure from what has been British usage and the usage of the various States ever since they have been British colonies. We say that the reason and justification for our departure is that we are face to face with an entirely new position. AVe have to look at the question from every point of view, and we say that the fairest and most equitable way is to abrogate the old practice of allowing foreign and British ships free stores, and to put them all, while going round the Australian coast, precisely in' the same position as Australian coasters. There are two entirely different questions. There is the question of what is the right policy, and the question of whether we can carry out that policy. We say that this is the right policy, because it has always been recognised that coasters, even in the days before federation, are simply parts of the territory, and we must' charge them for what is consumed on board, in the same way as if the stores were consumed at a wharf or in a river.

Senator MCGREGOR

- Exactly in the same way as teamsters are charged.

Senator O'CONNOR

- Exactly ; or as a river boat is charged.

Senator Playford

- It is only extending the principle.

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Senator O'CONNOR

- Under federation, which makes the whole of Australia one fiscal area, we are bound to extend that principle, and to treat all Inter-State traffic by sea precisely in the same way as we treat traffic by coasters. It would be grossly unfair to charge the coaster which goes from Cairns to Brisbane in a different way from the Inter-State steamer which starts from Melbourne, and calls at Brisbane and Cairns. There is no reason why locally - owned and locally registered ships should be treated in a different way, in regard to ships' stores, from Inter-State boats. It is absolutely necessary that all Inter-State traffic should be treated precisely in the same way in order to insure justice to all. There are a number of steamers which carry out precisely the same work and follow the same course as coasting and Inter-State steamers, and the question is whether the former shall be put in an entirely different position from the latter. Are we to put oversea ships in a position in which they can compete on unduly favorable conditions in our own Inter-State trade ? I have been asked whether I can point to a similar provision in any other country. I cannot, and for the reason that in every other country, except in the British Empire, there are special laws providing against foreign shipping competing in territorial trade. Such laws exist, as honorable members are aware, in America, and in various countries on the Continent; and there the only question which can arise is as to foreign ships going and coming into one port of call. Senator Gould put this as a question of the collection of duties, but it is more than that ; it is a question not only of whether we are to lose an amount of duty which has been fairly estimated at £15,000, but of whether we are to put foreign and British ships, which enter into competition in our Inter-State trade, in such a position that, while our own people have to pay duty on everything they supply to crew and passengers, those other ships shall obtain their stores duty free. When we remember the large amount of dutiable goods which must be involved, it is .obvious that our Inter-State shipping, considering the subsidies granted to American, German, and French boats, are quite sufficiently | handicapped without free stores being granted to their competitors. We have, no doubt, a difficult question to decide. We have to meet an entirely new condition of things, and exercise our power in such a way as to have regard to our own people. That can only be done by putting every ship which goes round Australia, whether that ship be a coaster or a foreign or British vessel, precisely in the same position ; and that is what the Government propose to do by these clauses. Senator Gould made some reference to section 58 of the Constitution Act, and I refer to this not because I think it necessarily has any bearing on these clauses, but because I would like to remove a misapprehension into which the honorable senator has fallen in regard to a very important matter. That section gives the Governor-General power to return to the House in which it originated, any proposed law presented to him, and to transact any amendments which he may recommend, when the Houses may deal with those "recommendations. The honorable senator seems to suppose that under that section the Governor-General might have power to remit for consideration a measure on the ground "that it infringed in some way the rights of subjects of the British Empire, or the rights of foreign powers. I undertake to say that no responsible Government worthy of holding a position in Australia would allow that power to be . exercised except under Executive advice, nor would they allow it to be exercised except to correct some accidental omission or accidental inconsistency in the passage of a measure through both Houses of Parliament

Senator Sir Frederick Sargood

- Does that agree with the instructions of the Governor-General ?

Senator O'CONNOR

- This power has nothing whatever to do with the instructions. As already pointed out, this is a power which has been in force in South Australia for some time, and no doubt it is there used, as in every other place where there is responsible government, only for the purpose of correcting errors, and not to bring into Parliament the will or opinion of any individual, whether he be Governor, or Governor-General, or anybody else, to interfere with the supreme right of Parliament to make laws for the government of Australia.

Senator Pulsford

- That makes the case infinitely more dangerous and risky.

Senator O'CONNOR

- I do not understand the purport of the interjection. Even supposing for a moment that Senator Gould is right, and that the clause involves a matter which it would be the Governor-General's duty, under his instructions, to call attention to, the Governor-General has a constitutional way of laying it before the Home authorities ; and no Government would allow him, or advise him, to use this section of the Constitution for the purpose of bringing a matter before the Houses of Parliament. I mention this because it seems to me that there are one or two points involving our rights, and it is important, when dealing with these questions for the first time, that those points should be dealt with as they arise. I should be sorry to have it supposed for one moment that this power given to the Governor-General, although it may be a useful power on occasion, is one to do anything more than act under the advice of the responsible Executive, or to carry out anything more than the correction of what may be described as formal errors or inconsistencies in a measure which has passed through Parliament.

Senator Major Gould

- Still the Governor-General can please himself whether he gives his assent on behalf of the Home authorities.

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Senator O'CONNOR

- That is another question altogether. I quite admit that under his instructions, the Governor-General has power to interfere if he finds there is anything in a Bill which affects the rights of British subjects, in other portions of the Empire, or affects foreign treaties. But he interferes, not by bringing the matter before Parliament, but by reserving his assent and giving his reasons when he transmits the Bill to the Imperial authorities. But the honorable senator has to satisfy us - and I do not think he has attempted to do so - that there is any reason for supposing this clause, on the face of it, interferes with the rights of British subjects in any other part of the Empire, or with any treaties or rights of foreign powers. It seems to be that the honorable senator has shown no reason why we should suppose that any difficulty would be felt by the Governor-General on that ground in assenting to the measure. I now come to the aspect of the question referred to by Senator Clemons. He says that even if it is desirable to exercise this power, it is doubtful whether we have the right to exercise it. I reply that beyond all question we have the constitutional right to exercise this authority on foreign ships as well as on British ships. They stand on precisely the same footing once they are inside our waters. As Senator Gould has observed, the only power which we have under the Constitution for dealing with shipping outside our own limits is that given by section 5 of the Constitution Act. Apart from that, there is no doubt that we have no power whatever over ships which are outside the limits of Australia - that is, outside the three-mile limit. If anything is done outside those limits, we have no control whatever. But we have control over those ships whose first port of clearance, and whose port of departure is within the Commonwealth. That is what gives us complete and absolute power over our own coasters. Wherever the beginning and end of a vessel's voyage is within the Commonwealth, the laws of the Commonwealth are in force on that vessel, no matter how far out to sea she may go. Therefore, I admit at once that our control over oversea ships - whether they are foreign or British - can only be exercised while a ship is within our own dominions and territory. There is no doubt in the world about this - that while a ship is within our own territory we have the right absolutely to make her subject to our laws. We have the power, if we thought fit to exercise it, to make a foreign ship pay duty upon every ounce of stores she brings into any port in Australia. Say a foreign ship comes to Perth ; we have the right to charge her duty upon every ounce of goods which she brings with her.

Senator Macfarlane

- No.

Senator O'CONNOR

- The honorable senator must not confuse what is right policy with what is our power. I am dealing with the absolute right which we have. The point is whether we have the right to enforce this clause, imposing duties upon goods in foreign ships. What I say is that we have the right to impose fines, or to impose duties, or to impose a capitation tax, or anything we like, upon any ship that comes within our own boundaries. We have the right to deal with the ship when she comes to us ; and there is no doubt whatever that we have the power while that ship is within our territory to do what we do already - cause a foreign ship to have our seals placed upon her stores. We have been doing it for years. We have the

power to seal up the whole of her stores, or, if we like, to extend a certain allowance to her, we may enable her to consume a sufficient quantity of freestores to serve her purpose while she is in port, or voyaging from port to port.

Senator CLEMONS

- Where is the provision giving the Government power to seal up a limited quantity and leave a certain quantity of stores unsealed.

Senator O'CONNOR

- It is given in the general power of boarding, entering, and sealing up. We can seal up any portion of a vessel's cargo.

Senator Millen

- The Government have power to seal up everything t

Senator O'CONNOR

- Yes.

Senator Millen

- Then how can they make any allowance t

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Senator O'CONNOR

- If we can seal up the whole we can seal up a portion. I am indicating what has been the practice, and I say that already we exercise the power of sealing up. All we now propose to do is to charge the vessel for the exceptions instead of allowing them to be consumed free. Then it is said that there will be a difficulty in carrying out this provision. I can see no difficulty whatever. It is said that the ship would use goods at sea, and that when she came into port with her seals broken we could not create that an offence. But what is the offence in this case? The offence is, not the breaking of the seal, which may take place at sea or anywhere else, but the bringing of that ship with broken seals into a port of the Commonwealth. A ship is not obliged to come into a Commonwealth port. She can stay outside if she likes. But, if she comes into our port, she must be subject to our laws. If one of the laws of the country is that a ship whose stores have been sealed by a Commonwealth officer shall not come into a port of the Commonwealth with those seals broken, and if a ship comes into a port with those seals broken, she breaks the laws of the Commonwealth, and for that offence must be prepared to put up with the penalty which the laws of the Commonwealth impose. A ship comes here for her own profit, and must abide by the laws of the Commonwealth when she comes here. That is the way the Government propose to deal with this matter. Senator Gould has presented a very moderately worded petition from various ship-owners, setting forth in plain, clear language what the wish of the petitioners is. Every one of those companies is a business foundation, carrying on its business to make a profit if possible. No doubt, they do a very great amount of good to Australia, but, at the same time, their primary object is the making of money. Naturally that is so. No one blames them for it. They do not wish the working of their ships to be made more expensive than it has been. They are perfectly right in the interests of their shareholders in trying to prevent any additional expense being occasioned in reference to the working of their vessels. But it must be remembered that we also have the right to look after the revenue of Australia, and after the shipping of Australia. We have to decide what is a fair and right thing to do as between the interests of these companies - involving no doubt the interests of Australia - and the interests of the revenue and of our own shipping. I maintain that in our proposals we have done that which is fair and right completely. If there be any possibility of question as to the form of clause 184, that can be discussed when that provision is reached. I do not admit that there is any doubt about it, but if there is, we can deal with it at the proper time. It is a very important question, and it is only right that it should be fully considered. These are the views of the Government, and the reasons why they ask the Senate to take the course which is here proposed, and which I submit is the best solution of a very difficult problem.

Senator MACFARLANE (Tasmania). I have listened with great pleasure to the eloquence of the Vice-president of the Executive Council, who has put the case of this clause very powerfully. But he has left out a very important condition, and that is the fact that we cannot charge duty on goods until they are imported, and they are not imported while they remain on board a ship.

Senator Playford

-- We can seal them up.

Senator MACFARLANE

- But we cannot charge duty on those goods until they are actually imported ; and I hold that goods are not imported until they are landed. As long as they are on a foreign steamer under a foreign flag, and are not landed, it seems to me to be impossible to charge duty upon them.

Senator O'Connor

- They are under the control of the Customs from the time the ship is reported.

Senator Major Gould

- But Senator Macfarlane says that we cannot charge duty on them.

Senator O'Connor

- Quite so, as the law is now. But we may make a law charging duty on them if we think fit.

Senator MACFARLANE

- Can we make a law charging duty on goods not im-, ported?

Senator O'Connor

- Undoubtedly ; we can make any law we like with regard to them if the goods are brought into port.

Senator MACFARLANE

- The position is rather a difficult one, and I do not see how the difficulty is to be got over. I am quite willing to allow the responsibility to fall upon the Government, but it seems to me that we can hardly make this clause equitable in conformity with the law of nations and the rights of foreigners.

Senator PEARCE

- There is one point to which I should like the Vice-President of the Executive Council to give attention, because I am not quite clear about it. Section 5 of the Commonwealth Act provides that we have power to make laws dealing with vessels whose first port of clearance and whose port of destination are within the Commonwealth. But take the case of a steamer trading from Sydney to London, her first port of clearance is within the Commonwealth, but her port of destination is outside the Commonwealth. Can we make laws which will be binding on that steamer in respect of stores used upon the journey, and enforce those laws when she calls in at a port on her journey, say at Adelaide or Perth ?

Senator O'Connor

- Section 5 of the Constitution has no application whatever. We only say that we have power to deal with a ship when she comes into port ; and that we can make it an offence to bring a ship into port with her seals broken if those seals were placed upon her stores by a Commonwealth officer.

Senator PEARCE

- Then the honorable and learned senator thinks we have power to enforce that condition, although the ship's port of destination is not within the Commonwealth ?

Senator O'Connor

- Undoubtedly. We do it because the vessel is in Australian waters, and because she comes into one of our ports with her seals broken.

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Senator Sir FREDERICK SARGOOD

- The object of this clause, as I understand it, is that all dutiable goods consumed in the Commonwealth shall be liable to pay duty. I think that is perfectly equitable and reasonable, and we must all absolutely agree with it. As affecting the two classes of ships trading on our coast, there cannot, to my mind, be the slightest doubt that if it is necessary that our own coasters should pay duty upon goods consumed on them, it must be equally fair, not only to those coasters, but to all the taxpayers of the Commonwealth, that in every case goods consumed by any other persons in the Commonwealth shall also pay duty. I do not suppose there is a particle of difference in the Senate as to the equity of that statement, and the only question to my mind is whether we can carry it out with regard to all ships, and especially foreign ships, that proceed beyond the three-mile limit. I have listened with great attention to the interesting exposition given by the leader of the House. I must say the honorable and learned senator has to some extent shaken my faith in my own opinion as a layman. It is perfectly true that a foreign-owned vessel coming into Perth and being within the Commonwealth, the Customs authorities are entitled to seal up anything and everything they like on board. If that vessel, in going from Perth to Adelaide, could keep within the three-mile limit of the shore, there is no question that the goods would have to pay duty. But these goods having been sealed up, the vessel goes outside the three-mile limit, and being outside that limit, it is not

an illegal act to break those seals.

