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1901-09-06

Senate.

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

QUESTIONS

PUBLIC SERVICE REGULATIONS

The PRESIDENT

- I do not think the first of Senator Dobson's questions on the paper is in order. It is asking for an opinion, and it is distinctly laid down in the standing orders that honorable senators shall not question Ministers of the Crown on matters of opinion. If the opinion of the law officers of the Crown is required, the proper way is to pass an address to the Crown. I call upon the honorable senator to omit question number one.

Senator DOBSON

- In accordance with your ruling, sir, I ask the Postmaster-General the questions in the following form : - Does the Minister intend to inquire into the breaches of regulations committed under the Public Service Act of Victoria as set forth by the

Argus of the 2nd inst., upon the authority of the Deputy Postmaster-General, alleged to have been committed by certain officers referred to as 1, 2, 3, 4, and 5 in the said newspaper, and reprimand or punish by fine such of the officers (if any) who shall at such inquiry be proved to have broken any of the regulations?

Does the Minister propose to advise the Governor-General in Council to make regulations to insure the good conduct and discipline of all officers of transferred departments pending the issue of regulations under any Public Service Act which may be passed, and in such temporary regulations will he provide that any officer applying or making complaint to any person other than his Minister (and then only through the permanent head of his department) concerning his position in the service or any matter in which he is personally interested, shall be punishable for a first offence by a fine, and for a second offence by disrating and consequent reduction of salary ?

Will the Minister table a copy of the report furnished by the Deputy Postmaster-General in reference to his published statement, and of all correspondence relating thereto ?

Postmaster-General

Senator DRAKE

- The whole matter is now under consideration, and will be dealt with before the next sitting of the Senate, when I shall be able to answer the honorable senator's questions.

TRANSFERRED OFFICERS

Senator Lt Col NEILD

asked the Vice-

President of the Executive Council, upon notice -

How many officers were transferred from the public service of Victoria with a statutory right to a pension from the consolidated revenue of that State?

Under what State Act do they hold their pension rights, and what contribution, if any, did they make thereto ?

Is the Commonwealth liable to pay these officers a pension in virtue of their federal services ?

Are they, and if not, will they be required to contribute to a federal Superannuation fund ?

How many officers were transferred from the public service of New South Wales with pension rights ?

Do any of them possess a statutory right to a pension from the consolidated revenue of that State; and, if so, how many?

Have others any guarantee that the civil service superannuation fund will not collapse before their conditional claim to a pension can mature ?

Is the Commonwealth liable to pay these officers a pension in virtue of their federal services ?

Are they required to contribute to a federal superannuation fund, and, if so, by what authority?

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Vice-President of the Executive Council

Senator O'CONNOR

- The answers to the honorable senator's questions are as follow : -

About 575.

54 Vic, No. 1133. No contributions were made, but the right of pension was doubtless taken into account when fixing the remuneration.

Yes, only for the period they are federal Officers.

They are not at present contributing, but the whole question will receive attention when the Public Service Commissioner is appointed.

The information will be obtained.

Yes; the information will be obtained.

There is no other guarantee but the good faith of the State.

Yes; as in answer No. 3. 9. I understand that pending full consideration of the matter officers who were at the time of transfer contributors to the New South Wales Superannuation fund have been called upon to continue their payments.

DISTRIBUTION OF FEDERAL EXPENDITURE

Senator CLEMONS

asked the Postmaster-General, upon notice -

If he is aware that contrary to the reply made by himself to a question asked by Senator Pulsford on August 2nd, the monthly distribution of Federal expenditure is still not being made on the census returns, but on the population estimates of the end of 1899, and that the State of Tasmania has now been overcharged more than the total of £500.

Senator DRAKE

- The distribution is still being made on the population estimates as mentioned in the reply of 2nd August. The statisticians have not yet agreed on the figures of the census. Until such agreement is arrived at it is impossible to say how much any State has been overcharged, but on the agreed figures overcharges will be adjusted.