Senator Sir John Downer

- She had better stop out.

Senator Sir FREDERICK SARGOOD

- I believe it is not an illegal act to break those seals. I am reminded of a Fugitive Offenders Apprehension Act which was passed some time ago in New Zealand, under which it was perfectly legal to arrest a man in New Zealand and confine him on board a steamer ; but I believe I am right in saying that once the steamer got outside the threemile limit from New Zealand, he was no longer in legal custody. But he would be in legal custody again as soon as the steamer got within three miles of Victoria.

Senator O'Connor

- No ; there is an Imperial Act which gets over that.

Senator Sir FREDERICKSARGOOD. That must be recent. I am speaking of what I know happened in New Zealand some years ago, for I had to put the Act into operation, and the man arrested simply assaulted the officers when the vessel was outside the limit, and I believe no action could lie against him for the assault. The Minister claims that the seal having been legally put upon the goods of the ship, the Commonwealth law can make it a penalty if that seal is broken outside the Commonwealth - or, rather, it is not said that the penalty is inflicted because the seal has been broken outside the Commonwealth, but because it is not intact when the ship comes within the Commonwealth. I must confess that it is very close sailing to the wind. As a layman, I do not like it at all, and if that be law it is very, dangerous law. I had an opportunity of discussing this matter some time since with the Minister of Customs, and I told him that there was this difficulty, and that there would be difficulties in the way if it was attempted to adopt such a course. It is all very well to say that a sufficient quantity of stores might be put out for the voyage between Perth and Adelaide ; but supposing there has been a miscalculation as to the quantity of stores required. They must break the seals under those circumstances.

Senator O'Connor

- Or starve.

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Senator Sir FREDERICK SARGOOD

- Or starve. I suggested to the Minister a way by which the difficulty might be got over without all the trouble likely to arise from the adoption of this course, for I venture to think still that a great deal of trouble may arise out of this course with the mother country and with foreign countries. I suggested that there might be some system of charging a fee, calculated at such an amount as would practically represent the duty which ought to be obtained. I have roughly drafted an amendment upon the subject, which I shall put before the committee for consideration -

Every owner of an oversea ship trading within the Commonwealth shall pay to the collector, at each port of call in the Commonwealth, a fee, as may be prescribed, for each passenger and member of crew upon such ship. Such fee shall be in lieu of charging duty upon stores, and shall be calculated so as to represent as nearly as may be the amount of stores that would be consumed by passengers and crew between port and port.

That, I venture to think, is what we want to do.

Senator Sir John Downer

- If you can do that, you can do this.

Senator Sir Frederick Sargood

- No, because the fee is levied when the ship comes into port, and there is no question of a breaking of seals outside the three-mile limit.

Senator Sir John Downer

- The power all comes from the physical control, and whether over the person or over the goods is a detail.

Senator Sir FREDER CK SARGOOD

- If it comes to be a question of physical control, when we are dealing with foreign ships I am afraid we shall be getting into Very troublesome waters indeed. The whole question is, have we legal control?

Senator Sir John Downer

- That is what I mean.

Senator Sir FREDERICK SARGOOD

- I am sorry that this matter was not more fully thrashed out in another place, and I know that many who dealt with it there are still under very grave doubt as to the policy of doing this, and also as to our power to do it, and whether it might not only get us into trouble, which, after all, would, comparatively speaking, be but a small matter, but might also get the mother country into trouble, which would be a matter of very much more importance. Senator Playford laughs, and though I grant that the mother country is well able to take care of herself, that is no reason why we should lead her into trouble if we can avoid it. These are the difficulties I see about the matter ; and while I thoroughly agree with the object of the clause, I do not at present see that we have the power it proposes, or, if we have that power, that it is wise to exercise it. Senator MILLEN (New South Wales.) I am just as anxious as the honorable senators who have preceded me that we should so shape this machinery Bill as to stop all leakages under whatever Tariff is ultimately decided upon. Whether a man holds free trade or protectionist ideas he must desire to see that the Tariff ultimately adopted is as effective as we can possibly make it to bring revenue into the Treasury. For that reason I have a great deal of sympathy with the purpose of the clause, and I fear only that there may be some difficulty in enforcing it. If there is to be a discrimination between ships owned locally and abroad, it should be in favour of rather than against our own shipping. Whilst admitting that, I am not prepared to admit that this clause can legally stand, or that it affords the only way in which we can bring about the result desired. The Vice President of the Executive Council said a little while ago that we were treading on new ground, and he admitted that the procedure proposed by this clause was unusual. That being so it increases the obligation of the Senate to see that, as we are treading on new ground and have no experience to guide us in the matter, we should look at this proposal from every possible stand-point, and be careful, not merely because we wish to do a thing to rush in and do it in a way that may bring trouble upon ourselves. So far as I can see, the crucial point in the whole matter is whether a ship which enters within the Commonwealth jurisdiction does, for all practical purposes, remain in it in passing from one port of the Commonwealth to another, irrespective of whether in doing so she goes beyond the three-mile limit or not. It may be admitted that ordinarily the majority of vessels coming round from Perth to Melbourne and Sydney do pass outside the three-mile limit. That being the case, the question resolves itself into this : Is the jurisdiction created at Perth continuous upon the arrival of the vessel in Sydney, although it may have been broken on the voyage round? If it is not, I submit that a vessel coming here, or coming to Sydney from Perth, would arrive in Melbourne or Sydney in the same position as if she had never touched at any other Australian port at all. It would not, be in the position of any vessel coming from one Australian port to another, but of a vessel coming to an Australian port from foreign waters, and therefore the first time at which we could set up an effective jurisdiction over a vessel arriving, in the case I have suggested, at Sydney or at Melbourne, would be when she arrived at Sydney or at Melbourne. It is impossible to adjudge them guilty of any offence which may be committed outside, our jurisdiction, and for which they could never be called upon to answer if they did not continue their voyage to some other Australian port. As to there being no need to fear the consequences if this clause is adopted, every member of the Senate must be equally desirous of seeing that the Bill when passed has not an unfortunate fate in store for it. If there is a doubt about this matter, and many able lawyers contend that there is a very serious doubt, we should ask ourselves whether it is necessary to pass this Bill in such a way that there will be any risk attaching to it. We might bring in the objectionable matter of these three clauses in a second Bill. If that were done this Bill providing all the machinery necessary to give effect to the Tariff could be passed into law without any risk, and the proposal about which there might be some risk being in a separate measure would not, even if it were ultimately disallowed, in any way handicap us or place us in any difficulty with regard to the collection of duties under the Tariff. That is a practical suggestion to which I invite the attention of Senator O'Connor. I wish to correct the statement he made when he inferred that there is a provision in the Bill by which a ship leaving Perth, with its bulk stores under seal, will have an allowance of goods for consumption on the voyage around here. I can find no provision of the kind. What I do find is that an allowance of stores may be made for a vessel bound from a Commonwealth port to a foreign port. Senator O'Connor was in error, and he appears to have admitted that he was, because a little later, when Senator Sargood remarked that the purpose of this clause is to secure that all goods consumed within the Commonwealth shall pay duty, he assented to it. The amendment which Senator Sir

Frederick Sargood has suggested, appears to me to have a very great deal to recommend it; certainly it would be much safer to adopt it than to stand by the clauses as they are. ' If such an amendment is to be entertained probably it would be better to take it a little further,- and instead of having one law for one class of ships, make the law and the practice uniform. Senator Sir Frederick Sargood suggested that as there may be some legal difficulty in the way of enforcing the proposal as against foreign or British owned ships it may be got over by providing for an annual charge, or a charge per passenger ticket. If that were adopted or held to have any merit it would be much better to make the practice apply to both Inter-State and oversea boats. Under such a provision there could be no question of differential treatment between one individual and another, or between one company and another ; we should treat them all absolutely alike. I would prefer an amendment of that kind to the proposal as it stands, and certainly if the amendment is moved I shall support it, unless a better proposal is submitted.

Senator Major GOULD(New South Wales).- - -I listened with much attention to the interesting speech by Senator O'Connor, but I failed to find in it a clear reply to the objection which was taken on this side to the attempt to enact the law proposed. We all recognise that there should be no differential treatment - that our own ships ought not to be handicapped as against foreign going ships, but we are anxious to see in what way we are to reach that end. It appears to us on this side that we cannot take the power which is sought. We say that although the authorities in Perth may put a Customs seal on the stores in a ship, still no offence is committed when the seal is broken beyond the three-mile limit, but we are asked to enact that the mere fact of the ship coming into port with a broken seal shall be an offence. Supposing that the goods had been taken to another State, and that the seal had been broken in that State, and that the ship came into another port in the Commonwealth ; could it be contended reasonably that an infraction of the law had been committed. You may create artificial offences, but the question is - How are those offences going to be regarded by the people with whom we trade ? Is not this a matter which may provoke intervention on the part of foreign powers? For it should be remembered that a German ship at sea is as much German territory as Germany is. Within our ports we have jurisdiction, over foreign ships, but we have no power to interfere with anything which they may do outside the three-mile limit. Is it not a peculiar refinement, to say to the master of a foreign ship - "If you commit an act which is perfectly legal in your own territory, the moment you come into our port with the evidence of the commission of the act we shall punish you?" We have no right, as between nation and nation, to attempt to inflict a punishment for an offence of that kind. It would be foreign to the British Parliament to enact such a provision, though it could legislate so as to prevent a ship coming into a British port. The object of this clause is not to prevent a foreign ship from coming into an Australian port, but to punish the shipowner for an offence which was committed outside our jurisdiction. In clause 184 it is assumed that the goods remain under Customs control from the time the seal is placed on them until the ship comes into port, and that the evidence of the commission of an offence is the fact of the seal having been broken ; in other words the seal represents the Customs officer. Now, assuming that the officer himself is put on the ship to see that no breach of the provision is committed, the moment she gets beyond the three-mile limit his power ceases. He can no more forbid the skipper to break the seal than he can take command of the ship. Once the three-mile limit is passed he cannot interfere with the breaking of the seal, and the only law which operates on the ship is the law of the country to which she belongs. We are doing an act which cannot be justified in attempting to provide that a punishment shall be inflicted for the breaking of the seal in such circumstances. I feel convinced that the construction of clause 184 by a court would be that it was only applicable to a case where the goods remained continuously under Customs control, and the seal was broken while under that control. Senator O'Connor argues the other way. Senator Millen has mentioned that some lawyers have given diametrically opposite opinions. I know that eminent counsel, who are not members of either House, have given the opinion that it is "beyond our power to pass such a law, and that if passed it cannot be enforced. They may be absolutely wrong, but at any rate that raises a very grave question, and

We should take the greatest care to see that what we do is really fair and just, and will not interfere with international rights. Of course, the case appears to be strong in regard to foreign ships, but after all, our own jurisdiction is so limited that the position of British ships would be exactly the same, beyond the three-mile limit. Senator Macfarlane has propounded a difficult question. Senator O'Connor says -we have absolute power in regard to every thing in a ship while she is in our waters, and that we can charge

it duty if Ave like ; but, as Senator Macfarlane has asked, are goods liable to a duty while they are in a ship's hold-? In clause 30 we find this provision -

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

As to all goods imported - from the time of importation until the delivery for home consumption or until exportation to parts beyond the seas.

What is the importation of goods 1 Goods are not imported if they simply remain in the ship's hold, and are not landed. We can prevent any goods being used in fraud of our law within our jurisdiction, but Ave cannot go a step further. I doubt whether we shall not be able to enforce this provision. I do not Avant to put our Inter-State shipping in an unfair position. Local shipping ought not to be handicapped as against trading vessels from other parts of the world. We could, no doubt, enforce this law so far as vessels within our own territorial limits are concerned.

Senator McGregor

- Suppose they go outside the three miles limit!

Senator Major GOULD

- Even if they do that, Ave have power of control under the direct words of the Constitution. If we enforce this law against local shipping, in order to bring in this £45,000 a year, with the knowledge or belief that Ave cannot enforce it against foreign-owned ships, it will be putting our own people in a very unfair position. I have noticed the suggested amendment of Senator Sir Frederick Sargood, but I agree with Senator Millen that, if we are to have an amendment of this character, it would be better to make it applicable to all classes of Inter-State passengers, whether they be carried by local or foreign-owned ships. In any case, Ave ought still to have the amendment which I suggest, if Ave are to have the clause at all. I admit that section 58 of the Constitution Act is a novel provision.

Senator O'Connor

- It is in force in South Australia.

Senator Playford

- And is A'ery often used there.

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Senator Major GOULD

- If, as I understand, this power is only used under the advice of the Executive, the remarks I previously made may not apply. If the Governor-General, in his discretion, is of opinion that a Bill sent up to him is a breach of international law. or undesirable in the interests of the Imperial- authorities, he Will. no doubt, regard it as his duty to reserve the measure .for. Imperial sanction. But is it desirable to put ourselves in such a position? In order to bring the matter to a definite issue, I move -

That the words "and entered outward for parts beyond the seas " be omitted.

Senator O'Connor

- The amendment means that we drop £60,000 of revenue.

Senator Major GOULD

- The question iswhether it is not better to drop that revenue than involve ourselves in difficulties, and probably lose the Bill. If we drop £60,000 of revenue we drop it in the interests of our own people, who obtain the benefit of the remission of the duty. Stores would be obtained at a cheaper rate, while freight would be kept down for passengers from port to port ; and, while losing on the one hand, the people would practically gain on the other. The matter is not of sufficient importance to justify us in doing what might turn out to be an injustice to ship-owning people, in order to secure revenue.

Senator Sir FREDERICKSARGOOD (Victoria). - I cannot help thinking we are importing more than is justified into the clause, which simply provides that stores free of duty may be put on a ship entered outwards for parts beyond the seas. The next clause provides that those stores shall not be touched until the ship has gone away from the Commonwealth altogether, and neither of these provisions touches the question of the consumption of stores within the Commonwealth.

Senator Sir JOHN DOWNER

- The clause isa good one, and I think we have power to pass it.If I thought it was a little doubtful whether we had the power, I should not be so astutely sagacious as honorable senators opposite as to raise the question. But under the Constitution Act , we have a power given to us which none of the States had before. The object of section 5 of the Constitution Act, which provides that the laws of the Commonwealth

shall be in force on all British ships whose first port of clearance and whose port of destination are in the Commonwealth, is to make those laws apply to ships though they may be 1,000 miles out at sea, as long as their port of starting and port of destination were within the Commonwealth.

Senator Clemons

- No matter who owned them?

Senator Sir JOHN DOWNER

- It has not to do with who owns them.

Senator Clemons

- Then we have control of the high seas, no matter under what flag vessels may sail ?

Senator Sir JOHN DOWNER

- My honorable and learned friend does not know what took place at the Convention, or he would be aware that the question of the power of the Commonwealth on the high seas was seriously discussed ; and we did obtain power to exercise authority over ships that start from one port in the Commonwealth with the intention of going to another.

Senator Charleston

- Ships that carry the British flag.

Senator Sir JOHN DOWNER

- No matter under what flag they sailed, if they started from one port in the Commonwealth and ended at another port they would carry the laws of the Commonwealth with them, although they were on the high seas.

Senator Clemons

- Undoubtedly.

Senator Sir JOHN DOWNER

- That was a power that no colony had before.

Senator Clemons

- Every State has exercised that privilege. If a steamer sailed from Launceston to Hobart, and went 10,000 miles out of its way, the same control was exercised over its goods by Tasmania. We have simply extended the area.

Senator Sir JOHN DOWNER

- What I say is that there was no power before, and that the laws of the States did not apply to ships on the high seas. One of the points that Senator O'Connor and myself had to seriously consider at the Convention was the extent to which we could give the Commonwealth power over ships on the high seas ; and it was with a view to the exercise of that power that we obtained what is conferred upon us by the Constitution.

Senator Clemons

- Subject to limitations.

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Sir JOHN DOWNER

- The power is that so long as ships start from one port in the Commonwealth with a view to going to another, although they go upon the high seas, we have control over them. Every country has the right to impose its own conditions upon shipping coming into its ports. It has a right to impose its own terms within its own territory. Those terms become useless directly a vessel goes out of its territory. But a ship cannot come back again against the law of a State, or go to another part of the Commonwealth against the law of the Commonwealth. So that we have not merely a physical but a legal control as well. The argument of Senator O'Connor appeared to me to be so clear that I thought there would be nothing said in answer to it. It justified the committee in passing the clause without hesitation. But I go further than that, and say that if there were some fairly well founded doubts in the minds of honorable senators they would be wise to pass the clause and take the risk. In my opinion there is no risk, and I support the clause entirely.

Senator CLEMONS (Tasmania). - Something was said by Senator O'Connor in answer to an interjection of mine in regard to the question of allowances of stores to ships. I understood him to say that there was a provision in the Bill that allowances might be made. We know that the crew and the passengers must be fed.

Senator O'Connor

- I do not remember to what the honorable and learned senator refers.

Senator CLEMONS

- Senator O'Connor said distinctly that the Bill provided for allowances to be made to a ship.

Senator O'Connor

- What I really meant was this : Some question was raised as to the power to seal goods. I pointed out that that power was contained in other clauses, upon which I could not lay my hand at the moment. I do not think I made any reference to anything else.

Senator CLEMONS

- Although we have been treating this question as if it were a novel one, it has arisen before, and has been dealt with in England. Let us say that a ship is going from Melbourne vid London to Liverpool. Her port of destination would be Liverpool. The Customs authorities of Great Britain impose no duties whatever on tobacco and spirits consumed on the voyage. They recognise that the position of boats going vid ports to a final port is different to that of boats coming from abroad. If a boat leaves Melbourne bound for Liverpool, Liverpool is declared to be her final port. Suppose she calls at London, and then goes vid Southampton to Liverpool. Directly she leaves London she is enabled to consume her stores duty free. I do not say that that should necessarily be an example to us, but I do say that considering that we are doing something that is not entirely without precedent, we might take the English example into consideration. Senator O'Connor did not reply to the point raised as to our constitutional right to pass this clause. I know that the Vice-President of the Executive Council will give me every credit for a desire to secure as much revenue as we can possibly get. We are on all fours in this, respect. It is because of that desire that I am doubtful as to this proposed method. If a ship comes into port with her seals broken, the owner of the vessel will say that the place where the offence was committed was outside the jurisdiction of the Commonwealth. It will be objected that the court has no jurisdiction because the seals, were broken, say, ten miles out at sea. There can be no doubt that this question of jurisdiction will be raised the first time the Customs authorities attempt to interfere with any French or German ship. What will be the answer of the Commonwealth Government? I still maintain that we cannot decide this question properly unless we give due consideration to section 5 of the Constitution. I hold that there is a distinct limitation of our jurisdiction as to British ships and, a fortiori, as to foreign ships. The limitation is very clear. The section says that we have only jurisdiction on British ships, whose first port of clearance and whose port of destination are within the Commonwealth. We are attempting to exercise authority over a class of boats that have been distinctly and clearly excluded from our jurisdiction. I still feel that that difficulty is unsurmountable. If I were in a minority of one I should still hold the same view. I am sorry the Vice-President of the Executive Council has not seen fit to follow the mode I suggested by which we could get, practically speaking, all this revenue in another way. The honorable and learned senator admitted that it was after all a question of custom ; but we are inaugurating new legislation and we should not be afraid to follow new lines. I ask honorable senators what good reason is there why goods should go on to any boat duty free? No one has answered that, question.

Senator Pearce

- Except that the duty becomes an export duty when the goods are used outside the Commonwealth.

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Senator CLEMONS

- That would be no objection to it whatever, and what I suggest would be a satisfactory and safe way of obtaining the duty. I see no reason, but the bald reason of custom, against it.

Senator O'Connor

- The effect of it would be that these ships, not being able to get free goods on shore, would bring surplus stores with them.

Senator CLEMONS

- I admit the force of that, and that we should run the risk of suffering one small loss.

Senator Playford

- Our own coasting steamers would have to suffer the whole loss. They would have to pay duty, while the foreign vessels would not pay duty.

Senator CLEMONS

- The effect of such an enactment would be that we should lose no revenue whatever, and I say without

hesitation that if this Bill is passed as it stands, we shall lose a certain amount of revenue under it. A considerable loss of revenue would be made up if we prevented any stores going on any boat within any port of the Commonwealth unless the duty had been paid on those stores. I admit that with regard to surplus stores there is a difficulty, but we are not facing that difficulty for the first time, for it has been found to be almost insuperable in England. My contention is that it is better to get nearly all the revenue possible under the method I suggest, than to run the risk of losing the lot. I say, advisedly, that by this legislation we shall run a considerable risk of losing the whole, and by the legislation I suggest, I say with the greatest confidence, we should certainly recover more than threefourths. Senator Playford looks at these things in an airy way, but if he wants the matters reduced to figures and facts I can tell him that the total amount of loss we could possibly undergo would be £15,000 a year.

Senator Playford

- I have heard of free-traders who wanted to have things fair between their own people and foreigners, but I never heard before of a free-trader who wanted to put the foreigner in a better position than the local men.

Senator CLEMONS

- The honorable senator is not fair, because he knows I do not want to do that. I want to do what is within my power and not what is outside it. I do not desire to legislate in any direction unless I am certain that I have the power. I object to seeing the Federal Parliament in its early career introducing legislation which may turn it into ridicule, and I am sorry to see Senator Playford so ready to waive that consideration. I am so far with Senator Playford and the Vice-President of the Executive-Council as to the desirability of what is proposed, that if I could be certain it could be done, I would not let oversea boats consume a single pound's worth of goods without paying duty.

Senator Playford

- I believe we can do this, and in twelve months' time we shall see whether the honorable and learned senator or myself is right?

Senator CLEMONS

- If any honorable senator present is satisfied that we have the power to do this let him go on. My remarks are being addressed to those who have doubts, and I say sincerely and honestly that, in my opinion, we should not attempt this legislation.

Motion (by Senator Sir William Zeal) proposed - That the committee do now divide.

Senator O'CONNOR

- I appeal to the honorable senator not to move that motion, as this is a very important question indeed.

Senator Sir William Zeal

- We have been three hours talking about this one clause.

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Senator O'CONNOR

- Considering the importance of it, I do not think that too much time has been spent over it ; it is very much more important that we should arrive at a conclusion after reasonable discussion upon the matter than that it should be rushed.

Motion, by leave, withdrawn. Senator Sir FREDERICKSARGOOD (Victoria). - I desire again to point out that it does not appear to me that the question arises under this clause of the consumption of goods within the Commonwealth. Clause 122 provides that free stores shall be put on a ship going to ports beyond the sea, and clause 153 provides that those stores shall not be touched until the ship has started on her voyage beyond the seas. Unfortunately we have, then, clause 124, providing that " no stores after being shipped shall be unshipped " - and it stops there, and does not say " used " - "except by permission of the collector." I propose that that clause should read in this way -

No stores after being shipped shall be un shipped or used contrary to section 123.

That would cover the whole ground, and in addition I should make the penalty £100 instead of £50. By that means we should be carrying out the practice of all these years of supplying all oversea ships with free stores. We would not in the meantime touch any question as to the duty to be paid on goods consumed within the Commonwealth. I could see no objection to pass these three clauses with that amendment.

Senator Clemons

- They must be read with clause 184.

Senator Sir FREDERICK SARGOOD

- No, they have nothing to do with it.

Senator MCGREGOR(South Australia). - As so much time has been taken up I shall also express my opinion. I would like to ask honorable senators what they are objecting to - are they objecting to free goods being put on board a ship to be used when the ship has cleared away from Australia altogether? Do they want to give preference to Germany, France, and America so far as ship's stores are concerned? If so, let them persist in what they are doing, and they will carry that out with the greatest effect. But we, who have the interest of the Commonwealth and her producers at heart, wish to give all the ship-owners an opportunity of taking our goods duty free when they want to use them outside our borders altogether.

Senator Clemons

- Does not the honorable senator see that we do not tax food, and that this refers only to spirits and tobacco?

Senator MCGREGOR

- We manufacture tobacco, brandy, wine, and other alcoholic liquors, and many kinds of foods on which there may be duties, and we want them to go on board these ships for consumption beyond our control, duty free. Any one who does not want that is standing in the light of the interests of this Commonwealth. We may come in a future portion of the Bill to deal with clauses to show how that is to be carried out, but this clause is a mere statement that this ought to be done. A great deal has been said as to the powers the Constitution gives us in dealing with what is set down in this clause. There have been a great many challenges issued through the Vice-President of the Executive Council to cite instances. I like to challenge people, too. We have been told that section 5 of the Constitution gives us certain control over British ships whose first port of clearance and port of destination are within the Commonwealth. I challenge honorable senators to point out the part of the Constitution which says that we have no control over any other. We all know that Great Britain could not give us control over German, French, or other foreign ships, but we, as a Commonwealth, have the right to make our own laws, and the right to see that they are carried out, and it would have been foolish on the part of the British Parliament to put anything into the Constitution that would prevent us from doing that.

Senator Clemons

- What about other British ships whose first port of clearance and port of destination are not in the Commonwealth?

Senator MCGREGOR

- That has nothing to do with us, and I challenge the honorable and learned senator to point out anything in the Constitution that prevents us from dealing with them. We are told that we can deal with them if their first port of clearance and port of destination are within the Commonwealth. Where is the section in the Constitution that prevents us from also dealing with those that start from London, Liverpool, or anywhere else?

Senator Clemons

- If we limit one class, we exclude another.

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Senator MCGREGOR

- Where is the law in England which prevents us doing it? If the people of Germany, France, or America like to give particular concessions to their ships to enable them to compete with our coasting trade, we have the right to make laws that will at the very least - and that is all we want to do - put them on an equal footing with our own ships. There is another thing honorable senators must look at as well as at the shipping trade. It has been stated by Senator Sir John Downer that we have a right to make laws for certain purposes, and that some of those purposes are to govern the commerce of the Commonwealth. Our trade is not confined to shipping. Shall we give an advantage to ships by exempting them from any duties, when railway employees, passengers, and others are subject to those duties? In certain portions of the Commonwealth, very convenient communication may be established by the rivers. If we give certain privileges to ships to trade from Western Australia or Adelaide to Sydney, shall we give no consideration to trade and commerce on the rivers when they become trade channels? We are asked to give all the privileges to outside trade, and to put all the embargoes on the land trade. The drivers of bullock - drays

which carry goods in Western Australia may have to compete with outside -ships. If 'they carry goods 'from Fremantle, across country to Esperance Bay, they have' to COMPETE against coasters' or international -ships which -go in that 'direction. They have a right to complain and -be considered, and it is our -duty not to consider the 'big outside ship-owners, -whose only. interest, in Australia is the dividends they can take out of us, more than the bullock-driver who >is trying to make a living by- carrying our .goods. I hope that we..shall do fairly with the people of Australia, and then as fairly as -possible with everybody else.