CUSTOMS BILL

In Committee (consideration resumed from 5th September, vide page 4560):

Clause 50 -

No spirits, opium, tobacco, snuff, cigars, or cigarettes shall be imported except in packages of the prescribed size.

Penalty, £100.

Senator PULSFORD

- The word "size" refers only to measurement, and, as opium, tobacco, snuff, cigars, and cigarettes are dealt with according to weight, I move -

That the words "of the" be omitted, with a view to insert in lieu thereof the word "as," and that the word "size" be omitted.

Amendment agreed to.

Senator PULSFORD (New South Wales). I move -

That after the word "prescribed" the following words be inserted - "and the prescribed package shall in no case exceed the lowest minimum prescribed in any of the States at the commencement of the Act."

In Victoria, South Australia, and Western Australia 60 lbs. is the minimum weight of a package of tobacco, snuff, cigars, and cigarettes, but in Queensland the minimum weight is 50 lbs., in Tasmania 40 lbs., and in New South Wales 25 lbs. If under the new conditions the comptroller of Customs were by regulation to say that the package should not exceed the Victorian minimum, then the packages which have been used in Tasmania, Queensland, and New South Wales would be illegal, and fresh shipments would be liable to a fine of £100, and, under clause 220, to forfeiture. My amendment means that any package may be imported which is not below the New South Wales minimum. States which now allow 60-lb. packages to be imported may, if they so desire, continue to allow them, but the people of New South Wales will not be penalized if they continue to import 25-lb. packages. It will also meet the case of Tasmania and Queensland.

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Vice-President of the Executive Council

Senator O'CONNOR

. - No doubt it would be possible to administer the Act in such a way that if the minimum were to be fixed

higher than the New South Wales minimum, injustice would be done to that State, but my honorable friend will recognise that such administration would be so outrageously unfair that it is impossible to suppose that any Minister responsible to Parliament would be guilty of it. Under the regulations which have been prepared under this portion of the Bill the minimum fixed is below the minimum of some of the States, and in no case is it higher than the lowest minimum in any of them, for the express reason that it has been determined that every State shall be treated fairly. The principle of the amendment has been and will be adopted in the regulations. But if we state in the Act that the minimum is not to be below the minimum in any of the States, it will render it impossible for the Customs authorities to make those convenient arrangements in regard to importations which sometimes may be found necessary. For instance, it may be found that there may be ways of importing and packing these things under certain safeguards which will make it quite consistent with a full care of the revenue that the convenience of shippers should be studied, and they should be allowed to import in small packages. If the amendment is carried I do not know exactly in what position the Customs authorities will stand. It should be left to the fair dealing of the Commonwealth with all the States. There is no possibility of any harm being done now. If there was any intention to make an alteration, of course full provision should be made to deal with the existing condition of tilings by providing for packages on the water, or in transit or under contract. But that is not necessary, because the regulations as actually prepared carry out my honorable friend's view. If it were carried out in any other way we would stereotype things as at the date of the passing of the Act, which I think would be undesirable.

Senator PULSFORD(New South Wales). - It is clear to the committee that a very important matter is being dealt with by regulation instead of by legislation, but for the reasons stated by Senator O'Connor, I ask leave to withdraw my amendment, on the distinct understanding that the regulations will clearly obviate any such risk as I have indicated.

Amendment, by leave, withdrawn.

Clause, as amended, agreed to.

Clause 52a verbally amended and agreed to.

Clause 60 (Master of wrecked ship to report).

Senator PULSFORD(New South Wales). - I move -

That after the word "ship," line 1, the words "arriving from parts beyond the seas" be inserted.

I wish to make the clause refer only to ships arriving. It is only the "inward" manifest which is spoken of, and therefore we do not require an outward-going ship which is wrecked to report.

Senator O'Connor

- Why not?

Senator PULSFORD

- An outward going ship could not give an inward manifest.

Senator O'Connor

- Whether the ship is going out or is coming in, if she is wrecked there ought to be information given as to her cargo.

Senator PULSFORD

- If she is outward bound, her clearance and all the details of her cargo will be in the hands of the Customs authorities.

Senator O'Connor

- What we want is a manifest of the cargo, whether the vessel is inward bound or outward bound.

Senator Clemons

- Strike out the words "an inward" before the word "manifest."

Senator O'Connor

- I have no objection to that.

Senator PULSFORD

- I do not understand why the Customs should want to be supplied with details which they already possess, but if the Minister thinks that desirable, I have no objection. I therefore ask leave to withdraw my amendment, with a view to the striking out of the words "and inward" and the substitution of the word "a."

Amendment, by leave, withdrawn.

Amendment (by Senator Pulsford) agreed to -

That the words " an inward" be omitted with a view to the insertion of the word "a."

Clause, as amended, agreed to.

Clause 94 -

Warehoused goods may be regauged, remeasured, reweighed, or examined by the officer, either by direction of the collector, or at the request and expense of the owner, and duty shall be payable according to the result, unless the collector is of opinion that any loss shown is excessive, in which case the duty shall be paid on the original entry, with any reduction which the collector may see fit to allow.

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Senator CHARLESTON

- I move -

That the words " and expense " be omitted.

I called the attention of the committee to this clause on a previous occasion. It has regard to the regauging and remeasuring of goods in warehouses. I felt confident that if I could bring evidence to show honorable senators that lockers do regauge, remeasure, and so forth, they would support me in striking out the words "and expense," for the reason that the licence-fee paid by the warehouseman ought to cover all services done by the locker. When goods first enter a warehouse they are gauged and measured by an expert. The expert then places the measurement on the cask, takes samples, and tests the quality of the liquor. When the goods are required for home consumption, the owner notifies the collector, who may require to have the goods regauged and remeasured for the purpose of fixing the duty. It is the simplest process in the world for the locker to remeasure the quantity of liquor in the barrel, and the remeasurement is sent to the collector to be compared with the previous measurement. Seeing that the process is so simple, and that it is always done in South Australia by the locker, I fail to see, as also do the merchants and warehousemen of South Australia, why they should be called upon to pay twice for the work done by the locker. Since I previously discussed this subject I have visited a warehouse and seen the whole process gone through. I was informed that the locker always does the remeasuring and reweighing, and was shown how his work was checked by the records in the office, so that there is no possible chance of the Government being defrauded.

Senator Playford

- It is only when the owner of the goods makes a request for regauging that it has to be paid for. If he requests that it be done he should pay for it.

Senator CHARLESTON

- It must be done at the request of the owner, who is anxious to know what duty is to be paid upon the goods. But as the work is done by the locker, for whose services the warehouseman pays, why should he be called upon to pay twice ? While Senator Playford was Treasurer and Minister for Customs in South Australia, he never asked warehousemen to pay twice for the services of the locker.

Senator Playford

- If warehousemen asked me to have their goods regauged I should expect them to pay the expense.

Senator CHARLESTON

- But they pay for the locker, and in so doing they pay for his services however they may be rendered. For the benefit of the committee I will read some communications I have received from South Australian firms on the subject. The first letter is from Mr. George Ferguson, Customs and shipping agent. It is as follows :

-

Rethe proposed fee by Customs for regauging &c, this appears to me to be very hard for merchants, and also for bonded proprietors, as it will increase the cost of warehousing. As you are aware, the lockers have always done the regauging and reweighing in the past in the ordinary course of their work. That system always worked well, and a departure from it will only mean increased cost.

Senator McGregor

- There is no departure from it where it is necessary.