Senator PULSFORD

- I must protest, against 'the remarks with which Senator McGregor opened Ms speech. It is no fault of the- Senate that 'the Customs Regulations ' Bill is only -submitted .in the month of August. We have been in session since May, and 'had the :Bill been here months ago, as I think it -might -have been, we should have been able -to discuss, it with the freedom- and fulness -with which -we- discussed the Post and Telegraph Bill. ' The series of clauses we are considering -are the most important provisions in this Bill. I must insist on the- necessity of the committee considering this question from the stand-point of international law. .It is all' very well for -us to say that we ought to. do this, or that we want to do that. 'But the question must be finally decided by the consideration .whether we have the power, or whether we are likely to do anything which will infringe recognised laws in. regard to international shipping.

Senator McGregor

- Are we never 'to take any part in making international law ?

Senator PULSFORD

- We may take part in making international law, but .let us also take- care that we take no part in- trying to break international law. It is because I feel that gentlemen like Senator McGregor and others are in danger of leading the Commonwealth into discredit, by breaking international law, that I rise, and very earnestly express the hope that the frivolity -with which he and some others treated this matter, may be discarded in favour of a more earnest and suitable line of consideration. The British Government are not too well satisfied with covering section 5 of -our Constitution.

Senator Sir Frederick Sargood

- Still it -is law.

Senator PULSFORD

- It is law; but when the matter was being considered in

London, the Crown Law officers held as follows : - "In covering clause the provision that the laws of the> Commonwealth should be in force on British ships, plying between, ports of the Commonwealth was proposed to be omitted as being too' wide and' involving a possible conflict of jurisdiction, whilst 'it -was 'thought that all necessary powers of legislation! in respect to 'the coasting trade were:given by-section 730 of the Merchant Shipping Act of J.894.

That extract is taken from page 229 of Quick and Garran's Annotated Constitution. It is clear, therefore, that in the opinion of the British law officers that section gives to the very full limit all the .power which under international law can be given to the Commonwealth.

Senator O'Connor

- No one denies that ; it was admitted three hours ago. That covering section has nothing to do with this question.

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Senator PULSFORD

- I am glad to hear that it is admitted ; but according to Senator "McGregor and others we have power to do almost anything, as if no such thing as international law exists. On page 292 of the same work I find the following passage with regard to the Imperial objections : -

They- felt it their- duty to place on- record -some of the reasons which made it impossible for them to accede to this request (i.e., to pass the Bill unaltered). As to the enforcement of the laws of the Commonwealth on "British ships' trading between ports of the Commonwealth, they said that the provision in 'the Federal Council Act, relied on by the delegates, was unduly wide. They contended that the power to control the coasting trade .given by -section 736 of the Merchant Shipping Act '1894 was not confined to territorial waters} and that the words "first port of clearance " and " port of destination- " were not free from ambiguity.

There again it appears that, in the opinion of the British law officers, covering section 5 of the Constitution is not altogether free from doubt, and it should lead us to see very clearly that anything which exceeds that provision is very likely, in their' opinion, to lead to trouble. The conference at the Colonial Office is referred to on page 235 of the work in these terms -

Mr. Chamberlain disclaimed any intention to interfere in interests exclusively Australian, but was confident that the Ministers of the colonies would give full' weight to these suggestions of the Imperial Government-when- urged on behalf of the United Kingdom, or as trustees for the Empire at large. The Imperial Government would have desired amendment as to various questions which had arisen, but were unwilling to risk delaying federation by. pressing their views.

Then when the Commonwealth Bill was being introduced into the 'House of Commons, 'Mr. Chamberlain said- -

The principles on which the Imperial Government had demit 'with the Bill- were these : They had accepted- without demur,- .-and they asked the House to -accept every -word, every line, every clause which dealt exclusively with the interests of Australia. But -where the 'Bill touched the interests of 1 the:Empire as a whole, Or of Her Majesty's- subjects -or- possessions- outside- Australia, the Imperial-Parliament- occupied a position of trust which it was not the desire of the Empire - nor he believed of Australia - that' they should fulfil in a formal or perfunctory manner. >My object ' in -reading "these passages' is to make it absolutely clear to 'the -committee that covering- section 5 Of the' Constitution gives,1 to the fullest extent which the law

Officers think 'possible, power 'to Australia to deal "with * international shipping, 'and therefore it behoves us to be very careful, and1 to consider how far clauses which appear to 'be 'different in'this Bill are likely to lead us' in to conflict with other nations. In this- connexion, I desire to- give some' information as to the usage -with regard to the stores in various ports. It- was given' to me on the authority of a gentleman who is interested, but whose position enables him to speak with knowledge. "I refer to Mr. Trelawny, the Australian manager of the P. and O. Company

In Canada and America, no stores are placed under seal either on coasting or oversea vessels. In German ports, only tobacco is placed under seal. In - China >and Japan no stores are placed under seal, but- the- list of stores is handed in with the usual documents. In all' the above countries, passengers .and crews of vessels have the right to use their own stores. -Mail Steamers leaving 'England and calling at Marseilles and Genoa have free access to their stores while lying in those ports. The Customs authorities of those places merely prevent Stores being landed.

At Bombay, Calcutta, and Aden there is no interference with ships' stores. A bond of 5,000 rupees is given on behalf Of the vessel that nothing shall be landed, and consumption Of stores by Officers and crew is allowed to proceed. The same custom prevails in. Prance, Germany, and Italy. The Customs officers' only interest is to see that no stores are landed ; they do not care how much or how little is consumed on board. How are we ..going 'to break this world-wide rule ? How can we -act on French, German, British, or Japanese ships as if they were merely in the coastal trade of Australia, and belonged to Australian citizens? The clause appears to 'me 12*g 2 so impossible that it must result in the reservation of the Bill for the Imperial assent, a circumstance which would certainly delay 'the Tariff for an indefinite time. 'I -warmly recommend the committee to eliminate all clauses 'relating to stores and leave it to 'the Government' to bring in a special Bill dealing with' the matter.

Senator O'Connor

- Would not exactly the same objections -apply to that Bill as to these clauses ?

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Senator PULSFORD

- But that Bill, would not result in ' the reservation of the Customs Bill. The clause would cause Chaos on board -great ocean-going- steamers. Some of these' vessels occasionally sail with 500 or 600 passengers, and those 'engaged in the management would 'be 'placed in a most extraordinary dilemma if they had ' to have two- sets of stores, one' set; under seal, for the complete voyage, 'and another set for consumption -on the coast of Australia. Great inconvenience and difficulty would certainly be caused, and I am not sure whether -such -an 'arrangement could be made except at considerable expense. The -competition' from these oversea steamers has been over-estimated. 'I am prepared to see. Australian shipping secured, and put on a safe footing; but, at the same time, 'we ought to have some

understanding as to what is at stake. It has been stated that if these clauses are eliminated' we shall drop some £60,000 in revenue : but we cannot drop what is not now being collected. Of the £15,000 estimated to be collected from the- overseas trade, only about £1,000 can be collected on the consumption of stores by passengers in the purely coastal trade, so that the amount of competition between overseas steamers and Australian steamers is very trifling, being something like only one in forty-five. It must further be remembered that the overseas steamers do not carry any cargo coastwise. But the very most has been made of this competition, which 'has been represented as overwhelming all other considerations. The Conclusion which should lead us to a final conclusion is that of international law, which we are not in a position to defy. With the knowledge we have, and the opinions that 'have been given by eminent legal men, it 'would be a grave risk for us to pass' this Bill as at present drawn, and I hope 'the committee will 'eliminate these clauses and leave the Government to deal with the subject in a separate measure.

Senator PEARCE (Western Australia). - I was in a state of uncertainty as to these clauses, but after the discussion, which has been most interesting, and after the speeches of the Vice-President of the Executive Council and Senators Clemons and Gould, I consider it safe to vote for the clause now before the committee.

Senator WALKER

- If the clause were to be treated as by itself there would be some force in what Senator Pearce has said; but clause 184 has been brought into the discussion. There are, it seems to me, three courses which the Government might adopt. Apparently Senator Millen's suggestion, which is a good one, to leave these clauses out in order to avoid any question of the Royal assent, and to introduce the stores question in a separate measure, is not to be taken into consideration. Three courses are open to the Government. The first is to allow all goods to go on board ship free of duty; the second, to charge a per capita rate on passengers, and the third, to charge duty on all bonded goods going on board the vessel.

Senator Glassey

- Would the honorable senator charge each passenger ?

Senator WALKER

- The ship would have to pay that duty. As to section 5 of the Constitution Act, I think we have no power to legislate when ships go beyond the last port of call. I have ascertained on good authority that it would take something like 35 hours to seal up the stores on board a P. and O. or Orient vessel, whereas the vessels of these companies only stay at Fremantle for six hours. Under section 5 of the Constitution Act we have no power to interfere with foreign ships, and to pass the clauses as they now are would be legislating in favour of foreign ships as against British ships. I am not at all satisfied with the estimate of £60,000 as the loss which would be incurred by striking out these clauses.

Senator O'Connor. - That is the estimate of the Customs officers of all the States.

Senator WALKER

- A gentleman, who is agent for a large line of steamers, expressed the opinion to me that £60,000 was quite an excessive estimate. Petitions and telegrams are coming forward now on this question, which is causing much more sensation outside than some senators are aware. We are making a bad start in legislating against the freedom of trade. The greater the freedom of trade we have in the world, and the fewer troubles of this sort that are unduly raised, the better.

Senator DE LARGIE

- Senator Walker boasts continually about being a consistent free-trader, but I see no free-trade consistency in his per capita proposal. If Senator Walker wishes to be a consistent free-trader he should support Senator Major Gould's proposal. Senator Clemons' suggestion means neither more nor less than a tax on the export of stores used outside the Commonwealth boundary.

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Senator CHARLESTON

- I shall certainly support Senator Major Gould's proposal. Even if we do lose £45,000 in respect of the trade between our various ports, that money will still be left in the pockets of the people, and can be obtained in some other way if necessary. I would much prefer to run the chance of this loss than of creating complications with British and foreign powers.

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

16

AYES

7

NOES

Majority 9

AYES

NOES

Question so resolved in the affirmative.

Amendment negatived.

Clause agreed to.

Clause 124 -

No stores, after being shipped, shall be unshipped except by permission of the collector.

Penalty : Fifty pounds.

Amendment (by Sir Frederick Sargood) proposed -

That after the words " shall be," line 1, the following words be inserted : " used contrary to the last preceding section or."

Senator O'CONNOR

- This is a very good amendment. It makes it perfectly clear that there shall be a punishment for disregarding the last preceding clause.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 125 (Duties payable under State Acts).

Senator O'CONNOR

- Some time ago Senator Macfarlane asked me a question which, though not strictly relevant to the matter in hand, I should like to answer. He pointed out that there would be a difficulty under the Bill as it stands in charging any duties on these ships' 'stores. Looking into the matter further, I think the Bill might be made clearer, and I intend to draft an amendment which will make it clearer by defining " importation." I am much indebted to the honorable senator for pointing out the matter.

Senator PULSFORD

- I should be glad if the Vice-President of the Executive Council would explain the procedure under this part of the Bill as compared with the procedure in regard to excise. Is it intended that there shall be a variation of procedure after the imposition of the uniform Commonwealth Tariff? Clause 3 of the Excise on Beer Bill reads as follows -

This Act shall apply to any excise on beer imposed by the Parliament, and to the exclusion after the imposition of such excise of the operation of all such Acts relating to the excise on beer.

Senator O'CONNOR

- The two Bills deal with different matters.

Senator Pulsford

- Would the action of the Government be uniform in regard to Customs and Excise 1

Senator O'CONNOR

- That is a matter of policy about which I do not intend to say a single word. It is one of those conundrums which I do not intend to answer. It is, however, quite open to the honorable senator to ask the meaning of this particular provision. The reason for it is this : Senator Pulsford, no doubt, will remember that this measure comes into force on a day to be fixed by proclamation. It may, therefore, be fixed to come into operation at any time, even before the imposition of the Tariff fixing uniform duties. , Previous clauses relate very largely to the computation of duties. In the computation of duties there may be a considerable difference in the amount of revenue collected. So that if it should be found necessary to bring this measure into force before the uniform Tariff is introduced, it will be found' that there will be a difference in the amount of duty collected and the amount computed in the different States. The computation of duty under some of these clauses might make the duties on some articles in New South Wales greater than they were before, or in Victoria they may be less than before. It will be undesirable to have any conflict of that kind. Therefore it is proposed that, so far as the computation of duties is concerned - which is a matter intimately connected with the Tariff - each State shall remain under the State's statute. That will

enable the Government, if they think fit at any time, to proclaim that this measure will come into force at some time before the uniform Tariff itself comes into force.

Senator Millen

- This clause would not become operative until the uniform Tariff sweeps away the State Tariffs.

Senator O'CONNOR

- Exactly ; that is one reason for it. Another reason is that in Western Australia there will be a right to impose duties upon Inter-State goods.

Senator Major Gould

- This Bill does not impose a Tariff.

Senator O'CONNOR

- I know that; but there may be a necessity for collections in Western Australia under a local Act. For that reason also it would be very undesirable that a general measure of this kind relating to computation of duties generally should be passed, which would affect perhaps the quantum of revenue derived by Western Australia from the duties which it is her particular perquisite to impose. The real reason is to prevent the operation of this measure in the collection of duties which are already collected according to local Acts, and the computation under this measure being such as may interfere with or alter in different ways the amount of different duties collected.

Senator Major GOULD

- That part of this section relating to the duties would remain in abeyance until we had a uniform Customs Tariff, except of course in the case of Western Australia I

Senator O'Connor

- That is so.

Clause agreed to.

Clause 126 -

No goods the property of the Commonwealth shall be liable to any duty of customs.

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Senator PULSFORD

- There appears to be another conundrum wrapped up in this clause. It appears that under this clause goods which are the property of any State would be liable to duty.