Senator CHARLESTON

- In South Australia the work done by the locker in regauging and reweighing has never been asked to be paid for when the firm already pays for the services of the locker. I have also a letter from Messrs. Gilbert Wood, Son, and Co., who say -

Heclause No. 04, Federal Customs Bill : - In perusing the above clause we notice it is the intention of the

Customs department to make a charge for reweighing and regauging, apart from the annual fee. For years past, as you are aware, this has been done by the locker in charge without any extra cost, except in cases where actual weights or contents are required for purpose of sale, and goods are left in bond. We trust you will strongly oppose this clause, as we consider the annual licence-fee should provide for all such work without extra cost to the proprietor.

There is also a letter from Messrs. Milne and Co., who say -

Because 94 of the Federal Customs Act, sought to be amended by Mr. Charleston : - We beg to point out that at present the regauging and reweighing are done efficiently by the locker in charge of the bonded store, and we see no necessity to employ an expert to do the work. We consider that the expense is fully covered by the licence-fee.

Then Messrs. Wilkinson and Co. write to a similar effect.

Senator O'Connor

- I appeal to the honorable senator's generosity not to read any more.

Senator CHARLESTON

- If the honorable and learned senator is satisfied, and will strike out the words to which I object, I shall not proceed.

Senator O'Connor

- I am willing to admit that the honorable senator can read twenty letters to the same effect.

Senator CHARLESTON

- I hope the honorable and learned senator is convinced that we ought not to impose upon merchants and warehousemen extra burdens, but should act fairly and squarely by them. We have heard a great deal about the tendency on the part of merchants toward dishonesty and defrauding the Government, but if we expect our merchants to be honest in their relations with the Government, they have a perfect right to expect the Government to be honest in dealing with them. I appeal to honorable senators not to impose this extra expense upon the owners of goods, and I earnestly hope that they will help me to strike out the words to which I object.

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Senator O'CONNOR

- This matter was thrashed out very fully previously, but I do not object to Senator Charleston bringing it on again now, if he has any new light to throw upon it. With all respect to him, it appears to me that he does not quite understand what this clause means. His friends in Adelaide have been needlessly apprehensive that some terrible calamity is going to fall upon them. I prefer to take the opinion of Senator Playford, who had the actual administration of the customs law of

South Australia for many years, that it is only in cases such as are plainly stated upon the face of this Bill - where for the benefit of the owner of the goods there is to be a regauging, a remeasuring, or an examination - that the owner has to pay. Why should the public of Australia pay because the owner of goods requests a remeasurement or a regauging ? It must be remembered that it is not simply the regauging and remeasuring that has to be done. If the goods are bulky, labour has to be employed to move them. It may be that the remeasurement has to be done by an expert. While he is engaged upon that duty, who should pay for his services ? If the remeasurement or reweighing is made by the direction of the collector, of course the Customs will pay for it, and that is stated in the clause. But where it is done by request of the owner, for his benefit, and in his interest, why should he not pay for it ? I do not think Senator Charleston has thrown any additional light upon the matter, and I trust that the committee will adhere to the clause as it stands.

Senator CHARLESTON(South Australia). - Senator O'Connor has not sufficiently explained to the committee why it is that this extra expense should be incurred by the owner. He says that the work may involve a great deal of expense and labour. But the owner practically pays for that in paying half-a-crown per ton for the goods being taken to the warehouse, and half-a-crown for them being taken out of the warehouse. Then he pays 3d. per ton per week for warehouse charges, which practically cover all the labour charges.

Senator O'Connor

- That charge would be incurred if the goods were never touched while they were in the warehouse. It is for the extra handling of goods that the honorable senator wishes the Customs to pay.

Senator CHARLESTON

- There are persons at the warehouse who are paid for that work. The owner -pays for all manual labour in the store. This Bill has already increased the burdens on the warehousemen of South Australia. We have increased the charge for a locker by £50 per annum. Hitherto the amount paid for a locker in that State has been £150 per annum, and under this Bill it is to be £200. Before, the charge for half the services of a locker was £75 ; now it is to be £100. In addition to that we are going to force the warehousemen to pay twice over for the services of a locker. Senator Playford practically admits that during the time he was Treasurer of South Australia the Government was defrauded, because they certainly did not charge for the services rendered by the locker in regauging, reweighing, and remeasuring That is practically what the honorable senator has said. The honorable senator knows that by agreeing to the clause as it now stands Ave shall be imposing burdens upon the people of South Australia which this Senate has no right to impose upon them.

Senator GLASSEY

- Senator Charleston has presented his case in an admirable manner, and is rightly anxious that no fresh burdens should be placed upon the merchants and traders of Adelaide. But supposing this work is done at the instance and request of the merchants, what will the cost be ? If it is such as will be likely to impose fresh burdens upon the merchants, the public at large must be prepared to pay for it. Supposing a merchant at Adelaide asks that his goods shall be regauged or remeasured. Some person will be brought in to do the work. It may take him half a day or a quarter of a day, or he maybe able to do it in an hour or in two hours, for which he may be paid 1s., 2s., or 4s. That is the amount which the merchants at Adelaide will probably have to pay for work done at their own request. I do not think that such a burden as that is of sufficient importance to be worth talking about.

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Senator Sir FREDERICK SARGOOD

- There is one other point to be considered, and that is that dealing, as we are now, with the Commonwealth as a whole, it is necessary that there shall be uniformity of practice throughout the Commonwealth. From what the honorable senator has said, the practice followed in Adelaide is not that followed in Victoria, Tasmania, New South Wales, and other States. They must either adopt the practice of South Australia or South Australia must fall in with the practice adopted by the majority of the States. After all it really amounts to very little indeed.

Amendment negatived.

Clause agreed to.

Clause 123 -

Ships' stores shall only be used by the passengers and crew, and for the service of the ship lifter the departure of such ship from her hist port of departure in the Commonwealth.

Senator O'CONNOR

- The amendment I propose to move is really to carry out what I think is the wish of the majority of the committee with regard to dealing with ships' stores, in the case of foreign or British ships coasting around the Commonwealth. I propose to insert, after the word " stores," line 1, the words, " unless entered for home consumption or except as prescribed." Then I propose to insert the -word " and " after the word " ship," line 2, so that the clause will read -

Ships' stores, unless entered for home consumption, or except as prescribed, shall only be used by the passengers and crew and for the service of the ship, and after the departure of such ship from her last port of departure in the Commonwealth.

The effect of that provision will be that with respect to ships' stores to be consumed in port, or from port to port, it will be open to the master or owners of the ship to enter the goods for home consumption ; or, if it is thought fit, a regulation may be made prescribing some other way in which the stores may be permitted to be used. The suggestion has been made in the Senate - I forget by whom originally, but several honorable senators have referred to the subject - as perhaps the most convenient way of settling the matter, and probably the modus vivendi that would be arrived at between shipping companies and the Customs would be that, instead of going to the trouble of making calculations as to the quantity of stores that would be required in a port, or in going from port to port, and also taking the trouble of sealing up goods, a charge of so much per head for passengers and crew might be agreed upon. These words - "

except as prescribed," will enable regulations to be made which will carry that out. The probabilities are that by consultation with the shipping companies, some regulations will be made which will enable a great deal of time to be saved, and the convenience of passengers and owners of ships to be consulted. It will be seen that if that is thought the better arrangement, the goods may be entered for home consumption either for the ship while in port, or while going from port to port. It seems to me that the provision proposed now will be sufficiently elastic to meet the convenience of ship-owners or masters and passengers, and at the same time it will conserve the revenue. I move -

That the words " unless entered for home consumption or except as prescribed" be inserted after the word "stores," line 1.

Senator PULSFORD

- It is almost enough to take one's breath away to find that a proposal which was originally made by myself in my second reading speech on the Bill, and which I repeated and pressed on the Government time after time, is now finally about to be agreed to by the Government in a very roundabout way. I regret we have not had time before this has been presented to us to form an exact opinion as to how these words will stand in relation to the succeeding clauses. I can only congratulate the Government on having at the latest hour taken steps to obviate a great difficulty, and I trust they will see that it does so effectually.