Senator O'CONNOR

- No, Under section 114 of the Constitution they are not. The portion of the section which bears upon the point is as follows: -

A State shall not; without the consent of the Parliament of the Commonwealth..... impose any tax on property of any kind belonging to the Commonwealth; nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

Senator Pulsford

- Does the term "tax " include, a duty ?

Senator O'CONNOR

- It is a tax.

Senator Major Gould

- We might get over the difficulty by making the clause read -

No goods the property of the Commonwealth or of a State shall be liable to any duty of customs.

Senator O'CONNOR

- If we leave it to the Constitution there will be no doubt about it, and should any question, such as the honorable senator suggests, arise, it might be shown that our amending this Bill would be unconstitutional. It is much better to leave it to the Constitution, and it could derive no additional force from being expressed in this Bill.

Senator PULSFORD (New South, Wales). - This clause 126 deals with goods, while the section of the Constitution Act referred to deals with property, and my reading of it has always been that it did not allow any State to impose a tax upon any property belonging to the Commonwealth, or the Commonwealth to impose a tax upon property belonging to a State - not goods, but houses, land, and so on.

Senator O'Connor

- "Property." is the widest word that could be used. It includes "goods" as well as land.

Senator PULSFORD

- If the honorable and learned senator is quite clear on the point, I am satisfied.

Senator O'CONNOR

- I would like to point out to the honorable senator that if his view is right, and this word "property" in the Constitution Act does include "goods," it does not require the protection of this clause.

Senator Pulsford

- I am not certain that the word "tax" also means duties.

Senator O'CONNOR

- If "goods" are included under "property," that applies to customs taxation as well as to any other taxation, and the provision will have no more force by being included in this Bill. On the other hand, if it should turn out that the constitutional meaning of this section is that it does not include customs taxation, it would not be wise for us, to make a provision of this kind, which might mean a very large amount of withdrawal of duty, and involve very difficult questions as to what is the meaning of "State goods" and "State property." We all know that the States carry on very large businesses. Take the case of railways and tramways for which goods are imported, and also the case of public institutions, and we shall find that an enormous amount of goods could come in under the denomination of "State goods," and would escape duty altogether.

Senator Pulsford

- If the Commonwealth takes over the railways, railway goods will be brought in free, but while the States would be importing them they would not be free.

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Senator O'CONNOR

- What I am pointing out is that if we are bound by the Constitution to allow these State goods to come in free, we cannot help it. But unless we are bound by the Constitution to do so, why should we allow these goods and property of the States to come in free? These goods and property of the States embrace an immense amount in value, and in addition to that there are many ways of evading the taxation altogether. For instance, we might have railway contracts under which the State Government would supply the material, and there might be large contracts with a similar condition in the case of Government institutions. It would be a very easy matter in the contract to arrange that the property should pass to the Government before the goods were shipped. A contract might be made to deliver thousands of pounds-worth of goods to some public institution by some contractor, and if it was made in such a form that the property passed before any customs duties were charged, it would pay no duty at all. I am giving that simply as an illustration to show that there might be all sorts of evasions, and the leakage of a very large amount of revenue. If we are prevented from dealing with State goods by the Constitution it cannot be helped; but I do not propose to ask the committee to voluntarily surrender any right we may have. It is, therefore, better to leave the clause as it is.

Senator PULSFORD (New South Wales). - I would point out that, under the clause, the Postmaster-General will secure the free admission of all telegraphic appliances and apparatus which may be imported for the use of the Post and Telegraph department, with the result that, while that department will be getting its goods in free, the Railway departments of the different States will be charged duty upon the goods they import.

Senator CLEMONS

- I entirely agree with the views expressed by the Vice-President of the Executive Council. At the same time, I recognise that this apparently innocent clause obviously raises a very large issue indeed - so large an issue that I am astonished that we have not all been ready and alert for the arrival of the clause. Its operation will have a very important bearing upon many of the financial proposals of the States in the future. If there is to be the construction of railways by the States; there may be a heavy duty upon steel rails, and it would come as a surprise to all the States, which under existing circumstances import all that kind of material duty free.

Senator O'Connor

- I am not expressing an opinion that this section of the Constitution Act does not exempt them.

Senator CLEMONS

- I do not think that the honorable and learned senator is certain as to his opinions on the subject.

Senator O'Connor

- No, I am not.

Senator CLEMONS

- I am personally inclined to risk it, and to think that the clause should stand as it is. If we withdraw this clause and allow the States to carry on the importation of all these goods duty free, as they have been accustomed to do in the past, we shall be distinctly tempting, many of them to import goods for what may be unfair reasons, and in cases where they would not be the bond fide owners or consumers. It is for that reason that I am inclined to agree that the clause should, stand as it is printed.

Senator Major GOULD

- -An important matter is opened up in the reading of this clause. In the first place, Senator O'Connor does not seem to have quite made up his mind as to whether these words in section 114 of the Constitution, give- us power to exempt. the property* of.- a State from customs taxation.

Nor shall' the Commonwealth impose any tax on property of any kind 'belonging, to a>;State.

The question arises whether goods imported! for the- purpose of carrying OUT Government works would- derive the benefit which is- proposed to be given .to goods theproperty of a, State under- the - Constitution Act. Senator O'Connor- is- doubtful as- to whether, that is the case, and Senator. Pulsford 'tells me that, in their, comments on the section, Quick, and Garran, raised the question of whether customs duties would come under the generic term of "tax" as applied to the Acts I am quite certain that when the Constitution was framed it was never in: contemplation that any property of a State should be taxed. And if there is any. doubt in the construction of the section it- is just as well to -put- that, doubt at rest by an amendment of, this clause.-

Senator O'CONNOR

- -That cannot settle the constitutional question.

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Senator Major GOULD

- No ; the Constitution says that we shall not impose a certain tax. My contention is that the intention was that, no goods should be subject even to customs taxation which came into a State as. its property or- for the purposes of' its Government-. If I am correct in drawing that inference from section 114, we could very well amend this clause. We should not be acting contrary to the Constitution, .but: making, clear, what we believe to have been the intention. But the question arises whether it would be fair to exercise this power. Take the case of a State which builds many miles of - railways. We say to that State, " If you want, to build railways and it is necessary to import railway iron and material, for that purpose, you shall pay whatever duty may be determined on by the central Parliament before that property comes into the State." I may be met with the reply that at. the- present time the State would get back threefourths of the duty, it paid, the other fourth being utilized: for Commonwealth purposes, and possibly relieving.' the State from contributing money from other sources. But the answer to that argument is- that this system is only to .exist for the limited period .of five years. At the- end of that period another method is- to be adopted of distributing the customs taxation - per capita, I think. Honorable senators will see that if we have this clause it may work most unfairly. Some States will get more than they are honestly entitled to, while others will get less. I contend that it is advisable that the States should be assisted as far as possible to develop and open up their territory. There is no better way to achieve that object than by promoting railway extension. But when a State takes railway .extension into its hands it has to look not only to opening up its territory, but to what return the line will yield. I admit that occasionally a State will say, " We are opening up all our country, and we do not expect to get a direct return," but whether it is given much or little weight the direct return is a factor in determining whether a State will build a railway. Take the case of a State which says that it can afford to build railways to the value of £500,000 during the year. For that sum, if there is no customs duty on railway material, the State Government can build more mileage than it otherwise could do. The Government may say, " With this sum we can build 100 miles of railway, as we have no custom taxation to pay on the material we use." But if it is subject to a tax of 10 to 15 per cent., so much has to be expended on material, that it considerably reduces the power of the State to open up. its territory, and instead of building 100 miles of railway within a given period, probably it would only be able to build 70 or SO miles. Is not that a matter of very great importance to the State, and if it is, is it not a matter of great importance to the Commonwealth, because, whilst the Commonwealth has not

the inherent power to open up the country in this way, it must depend on the State to do that which will ultimately be not only for the benefit of the State, but for the benefit of the Commonwealth. I shall put another case. Assuming that the policy of the central Parliament was to have steel rails manufactured within our boundaries, and 'that in order to encourage their manufacture it imposed a duty of 50 per cent, on imported rails. The moment the duty is imposed, it enhances the cost of steel rails to every State. I do not care whether honorable senators believe in free-trade or protection, I ask them is it a fair thing to make the States pay vastly increased prices for their railway material 1 If it is the policy of the Commonwealth Parliament to levy a duty of 20, 25, Or 50 per cent, on an article, let that duty be applicable to people generally in the. States, but do not let it apply to the Governments of the States, because if you do you punish very severely the enterprising State which is determined to open up its territory as against a State which is not prepared to take that step.

Senator Staniforth Smith

- If we take over the railways the difficulty will not arise.

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Senator Major GOULD

- If the Commonwealth were to take over the railways, or take over particular lines it could import any material it required free of duty. But a State in regard to its railways would have to pay heavy duty on its railway material. Since the Postmaster-General has control of telegraph and telephonic services he can import what material he requires free of duty. But if a, State requires to import any such material it is liable to duty, assuming that the section does not sufficiently cover what we are aiming at. When the States entered the Union they understood clearly that the State Governments should be amply protected from any undue exaction by the Commonwealth Parliament. Certain States are beginning to complain that the Commonwealth Parliament is trying to take a little more power than they think it ought to do. Unless it is clearly within our power I do not think we ought to attempt to enact the 'provision in this clause. The Commonwealth is still on its trial, and we wish to show the people that they adopted a wise course of action when they surrendered all these powers, and that the central Government is determined to look at all matters which appertain to the States in a fair and reasonable way. We are here to represent the States, and, if we are not alive to their interest, can we expect any one else to be, or are we fulfilling our mission ? We ought to deal with this clause in a very careful way. I move- -

That the words "or of any State" be inserted after the word ".Commonwealth."

It may be said that attempts would be made to evade this provision ; that goods might be introduced for charitable institutions, and that advantage would be taken of that circumstance to evade payment of duties. But I do not think we need fear that, because these are matters of very minor importance. When we consider the importance of constructing railways at the lowest possible expenditure, we ought to do nothing which would tend to increase the price of the material. The more railway construction there is in the various States the more work there is for our own people, and I would sooner see an extra 100 or 200 men earning wages in building railways, than see those wages added to the cost of the raw material by means of customs duties. The amendment is in accordance with the spirit and intention of the Constitution, if it does not actually come within the provisions of the Constitution.

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Senator O'CONNOR

- There are two ways of looking at this question. One is as to the interpretation of the Constitution, and the other is as to the question of policy involved in the amendment. I would ask the committee to refrain from discussing the somewhat tempting question of the construction of section 114 of the Constitution Act. It is a very difficult question whether the words "tax on property of any kind belonging to a State" includes customs duties. It is not a new question, because I have had occasion to look into it, though I must admit I have not formed a definite opinion. I am rather inclined to think, however, that the words do not include customs duties. I take it that the discussion on the .Constitution itself, so far as this point is concerned, is more or less an academic one, which I hope the committee will not indulge in. As to the question of policy, I strongly urge the committee not to accept the amendment, which means that the property of a State is to be exempt from customs taxation. The property of a State means anything which the State has, or which may become vested in it in any way whatever. There is a tendency to more and more place on the State the duty of carrying on certain businesses for the benefit of the people. That

tendency will grow in Australia, and we do not know what businesses may in the future be carried on by the State ; and if all goods for these businesses come in duty free, a gap will be left in the revenue. States now carry on railways, tramways, water supply and sewage, and irrigation works, and there are a very large number of charitable institutions of which the State is the proprietor. These businesses in themselves involve a large amount of property imported directly by the State. We do not know at any moment when the policy of a State may be expanded in these directions, and, therefore, it would not be known what revenue could be collected on the imports of any particular article. Then a State, in setting up in these businesses, necessarily destroys all other businesses of the same kind and, in addition, a great deal of Government work is carried on by contract. Of course, in New South Wales, and, I believe, in most of the other States, railway contractors have the rails supplied to them, but other work, such as the building of carriages, and, perhaps, engines, is handed over to private individuals. I hope, as time goes on and manufacturing expands in Australia, there will be a large number of things, which the Government now order from abroad, ordered from our own manufacturers. If Government property were exempt from customs duties there would always be a temptation on the part of manufacturers to have it provided in contracts that property which had to be imported should vest in the Government so as to escape payment. In that way the privilege would not only be given to the State, but to contractors to the State. I am pointing these matters out to show the very large field which is covered by any exception of the kind - a field the area of which the tendency of our social legislation will increase as time goes on. The only source of revenue which the Commonwealth has to carry on its business, and give back to the States a proper share, is the Customs, and the amendment would introduce a cause of leakage the extent of which we cannot foresee. Then what position would the amendment put the different States in with regard to the Commonwealth revenue ? A State carrying on an expansive railway policy might place its orders abroad, while another State might choose to deal with manufacturers within its borders. Why should the latter State, which uses its own material, and employs its own people, be put in a position of disadvantage as compared with the State which imports from abroad ? The whole people of Australia would have to pay for the advantage gained ; and this illustration only shows the kind of unfair incidence which a benefit of the kind involves. There would be a benefit to the State importing the particular railway material, but no benefit to the whole of - Australia. What would benefit the whole of Australia would be to let duty be paid on the articles as they came in. The States themselves would get back three-fourths of that revenue.

Senator Major Gould

- For a period of five years.

Senator O'CONNOR

- The period is five years after the imposition of uniform duties, and, unless otherwise provided, it has to be extended for another five years, so that practically the States will receive their proportion for ten years.

Senator Millen

- We have no right to assume that yet.

Senator O'CONNOR

- We have as much or more right to assume that than to assume that the Commonwealth will make an alteration of the system within five years. That, however, makes no difference to my argument. During that period there will, under the bookkeeping system, be a distribution which will, give back to the States, taken as a whole, three-fourths at all events of the duty collected. It would be much fairer to let the States pay the duty, and, in the settlement get three-fourths returned, so that each State may benefit equally, than to allow a privilege which opens up great opportunities for leakage, and which might be abused in such a way as to largely defraud the revenue.

Senator Major Gould

- Is the honorable senator not placing a State which does not believe in the principle of heavy duties on imports in a disadvantageous position in regard to other States? He is allowing those other States to dictate to a State what its policy shall be so far as its works are concerned.'

Senator O'CONNOR

- It is quite the contrary. If all the States are put on the same footing, they can make their own arrangements as to where they deal.

Senator Major Gould

- Could they not make their own arrangements in the same way if there was no duty?

Senator O'CONNOR

- Under those circumstances the State which chooses to employ, its own people would be placed at a disadvantage as compared with a State which sends its orders abroad. This is only an instance of the operation of this privilege or exception which we cannot disregard. Considering the urgent necessity there is for seeing that we get all the revenue we can, in the interests of the State as well as of the Commonwealth, we should take care that nothing is done which would result in leakage. I quite admit that we are here as representatives of the States to look after their interests, but in a matter of this kind the highest interest; of the States is the interest of the Commonwealth itself. In Canada, I am reminded, the law provides that goods, the property of the Dominion; are allowed to come in free of duty, but there is no exception made with regard to the property of the States.

Senator MILLEN. (New South Wales). The question of whether or not the position; in Canada is similar to ours revives the constitutional question which the Vice-President of the Executive Council asked us to leave alone. I do not propose to argue from that point, because if, the Constitution itself imposes a bar against the imposition of a federal duty upon State . imports, the passing of a law will not alter the position, and some States will be certain to test the question by appealing to the High Court. I shall deal with the matter entirely from the point of view of policy. I have known no question since I have been a member of the Senate - I might almost say during my political career - which has given me so much difficulty in coming to a decision as this. I see the difficulty which the Vice-President of the Executive Council has pointed out. I can perceive at once the serious position that may arise as to the development of: State enterprises; but I also see that we shall be defrauding the Commonwealth of revenue by depriving it of that assistance which it would otherwise obtain. I can imagine a position where, under the impetus of a growing demand for State activity, there might be a demand for the establishment of State stores, especially if this temptation were held out to the States to do anything of that kind.

Senator Drake

- A State might become a general provider.

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Senator MILLEN

- But I also recognise that we have an obligation imposed upon us by the very Constitution itself. I cannot shut out from my mind that it is proposed to collect duties upon State imports, and that consequently a progressive State, with a large area of territory requiring railway development, might be seriously penalized for the benefit of smaller States, or of those which have made greater progress in the construction of railways. Let me institute a parallel between New South Wales and Victoria. Victoria is a State which, so far as size is concerned, is small compared with New South Wales, but which has a longer railway mileage. This means evidently that the amount of railway work to be carried out in Victoria is very much less than that which has to be carried out in New South Wales. We will assume that Victoria has developed its railway system to a convenient point, and that for a number of years it is not proposed to construct new lines.

Senator Staniforth Smith

- Victoria is authorizing new lines now.

Senator McGregor

- More than New South Wales.

Senator MILLEN

- I dispute that statement. However, it is obvious that, for some years to come, the demand on, the New South Wales Government for the construction of railways must be very much greater than the corresponding demands on the Government of Victoria. That means that New South Wales will be bound by force of circumstances to import railway material to a greater extent than Victoria. The Vice-President of the Executive Council drew a comparison between a State which preferred to import its. material, and one which preferred to obtain its material from the home manufacturer but he did not make a comparison between a State which is progressive - a State which desires or is obliged by circumstances to carry out a progressive railway policy - and a State which is content to go to sleep in this respect. So long as the bookkeeping period remains, I am free to admit that there is no great injustice done to a State which is a considerable importer through force of circumstances. But after that period comes to an end, the position will present itself that the State which is a large importer will be a huge contributor to

the general revenue of the Commonwealth, which revenue will be distributed among the States. I would point out the extreme absurdity which will be presented if the clause is carried as it stands. Each State will have to develop its own territory by means of railways. For the purpose of constructing railways, the States must, so far as we can judge, be borrowers. We are actually seeking, if this clause is carried as it stands, to place the States in the position that they will borrow money not, only for constructing railways, but for paying duty to the Federal Government; so that the Federal Government will be living on money borrowed by the States under their public works policy. Surely we do not want to bring about a position by which the Federal revenue will obtain the benefit of a large portion of money borrowed by the States.

Senator O'Connor

- Why should not the States pay the duties out of current revenue?

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Senator MILLEN

- Because, as the honorable and learned senators know, the States have as much as they can do to pay their way now out of revenue. This clause simply means that if they are to pay money to the Federal Government, on account of goods they import, they will have to borrow more money in order to pay the duty. There does not seem to be any way out of the position that goods imported for purposes of public policy will be paid for from money borrowed, and that a portion of the money, borrowed will have to be devoted to pay duty on the goods imported. Without wishing to protract the debate in any way, I should like to make a suggestion - without, however, expecting that it will be adopted. I admit, at once that there is a great deal in this clause which requires consideration. I should like to have an opportunity of considering the statistics as to the imports of the several States. It may be that there is a greater equality in them than I imagine. If so, no great injustice will be done between one State and another. Or it may be that the difference is so glaring and marked as even to arrest the Government in its efforts to pass this clause. The clause came to me as a surprise after Senator Pulsford had raised the point, and before coming to a final decision I should like to have a little further time for consideration.

Senator PULSFORD (New South Wales). - The silence of the members of the Government upon this matter is noteworthy. Senator O'Connor has studiously avoided reference to one of the matters I pointed out; Why the Postmaster-General and the Minister of Defence should be able to get in their goods free of duty whilst the various States are to be called upon to pay duty for their importations, is a matter that has not been explained. If the services for which the importations of the States now take place were taken over by the Commonwealth, the goods imported would be allowed in free. The position is so anomalous, and indefensible that I am rather curious to hear; what the representatives of the Government have to say about it.

Senator MCGREGOR

- Senator Pulsford, as usual, is thirsting for information. He wants to know how it is that the Government have been so silent. He might have asked the same question with respect to many other honorable senators. I think that Senator O'Connor has very ably put the position of the Commonwealth in this instance, and any one who requires any further information must be intentionally stupid. But I will endeavour to amplify what Senator O'Connor has said. Senator Pulsford says it is a very anomalous position that anything imported by the Commonwealth is free whilst goods imported by the States are bound to pay duty. See how it works out. Senator Pulsford said that in connexion with railway construction the Commonwealth might take over railways, and that in that event their material would be introduced free, while if the railways were under the States the States would be penalized. If the Commonwealth took over the railways, the powers of construction possessed by the Government would extend all over the country, and the whole Commonwealth would benefit if there was a remission of duty. But under the condition of things sought to be brought about by Senator Pulsford, one State might be the importer of its own railway material, whilst another State might manufacture its material. A third State might import its railway material through a contractor who had nothing to do with the Government at all. Consequently a different policy might exist in the six States with respect to railway material. But that is not a position we want to bring about. If all the States are bound to pay duty, and if the Commonwealth takes over the railways it will be all right. Some of the States are progressive and socialistic enough to become importers themselves. Supposing the State of Queensland under the amendment of Senator Gould, in the interests of the pastoral development of the country, became an importer of rabbit-proof fencing, and that

the Government of Western Australia did not, we should have the pastoralists of Queensland reaping a benefit through the Government of Queensland that the pastoralists of Western Australia would not get at all. Would not that be an anomaly ? We know that all the States of Australia are taking a great interest in the development of agriculture, and if one State were progressive enough to import large quantities of artificial manure on which there was a small duty, the farmers of that State would be placed at an advantage as compared with the farmers of another State which did not take similar action - that would be another anomaly. As the clause stands it refers only to the Commonwealth, and if the Commonwealth undertakes these socialistic functions it will be for the benefit of the whole people of Australia, and no anomaly will exist. Coming back to the question of railway construction, a Government could import the tea, sugar, blacking, starch, blue, and castor oil for all the railway camps owned by the contractor for any of their lines. Look at the anomaly that would exist there if another State did not choose to do that. Seeing all these anomalies staring honorable senators in the face, I hope they will support the clause as it stands, and let us get on with the business.

Senator WALKER

- We must remember that when the States joined the Commonwealth, it was not supposed that they would incur any disadvantage by so doing. So far as know, they all import their own railway material free of duty, and we are consequently here proposing to put a disadvantage upon them they had not before. Senator O'Connor stated that he was doubtful whether the word " tax " included a duty, and it would therefore be better to remove the doubt on the question by agreeing to this amendment.

Senator Clemons

- That would not remove the doubt.

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Senator WALKER

- One strong argument might have been used from the other side, and that is that the clause might force the States to some extent to see the advantage of handing over their railways to the Commonwealth. I am in favour of that, but at the same time we are here as representatives of the States, and it is our duty to protect the States as far as possible. I shall support the amendment.

Senator CLEMONS(Tasmania). - As a protectionist, to the best of my ability, of my own State, I intend to support the clause as it stands. But I rise chiefly to draw attention to the speech made by Senator McGregor. The honorable senator dealt chiefly with anomalies, but I could not help thinking, with all respect to him, that the greatest possible anomaly was himself. It amused me to see Senator McGregor, who, I believe, is a good socialist, supporting this clause, when it is obvious that we could not devise any better plan for encouraging State socialism than the amendment proposed by Senator Gould. If the amendment is carried the position will be that all goods imported by private individuals will be charged duty, and all goods coming in for a State will be- free. We can all see what a great encouragement that would give to all sorts of State activity, and what a distinct incentive it would be to State socialism.

Senator Pearce

- We believe in a socialism that can stand without any fiscal props.

Senator CLEMONS

- I am delighted to hear such an opinion from Senator Pearce but I have been impressed by the anomaly of seeing Senator McG regor opposing an amendment which would do more to bring about State socialism than anything else I can conceive of.

Senator Major GOULD(New South Wales). - I must also express a little astonishment at the conversion of Senator Clemons to protection. If it is a strange thing that Senator McGregor, as a State socialist, should oppose the amendment, is it not equally an anomaly that Senator Clemons should support a protectionist policy? The question is a more serious one than some honorable senators seem to think. Senator- O'Connor, in his speech, pointed out that if one State desired to construct its railways by means of material manufactured in its own territory it would be placed at a disadvantage as against other States that preferred to import. But is not that a position which the States should be allowed to take up for themselves ? One State, believing in the principal of free-trade, says that it is to the advantage of the State generally to construct public works as cheaply and economically as possible, while another State says it is better to adopt the other course. A little time ago, in the State I come from, it was determined that in connexion with certain waterworks to be constructed for a municipality the pipes should be made

within the State. The result of that was that the cost of the work was enhanced to the extent of something like £20,000, and the people living in that district will be compelled to pay interest .on that, .additional amount.

Is it a fair thing that the Commonwealth should say to the people of New South Wales - " You must continue that sort of policy whether you like it or not," if they desire to adopt some other? If we do that we shall be putting it in the power of the Commonwealth Government to impose a protective policy upon all the States.

Senator Staniforth Smith

- We do not know that the Tariff will be protectionist.

Senator Major GOULD

- No ; but supposing they tax railway material, locomotives, and steel rails, as has been suggested, for the purpose of obtaining revenue--

Senator Pearce

- Does the honorable and learned senator think the Senate would agree to it ?

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Senator Major GOULD

- I do not know what the Senate may do, and I should be sorry to predict what it will do, if I were subject to a penalty should my prediction be falsified. Under this clause, if we accept Senator O'Connor's construction of the Constitution Act as not applying to customs duties, the States may have to pay a greatly enhanced price for anything they* desire to construct on their own behalf. It is perfectly true that a State may become very socialistic and manufacture everything it requires, and may cut down the Customs revenue by that course. They could have recourse to direct taxation to make up any loss' of revenue so caused. We have power under the Constitution to assist a State that is short of the amount of money it requires, and it is better that we should take advantage of that power than that States, which have more than they require, should be taxed under this clause in order to provide for the deficiencies of other States. I submit that this is only a reasonable amendment, and one that is in the interests of every State in the Commonwealth. It may be that it will not be carried, because I recognise the fact that there is one section of the committee always ready to rush to the assistance of the Government should they think it necessary ' to make a stand, and, if Senator McGregor will excuse me for saying so, that is one of the reasons why I have such little faith in what the Senate will do under any given set of circumstances.

Senator DE LARGIE

- When I interjected during the speech of Senator Millen about NewSouth Wales having been asleep so long, I meant that if that State had been awake to its own interests it would have been in a position to manufacture its own steel rails. No State in the union is so well adapted for the production of steel rails as is New South Wales, and if the people of that State want to. avoid taxation which they dread so much, let them develop their territory in the way in which nature intended that it should be done.

Senator Millen

- If the honorable senator advocates this clause as a means of coercing a State to adopt protection let him say so.

Senator DE LARGIE

- I hope it will have the effect of saving New South Wales against itself. If it had had sense enough to develop its iron ores years ago it would undoubtedly have been the foremost State in the Union. I believe that if Victoria had had such a splendid opportunity as that State has had we would have had no need to import Steel rails from the old country.

Senator KEATING (Tasmania)- I intend to oppose the amendment of Senator Gould, who, although he devoted a considerable amount of attention to it, was, at any rate to my mind, most unconvincing. I would go even further than the Government. I cannot see why the States or the Commonwealth should claim any such special exemption.

Senator Major Gould. - Under their present laws the States have this privilege.