Senator Sir JOSIAH SYMON

- I think this is, as Senator Pulsford has said, a complete, though tardy, recognition of the extreme difficulty that will be experienced in carrying out this policy of seeking to levy duties of customs upon ships' stores in oversea vessels. There can be no doubt that the amendment suggested, and to which I think all honorable senators will feel disposed to agree, will afford an opportunity, at least, to the Government to endeavour to make what I may call friendly arrangements with oversea shipping companies, if they are prepared, to abandon their strict and just rights, in order that they may contribute to the Commonwealth exchequer in respect of duties of customs upon goods not otherwise liable to duty. The first part of the amendment is intended to enable an oversea ship - if she is foolish enough to do it - to make an entry for home consumption of stores on board which she may think she will consume during her stay in the waters surrounding Australia, and pay duty upon them. They will then, of course, be in the same position as if they had been dealt with ashore.

Senator McGregor

- What if she gets wrecked?

Senator Sir JOSIAH SYMON

- If she gets wrecked she will have paid duty upon goods that have never been consumed, as the great acumen of my honorable friend enables him to point out.

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Senator O'Connor

- They will be covered by insurance.

Senator Sir JOSIAH SYMON

- I hope so. I hope we shall leave to her owners something fairly and honestly, because we seem to be taking every rag once she gets into these confiscatory waters surrounding Australia. I think the second part of the amendment is much more important, because the words " or except as prescribed " enable the Commonwealth Government to enter into a bargain with a view to obviating all the inconveniences which have already been pointed out in connexion with the attempt to levy these duties. Whether it will be successful or not remains to be seen, but at any rate it will give the Government an opportunity of bargaining or compounding with these ship-owners if they are disposed to put their hands into their pockets to pay these duties. I feel that this is a recognition of the difficulty pointed out yesterday of enforcing the provision, as we lawyers say in invitum, against the shipowners. But I feel that the benefit to the Commonwealth in the duties recovered will be very small in the long run. There will be all the expenses and difficulties of investigation, but in view of the ship-owners abandoning what, I think, are their rights, this will be a facile way of getting a small contribution to the Commonwealth exchequer.

Senator Sir FREDERICK SARGOOD

- Just a week ago this amendment, or one very closely approaching to it, was circulated, and I must confess I was pleased with it, as it appeared to me to be the only practical solution of a very difficult

question. It is what I suggested to the Minister for Trade and Customs as the only practical way in which what is proposed could be done.

Senator McGregor

- Honorable senators are all wanting to claim it now.

Senator Sir FREDERICK SARGOOD

-I shall let the honorable senator have it if he pleases. What astonishes me is that it should have been proposed after the long debate we have had upon clause 184. I cannot but think that Senator O'Connor would have saved an immense amount of time if he had introduced this amendment a week or ten days ago. This will provide a means by which the question can be dealt with with a minimum of trouble to both the Customs and the ship-owners, and I believe that under it we shall get what we want, and that is duty upon goods consumed in the Commonwealth.

Senator McGREGOR

- I object to other honorable senators claiming this amendment when really, if honorable senators will recollect, it was Senator Walker who suggested it. That honorable senator is now very quiet about it, and I do not know whether he is ashamed of it or not.

Senator Major GOULD

- I am glad to find that Senator McGregor admits that the merit of the suggestion, whatever merit it may have, is due to this side of the chamber. I congratulate the Government upon having determined to make some sort of provision which will enable them to climb down very comfortably. The value of the clause lies in the words "except as prescribed." We know that there will be very little opportunity for the discussion of regulations that may be framed either in this House or in the other Chamber, and under those regulations, as prescribed, it will be perfectly competent for the Government to make the provisions of clause 184 absolutely nugatory. Of course the intention of the Government now is to have an adequate sum paid by the ship-owners, to cover the duty upon the goods which may be consumed, but at the same time the provision suggested leaves it open for the Government, if they think fit, to say that they have gone a little too far in regard to clause 184a, and to make amends to the ship-owners. There is no doubt that had this amendment been proposed earlier, it would have shortened the debate ; but it would not have stopped it altogether, because there would have been a debate on the great question as to the legality of doing what the Government desired to do. I do not propose to raise the question now, as I recognise that the committee have, by a substantial vote, declared in favour of the proposal.