Senator KEATING. - The interjection reminds me that when the Post and Telegraph Bill comes into operation, each State loses certain privileges. For. instance, in some States the Postal departments were used for the carriage of newspapers free ; but hereafter the same rates will have to prevail in all the States. There may have existed in a State, when it had supreme control of its Telegraph department, certain

franking privileges which will have to be surrendered under a uniform administration. I would very much have preferred that Senator O'Connor had in regard to this particular subject taken up the attitude which was taken up by the Cabinet when it said that the Postal department should not be made a means of subvention for any other department of the State. Wherever it does work for any other department it should receive the same amount as would accrue to it if it did similar work for people privately, because as was pointed out when that argument was adduced, by no other means can we properly ascertain the relative advantage and value of each department. Why should the Customs department be asked to forego any taxation if the property when introduced by a private citizen is liable to duty? We should have no means then of ascertaining the value of the Customs department towards or contrasting State work with private works. I admit that by imposing a tax we are practically taking it out of one pocket to put it in our other. It involves an additional amount of bookkeeping. The policy which was laid down in regard to another department should have been adhered to in the case of this department. I should be very pleased to support a motion that the clause be struck out but I certainly cannot support the amendment.

Senator PULSFORD (New South Wales). - The committee must see by this time that the clause is a mistake; that no provision ought to have been introduced which would lead to a debate of this kind. I feel myself very much handicapped. I do not want to talk on the fiscal question, and yet it is bound up in this clause. The Government cannot have seen what was intended when they put in the clause. Any legislation in this direction ought to have been included in a Tariff Bill, and not in a machinery Bill. We cannot discuss the question on its merits if we look at it simply from the point of view of machinery. It involves policy, and ought to come with the Tariff.

Senator MILLEN (New South Wales). - I wish to ask Senator O'Connor, before a vote is taken, whether he is supporting the clause or opposing the amendment for the reason advanced by Senator De Largie - that is, that it is to be made the instrument of forcing States, otherwise unwilling, to adopt a protective policy?

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Senator O'Connor

- Surely the honorable senator is not serious in asking me whether I am supporting it for the reason given by some other honorable senator?

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

Ayes 6

Noes..... 16

Majority..... 10

Question resolved in the negative.

Clause agreed to.

Clause 135 -

Whenever any dutiable goods are composed of two or more separate parts any part though imported by itself shall if so directed by the Minister be chargeable with duty at the rate applicable to the complete goods.

When the duty on the complete goods is specific or both specific and ad valorem, the Minister may fix the proportionate rate of duty with which any part shall be chargeable.

Senator CHARLESTON

- I move -

That the following be inserted as a new subclause :-

When the complete goods are free of duty the parts of such goods shall also be free. This amendment is in harmony with the clause. The principle of sub-clause (1) is a proper principle. There are some goods which will be admitted free of duty, and I contend that if such an article is imported in parts, they also should be admitted free. If hereafter we decide that reaping machines shall be free of duty, they may be imported in parts for the convenience of carriage. Some of the parts would represent ironwork such as wheels and axles, and without such a provision as I propose those parts, being machinery, might be taxed under the head of machinery. The amendment is in accordance with the spirit of the clause, and I do not anticipate any opposition from the Ministry or from honorable senators. It must appeal to every honorable senator as being a fair and just provision that when an article is admitted at a certain duty, all the parts of that article shall be admitted at the same rate.

Senator PLAYFORD

- The honorable senator who has just resumed his seat appears not to have read the clause. We all agree with him that if a complete article is not liable to duty the parts of which it is composed should never be liable to duty. The clause does not say that in such a case the parts would be liable to duty. The clause refers to only dutiable goods, and, therefore, there is not the slightest necessity for this amendment.

Senator CHARLESTON(South Australia). - In South Australia the anomaly referred to has been perpetrated. Complete goods have been admitted free of duty, but parts of goods have been charged with the duty which could have been placed upon them if they had belonged to something else. I am anxious that the committee should protect the citizens against such an imposition as the Treasurer of South Australia has imposed upon the citizens of that State. Suppose it is said that certain parts of machinery shall bear a certain duty-say 25 per cent. If those parts are imported by themselves the collector may say that the duty shall be paid upon them. But the importer may say that the particular parts are only portions of a machine that would be admitted duty free if it came in complete. The collector would reply "No," and class them as machinery entitled to pay duty. This would create a very great injustice. I contend that so long as the importer can show that the goods are parts of a complete article which would be imported duty free, no duty should be charged upon the parts.

Senator CLEMONS

- I quite agree with what Senator Charleston has said, and I am confirmed in that belief by what has fallen from Senator Playford. I find that in the model State of South Australia, owing to the omission of such a provision as that now proposed, a very great amount of injustice has been done to importers.

Senator Playford

- No ; it is all pure imagination.

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Senator CLEMONS

- I see no reason for the Commonwealth committing an error into which South Australia has fallen. The proposal only means that the work of constructing machines is enabled to be done locally. Surely it is not desired to put a duty upon the parts of machines when the complete machine constructed elsewhere is allowed to come in free? The only objection to the clause has been raised by Senator Playford, who holds that it is unnecessary. I do not think the clause is surplusage. Take the case of a cream separator. A part of such a machine may be imported, and the collector of Customs may be unable to place it as being a part of a cream separator.

Senator Sir William Zeal

- What about the bill of lading %

Senator CLEMONS

- It is quite possible that the bill of lading would not accurately describe the article so as to let the officer know.

Senator Sir William Zeal

- The bill of lading would say that it was part of a cream separator.

Senator CLEMONS

- Every one wants to establish work in the Commonwealth. We should, therefore, be extremely careful to let machinery be introduced in parts so that labour may be engaged in putting them together.

Senator O'CONNOR

- Senator Playford has given a good reason for believing that this amendment has no proper place in this Bill at all. Senator Charleston has got hold of the wrong Bill. When the Tariff Bill comes before the Senate, that will be the time to make a provision of this kind. It is possible that we may be committing an absurdity and a contradiction of the Tariff by passing such an amendment. Let me give an instance. As I understand, in Tasmania, axe handles are subject to duty. It is considered that axe handles can be manufactured in Tasmania as well as they can be imported. But tools are free of duty. At one time an attempt was made to put handles into the axes, and introduce the whole tool free of duty, inasmuch as it was contended that the axe handle was part of the tool. But the Government of the State very properly decided that the handles in the axes must pay duty. Under such a condition of things Senator Charleston's amendment would prevent the Government charging any duty upon the handles in the axes. That illustration seems to me to show conclusively that if we are to provide that the whole and the parts of any machine which is free shall be free, that provision should be made _ in the Tariff itself. Those who are

familiar with the ordinary provisions of a Tariff Bill will know that if there is a free list it will be likely to provide for " machinery and all portions thereof." That cannot be provided for here without creating the greatest possible anomalies, but in the Tariff each particular case can be provided for. For these reasons I hope the committee will reject the amendment.

Senator STEWART

- It appears to me that the whole clause is out of place. According to the reasoning of the Vice-President of the Executive Council himself, the matter ought to be discussed when the Tariff is before honorable senators. I shall vote against the clause because it contains a provision that ought to appear in the Tariff Bill.

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Postmaster-General

Senator DRAKE

. - I think the real reason for objecting to this proposed amendment is that it is the policy in a great many States to allow certain kinds of machinery, which cannot probably be produced in the State, to come in free. But this machinery may include iron castings, we will say, which can be produced in the State, and which, therefore, are subject to duty. If we are going to say that, because the complete machine comes in free of duty, therefore we must accept a number of articles forming portions of a machine, it will mean leaving the door open for the importation of a number of articles which can be made in the State, and which are subject to duty. Mention has been made of reapers and binders. In some of the States these machines are allowed to come in free. A reaper and binder requires certain wheels, which can be made in the State. In many cases there is a duty imposed for the express purpose of enabling those wheels to be made in the State. But, by a provision like this, we should enable persons to import a large number of wheels for reapers and binders free of duty, without any guarantee that they would not be used for other purposes, and come into competition with the local article, which is being produced under the operation of the import duty. I cannot see any reason for proposing this amendment, because I cannot see what other operation it will have than that I have mentioned. The whole of a machine comes in free, so that if a person wishes to import any number of machines he can introduce them free. But why let him introduce portions of machines, as, for instance, wheels for reapers and binders, which may very well be made in the State ? The first sub-section of the clause allows parts to come in. It makes express provision for what is called " assembling " - for putting the parts together. Therefore, where is the necessity for this proposal ?

Senator MILLEN(New South Wales.)I want no other illustration than that given by the Postmaster-General to induce me to support the amendment.

Senator Drake

- Because the honorable senator is a free-trader.

Senator MILLEN

- That remark raises the fiscal question at once. We now know that under the guise of a machinery Bill the Government are fighting the fiscal question all the time.

Senator O'Connor. - Under what guise is the honorable senator fighting?

Senator MILLEN

- I want to have a Bill which will do what the Government say they want to do. Let me take the illustration submitted by the Postmaster-General. Suppose reapers and binders are

Allowed to be imported free of duty. What Senator Charleston wants is such a provision as will insure that the parts and wheels which form portions of such a machine as that, although coming in separately, shall come in free of duty. According to the Postmaster-General's illustration, those parts would only come in free if they were actually put upon the machine when it was introduced'; but if for the sake of cheap packing, and to save space, they were brought in separately, they would have to pay duty. Senator Charleston wants to provide that parts shall come in free just as if they came in a bigger package.

Senator Playford

- So they would.

Senator MILLEN

- If Senator Playford is right, the Postmaster-General is wrong. The next point is this : If the Tariff is the right place to determine such a matter as that raised by Senator Charleston, it is equally the right place to

determine the apportionment of duty, and whether goods are dutiable ; in which case the whole clause should stand out until the Tariff is introduced. If the clause is to remain, the amendment cannot by any process of reasoning be held to be out of place.

Senator CLEMONS(Tasmania). - The Vice-President of the Executive Council should either consent to this amendment, or admit that the whole clause is not wanted. Senator Stewart's argument seems to me to be unanswerable. The contention of the Vice-President of the Executive Council is simply that we ought not to introduce on this Bill a discussion on goods that are to be free of duty, although it is perfectly competent for us to discuss the question of goods that are dutiable. If the honorable and learned Senator's contention is right, that to make a provision that certain goods are to come in free is an encroachment on the Tariff Bill, then this clause ought to be in the Tariff Bill and not here. I shall wait with some curiosity to hear how Senator O'Connor will extricate himself from the position in which Senator Stewart has placed him.

Senator CHARLESTON(South Australia). - We are, I think, entitled to Senator O'Connor's support in this matter. It is quite evident that what we are contending for is necessary for the fulfilment of what this clause proposes. When we can import machinery that complete is free of duty, we should be able to import any . parts of that machinery free of duty, and this clause, as it stands, does not provide for that. Take the case of axes. If an axe is to be imported free of duty complete as a tool, then the handle and head, if imported separately, should also be admitted free of duty.

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Senator MCGREGOR

- This is a much more serious question than some honorable senators may suppose. It has been suggested that the clause raises the question of protection and free-trade, but nothing of the kind is involved in it. It is simply a machinery clause for the purpose of enabling the Customs authorities to collect duties equitably. The Federal Parliament may, in its wisdom, impose a duty upon a machine, for instance, which is composed of two or more parts, and if these parts are attempted to be introduced separately under the first portion of this clause, the Customs authorities are given power to apportion the duty to the different articles, so that no evasion of the Tariff we may afterwards frame can be brought about. Again, under the second part of the clause, where one portion of an article or a machine is subject to an ad valorem and another to a specified duty, and the parts are being introduced separately, the authorities are to have power to adjust the duties payable according to the intention of the Federal Parliament in passing the Tariff Bill. What Senator Charleston has attempted to introduce is simply an evasion clause. Take the case of a reaper and binder which may be introduced into the Commonwealth free of duty as a complete machine. The complete machine does not mean a complete reaper and binder, and 100 cogwheels that may be used just as well for a winnowing machine. In importing a hundred reapers and binders we might import a hundred thousand portions of a reaper and binder that might be applied to the construction of other machines. This is a machinery Bill drawn upon proper lines, so as to give the Commonwealth Customs department power to administer the Tariff when it is in their hands. When the Tariff comes before us, if we wish to say that a reaper and binder should come in free we should do so. If we wish to say that a winnowing machine should pay a tax of 10 per cent, or 1 per cent., we shall do so. If we want all the wheels within wheels of a reaper and binder to come in free we shall say that also, and then the Customs authorities will know what they are doing.

Senator Stewart

- No; they will have two Acts to work under.

Senator MCGREGOR

- This Bill imposes no duty ; it only gives the power to collect duty when it is imposed.

Senator PEARCE

- I intend to vote for the new sub-clause, and, if the amendment is carried, I shall vote against the clause as amended, because I believe, with Senator Stewart, that this is not the place for any of these provisions. If a complete article is admitted duty free in the interests of those who have to use the free goods, it is necessary also to say that the parts of the free goods shall be admitted duty free. That is only logical.

Senator Sir JOHN DOWNER

- It appears to me that if there is a clause in the Bill which is clearly and unmistakably necessary, it is this

clause. It has nothing whatever to do with free-trade or protection. It only provides that if goods are made dutiable, we shall have power to prevent frauds on the revenue by any importations of those goods in detail or in sections, so as to evade the duty which ought to be paid. If there are no duties, the clause does not apply, but if there are duties everybody, who wants to conserve the fair carrying out of whatever Tariff we pass, should take care that we do not allow that to be done indirectly which we do not allow to be done directly, and that a machine which, imported complete, has to pay duty, shall not be imported in detail, and so evade the payment of duty. This clause creates no duty, but it simply says that if there is a duty imposed by the Tariff then there must be no tricks to evade the duty.

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

Ayes 10

Noes 11

Majority 1

Question so resolved in the negative.