Senator O'Connor

- This provision would be absolutely nugatory if it were not for the provision of clause 184. Both must be taken together.

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Senator Major GOULD

- Not as the clause is now proposed to be amended, but under the original provisions of the Bill. I do not propose to say anything in opposition to this amendment, which recognises the position of these overseas ships, and the difficulty the Government would have got themselves into if they had not adopted such a course as is now proposed.

Amendment agreed to.

Amendment (by Senator O'Connor) agreed to.

That the word "and" be inserted after the word "ship," line 3.

Clause, as amended, agreed to.

Clause 135 (Duty on parts).

Senator CHARLESTON

- I desire to make another effort on behalf of honesty on the part of the Government to insure that when an article is admitted free its parts shall also be free of duty. I move -

That the clause be amended by the addition of the words "when the complete goods are free of duty the parts of such goods shall also be free."

On a previous occasion I was defeated by one vote because a good many honorable senators, who, I am sure, would have supported the amendment if present, were away. Undoubtedly we shall have a large free list, and it is desirable when goods are on the free list that their parts shall also be considered free of duty. Supposing that a reaper, mower, and binder is on the free list, and that a machine is imported in

ports. Some cases may contain wheel gears and other things which may be considered as machinery or castings, liable to a duty of 15 or 20 per cent, ad valorem. Is it not obvious to every honorable senator that the parts of a machine should come in free as well as the machine itself? I only ask the Government to provide here that which I am sure they intended to do. For some reason or other they failed to give expression to what was in their minds. I appeal to Senator O'Connor's honesty, and to his sense of fairness, to insert this provision.

Senator O'CONNOR

- My honorable friend has a very happy way of addressing himself to this question as if it were perfectly new. We thrashed the matter out some time ago. I thought that he might be able to adduce fresh argument, but he has not carried his argument any further. The clause is exactly as the Government intend it to be. They have expressed their meaning with the most perfect clearness. The clause refers to dutiable goods, not to free goods. Free goods will be dealt with in the Tariff Bill. It is impossible here to lay down any hard-and-fast rule applying generally, without giving an opportunity of constant evasion. I gave the committee an illustration of axe-handles imported into Tasmania. Although a machine may be admitted duty free, we may be able to manufacture here the parts of that machine. Parts which may be used as portions of a free machine may be chargeable with duty just as in the case of the axe handles. We want to reserve ourselves free for a policy of that kind. That can be done if we leave such things to be inserted in the Tariff Bill, but if we lay down a hard-and-fast rule here it cannot be altered. Again, take the case of agricultural machinery, in which a number of cogs and wheels of different kinds are used. There are some wheels of a very common description which may be used for an agricultural machine, or a dozen kinds of machines. If these are introduced as parts of an agricultural machine, how are we to know that they will be used in that way? Thousands of parts may be so introduced, only to be applied to a different use. Illustrations might be multiplied, but I do not wish to take up further time.

Senator CHARLESTON(South Australia). - It is quite evident that what the Minister desires is to have some sort of deception in this provision. He says, if an article be admitted free of duty, and we can manufacture certain parts of it here, we should impose a duty on the importation of the parts. That is a violation of the true principle that ought to be laid down in a Bill of this character. If an article is admitted free of duty, and we encourage its importation in parts, we give a certain amount of work to our labourers and mechanics in putting them together. Unless we make this amendment we may have the goods brought here complete instead of in parts. I am surprised at the Government attempting to levy duty on the parts of an article which is on the free list. It is the duty of the Senate if possible to prevent such a thing being done. I earnestly hope that honorable senators will stand by me.