Amendment negatived.

Senator Stewart

- I wish, sir, to ask your ruling on a point of order, as to whether this clause comes within the scope of the Bill. This Bill practically fixes the Tariff. Clause 135 says -

Whenever any dutiable goods are composed of two or more separate parts any part though imported by itself shall if so directed by the Minister be chargeable with duty at the rate applicable to the complete goods.

Is that not fixing the Tariff? I believe it is.

Mr Playford

- We could not collect anything on that.

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Mr Stewart

- Suppose the duty on a complete machine is fixed at 10 per cent, then, according to this clause, the duty on parts of the machine must be 10 per cent. I contend that we have no right to do that in a machinery Bill. It fixes what duty shall be charged upon parts of a machine, and that should be left to Parliament in dealing with the Tariff. Parliament may decide that the duty upon a complete machine shall be 25 per cent., while the parts may be admitted on a duty of 10 per cent. ; but, if this is passed, when the Tariff comes up for consideration in the House of Representatives they will be face to face with this provision, and if the two Bills are passed the officers of the Customs will be face to face with this provision. The Tariff may say one thing and this Bill say another.

The ACTING-CHAIRMAN. - The honorable senator raises no point of order which I am called upon to decide. The clause appears to me to be absolutely a machinery clause, applicable to all Tariffs which may be passed.

Senator O'CONNOR

- I cannot understand how there can be any objection to retain in a machinery Bill a clause which is contained in the law of many of the States, and which is inserted for the purpose of preventing fraud, and enabling the Minister to fix a duty in cases where it may be very doubtful what duty ought to be applicable. What we are dealing with is a Bill to enable the revenue to be collected effectively. We ask that a number of powers shall be given to the Customs-house officials to enable them to collect the duties effectively. We put in the Bill a series of clauses which it has been recognised by the practice of other States are necessary for collecting the revenue. Yet, when revenue is a matter of such immense importance to the Commonwealth, we find senators attacking a clause of this kind and wishing to strike it out, and therefore neutralizing our efforts to collect this revenue effectively. What reason has been given for omitting the clause? Senator Stewart gave as a reason that we are attempting to impose taxation. It is quite obvious that the clause imposes no taxation. It stands on exactly the same footing as a number of provisions which are necessary for the protection of the revenue. Who is it that suffers by the grant of a power of this kind ? It must be admitted that the revenue gains. The only person who would benefit by the omission of the clause is a fraudulent importer - an honest trader has nothing to fear from it. We ought to be very careful in taking upon ourselves the responsibility of striking away safeguards for the collection of revenue which it has been admitted by persons who have administered the Acts in different States, are

necessary ? If any loss of revenue or fraud should result, the responsibility will be on those who, without any reason, and in a light and airy fashion, and for the benefit of no one, threw away safeguards which those who understand this business have over and over again deemed to be necessary. A similar power is to be found in the law of Western Australia, Tasmania, Victoria, New Zealand, and, I think, South Australia.

Senator STANFORTH SMITH

- The position taken up by Senator O'Connor is not a very logical one. Senator Charleston, in his amendment, did not suggest any alteration or imposition of a duty ; he simply desired that certain parts of a machine should come in at the same rate as the machine itself. If we read clause 135, we shall see that the parts of an article are to come in at the same rate of duty as the article itself. That is an exactly analogous provision, and yet we have Senator O'Connor saying that Senator Charleston's amendment should not be inserted because it states the rate at which certain things shall come in. The clause imposes exactly the same conditions. I agree with Senator Stewart that it should not be in the Bill. It might be the wish of Parliament at a later stage to impose a lower duty on certain parts of a machine than on the whole machine, and if Senator Charleston's amendment should not be in the Bill, then undoubtedly the whole clause should not be in it.

Senator CHARLESTON

- The whole of Senator O'Connor's argument was quite as applicable to my amendment as to the clause we are discussing. If it was out of place for me to insert what was only an instruction to the collector, then it follows that the instructions given by this clause are also out of place. I cannot believe that my sub-clause was out of place, nor do I believe that these two sub-clauses are out of place, but to follow the logic of Senator O'Connor we must say that the whole clause ought to be struck out. All the logic is with Senator Stewart.

Clause agreed to.

Clause 136 (Duties on condensed articles).

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Senator Sir FREDERICK SARGOOD

- The clause provides that essences and concentrations are to be liable to duty, according to the quantity of dutiable goods into which they may be converted. It is necessary, in order to ascertain what quantity can be obtained, to provide for a standard, and therefore, following the provision in the Victorian Act, I move -

That the following words be added to the clause: - "And according to a standard to be prescribed."

Amendment agreed to.

Clause, as amended, agreed to.

Clause 144-

If any dutiable goods which are included in the report of any ship shall not be produced to the officer, the master or owner of the ship, or the owner of the goods, shall on demand by the collector pay the duty thereon as estimated by the collector, unless the goods are accounted for to the satisfaction of the collector.

Senator Major GOULD

- The goods may not come under the control of the owner, but may still be on the ship or in a bond. It has been suggested to me that the words " or the owner of the goods " should be omitted, leaving the responsibility on the master or owner of the ship, if the goods are not produced on demand. It may not be within the power of the owner to produce the goods, and it would be unreasonable to render him liable to a penalty in that case.

Senator O'CONNOR

- Where goods have been reported in the report of a ship, the duty of the Customs officer is to verify that statement. If the goods are not there the clause puts on the master or the shipowner or the owner of the goods the responsibility of paying the duty. Of course, they do not each pay the duty. A choice is given to the collector to make either the master or the ship-owner or the owner of the goods liable to pay the duty. If the goods have come under the control of their owner, that is a proper case in which to make him liable ; but if they have not come under his control, that is a proper case in which to make the master or the owner of the ship liable. It must be assumed that the collector will do justice, and will not make the wrong

person liable. If we do not give this power, the captain may say - " I am not responsible. The owner was here and he took charge of the goods ; I have not seen any more of them." Would it not be wrong to make the captain liable for the duty in those circumstances 1 We must leave it to the collector to decide in particular circumstances which of the three it is fair to make liable for the duty.

Senator Sir FREDERICK SARGOOD

- I entirely concur in what Senator Gould has stated. It occurs not very frequently that goods are short-shipped from the docks after they have appeared in the manifest. Apparently a manifest has goods for our firm, but one case is short. We have the invoice, and we have passed entries, believing that it was on the ship, but, as a matter of fact, it was shut out, and is either lying in the docks in London or is coming- out by another ship. Surely the party who neglected to bring out that case - the ship-owner - is the one who should suffer any inconvenience or loss.

Senator O'Connor

- And he is the person who would be made to pay.

Senator Sir FREDERICK SARGOOD

- Under the Victorian Act he would ; but if this clause is passed, in nine cases out of ten the merchant will be called upon to pay, because he can be most easily got at.

Senator O'Connor

- He has a remedy against the owner of the ship.

Senator Sir FREDERICK SARGOOD

- The owner of the ship has gone. If the captain has not been able to deliver the goods he can account for them to the satisfaction of the collector, and there is an end of it. He can turn up his books and show that the goods never came on the ship, and although the merchant has the invoice and the bill of lading, still the goods are not in the State. It does not occur very frequently, but it occurs one or twice in each season, and it is unfair that the innocent merchant, who not only does not get his goods but loses the chance of selling and making a profit on them, should be called on to stump up the money.

Senator O'Connor

- That would be quite right if he was the only one made liable, but inasmuch as we make the others liable, the honorable senator may rely upon it that the Customs officials will do what is fair.

Senator Sir FREDERICK SARGOOD

- I am not so sure that they would, and I have had more experience of them than my honorable friend has had. They would do exactly what he or I would do - go for the the man from whom the money could be got most easily. The clause should be struck out.

Senator Major GOULD(New South Wales). - I hope the Vice-President of the Executive Council will see his way to permit the omission of the words referred to, especially after the explanation given by Senator Sir Frederick Sargood. I move -

That the words " or the owner of the goods " be omitted.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 146 -

Samples of duty-paid goods, or goods the produce of Australia sent out of Australia, may, subject to any prescribed conditions, be re-imported or brought back to Australia without payment of duty.

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Senator Sir FREDERICK SARGOOD

- The marginal note of this clause refers to samples. .But, as the clause is drawn, it may refer to "goods, the produce of Australia." These goods are intended to be re-imported without paying duty. It seems to me that there needs to be a transposition of words to make the clause read -

Goods the produce of Australia, or samples of duty-paid goods sent out of Australia.

This matter has been submitted to experts at the Customs, and they are desirous that the transposition I suggest should be made-

Senator O'CONNOR

- I do not object to the amendment suggested by Senator Sir Frederick Sargood, who has correctly interpreted what is the intention of the clause.

Amendments (by Senator Sir Frederick Sargood) agreed to -

That the following words be inserted at the beginning of the clause : - " Goods the produce of Australia, or."

That the words "goods the produce of Australia," lines 1 and 2, be omitted.

Clause, as amended, agreed to.

Clause H7 -

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

Senator MILLEN

- This clause provides that where an agreement may be in existence for the sale or delivery of certain goods, on the imposition of the Tariff the seller of the goods, if he has paid the duty, may charge it on to the price at which he has contracted to deliver them. But, on the other hand, the purchaser may, in the event of there being a reduction of duty, deduct from the price the difference caused by the alteration from the agreed price. The practice has been in New South Wales, where such a state of things has occurred, that by consent of either party the agreement may be broken, and by the amendment which I intend to propose the same may be done under the Commonwealth. I move -

That after the word "agreement," line 6, the following words be inserted : - " Maybe abrogated at the option of either party."

Senator O'Connor will see that if the clause is passed into law in its present form such a state of things may occur as the following : - A merchant has, we will say, entered into a contract to deliver 5,000 of any particular article. He has 1,000 of the articles already out of the bonded stores. They are duty free. His business then requires him to take out of bond and pay duty on the other 4,000. When he comes to determine the price that he will charge his customers for the articles upon which he has paid duty, the trouble commences as to whether the particular article that is supplied to a particular customer is the one upon which duty has been paid or not.

Senator O'Connor

- Does the honorable senator mean that either party should have power to nullify the agreement?

Senator MILLEN

- Either party should have power to break it if he so wishes, or if that be not done, one or other of the courses mentioned in the latter part of the clause must follow. But if my amendment is agreed to, those other provisions may as well drop out. I can understand why the clause was framed. It was to enable a trader who has had to pay duty to pass it on, and where no duty is imposed on an article which was formerly taxed to shield the purchaser from the payment of duty. It will be seen at once that in the case I have mentioned, where a merchant has agreed to supply a certain number of articles, and where he has a certain number of them free of duty and has to take out others and pay duty upon them, he has to apportion the duty among the customers to whom he supplies the articles. Each one of the customers will naturally say that he insists upon having the articles upon which no duty has been paid. If the duty were reduced by the Federal Parliament the position would be reversed. Each receiver of the article would insist on getting the benefit of the reduced duty, while the merchant may have paid a higher duty on half the goods he may have to deliver.

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Senator O'CONNOR

- I am afraid that the amendment proposed by Senator Millen would lead to a great deal of confusion in business. The proposals of the clause are very common in all Customs Regulation Acts, and* the object is - that the ordinary course of business shall be interfered with as little as possible by Tariff alterations. According to this clause the passing of a new Tariff, with either increased or lessened duties, will have no effect whatever on contracts for the sale of goods. If there is an increase of duty the price will be added to the goods, and if there is a decrease it will be deducted from the goods.

Senator Millen

- I know of some contracts that have been running for two years and were made before a new Tariff was anticipated.

Senator O'CONNOR

- It is always open for parties to make provision for such contingencies as this ; and the probabilities are

that in contracts made, that provision will have been considered. If the parties are not satisfied to take the usual terms that are provided by this kind of clause, they will probably make an express provision for the purpose. But I think the honorable senator will find in the majority of cases that provision is made in the contract to meet such cases. There are, 'no doubt, old contracts where no provision has been made in writing. Then the only alternatives are, either to allow no differences to be made in the contract except the addition of the duty to the price, or the reduction of the duty from the price ; and the other is the way proposed by Senator Millen, to give the option to either party to annul the contract altogether. But that is not a fair provision. A contract, as Senator Millen says, may have been in existence for two years. The rights of parties may have been acted upon under the contract. Goods may have been delivered under it. It is unfair under those conditions to abrogate the contract because there has been an alteration in the duty. A provision of that kind in a statute would simply throw mercantile contracts into the utmost confusion.

The ACTING-CHAIRMAN - Although I cannot rule that this amendment is out of order, I think it is not one that should be passed, It interferes with the rights of contracting parties.

Senator MILLEN(Now South Wales).I do not know how far the Chairman's statement is an expression of opinion from him as Chairman, but I think it is the first time I have ever heard a Chairman express an opinion of that nature before the matter has been brought formally to his notice. I do not propose to press the amendment, but the matter is not quite as simple as stated by Senator O'Connor. He assumes that on the imposition of duties there is nothing to be done, but to add to the price of articles, or, if there is a reduction of duties, to deduct from their price.. But the position is that the merchant may have paid some portion of the duty before the Tariff alteration takes place, and his difficulty is to prove to his customers that he has paid duty on the particular article that he delivers to a particular customer. The merchant has paid no duty on 500 bales of material, and he has to pay duty on 500 bales under the new Tariff. Then he has to distribute the duty which he has paid on the 500 bales amongst, say, five customers. Every one of them will insist that the bales supplied to him are those upon which no duty has been paid. The difficulty is a considerable one from the merchants' point of view, but I can realize the objections pointed out by Senator O'Connor, and am content to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause agreed to.

Progress reported.

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22:10:00

Senate adjourned at 10.10 p.m.