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Senator EWING

- If Senator Charleston will reconsider the position he will see that he is wrong. Free-traders or protectionists, we must see that the intention of the Tariff, whatever it is, is carried out. We must bow to the will of the majority. If there is a protectionist majority in both Houses there may be a difference in the Tariff between a complete machine and the portions of the machine which can be locally manufactured, the object being that the parts shall pay duty for protective purposes, and in order to establish a local industry. But if we provide here that when the complete machine comes in free the parts shall also come in free, we practically decide in a machinery Bill part of the policy of the Commonwealth. That I do not think is any part of the purpose of a machinery Bill. I trust that no discrimination of this kind will ever be carried out. This undoubtedly is not the proper time to decide what is to be the Tariff. It is manifest that many parts of machinery are applicable to numerous machines used in different trades. Cog wheels which are used for an agricultural machine might be used in dozens of other machines. The wheels of machines might be used for a variety of purposes, and although the Commonwealth in its wisdom might for certain reasons agree to admit a complete machine free, yet it might not allow the parts of it to come in without paying duty. I wish it to be clearly understood that I do not for a moment disagree in principle with Senator Charleston.

Amendment negatived.

Clause agreed to.

Clause 136 amended to read as follows, and agreed to :-

Duty shall be charged on all essences, condensations, concentrations, or preparations of goods liable to

duty according to the quantity or equivalent of dutiable goods into which such essences, condensations, concentrations, or preparations can be converted according to a standard to be prescribed.

Clause 149-

When any duty is imposed according to value -

The invoice shall be stamped by the collector with the Customs stamp, and shall be produced to the officer prior to the delivery of the goods for home consumption or for warehousing.

Senator CHARLESTON

- It has been pointed out to me that often goods are warehoused simply because the invoice is not obtainable.

Senator O'Connor

- Sub-clause (d) really meets that case.

Senator CHARLESTON

- Supposing the goods are wanted for home consumption right away, but the invoice cannot be produced, and the collector is satisfied to deliver the goods on payment of so much duty. The goods have practically to be warehoused, yet before they can be warehoused the invoice must be stamped according to this provision. It has been represented to me that goods are sometimes imported through the banks, and there is often a dispute between the buyer and the seller, while the bank holds the invoice and bill of lading. These goods are then often put into a warehouse pending the settlement of the dispute. It has been pointed out to me that if the goods were allowed to go into the warehouse it would facilitate the conduct of business, but that if the production of the invoice were required before warehousing a great deal of obstruction would be placed upon business. I suppose that this would not be quite so oppressive in Melbourne as it would be in South Australia, because the goods would be put in a Government shed, which is practically a bond for the time being. But where we have not these facilities the goods are put into a warehouse pending a settlement of the matters in dispute. Of course, if Senator O'Connor thinks that it will not interfere with the conduct of business in a place like Port Adelaide I must submit, but I have been assured that it will cause a great amount of inconvenience, and that it will be almost impossible to conduct business under it. I move - .

That the words "or for warehousing" be omitted.

Senator O'CONNOR

- There is not the least reason for alarm. There is no difficulty at all. The fullest powers are given in paragraph (d) that the Customs may be satisfied with any evidence that may be available. Any one who is acquainted with the practical working of the Customs will say that there is no difficulty.

Senator Sir FREDERICK SARGOOD

- Hardly a month passes but cases of this kind arise, and we have no difficulty about them. If we have not got an invoice we submit the best evidence we can, or give a guarantee, whereupon the goods are made available for home consumption, or go into the warehouse.

Amendment negatived.

Clause agreed to.

Clause 150 (Genuine invoice).

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Senator Sir FREDERICK SARGOOD

-I mentioned yesterday that a deputation had waited on the Minister for Trade and Customs with regard to my amendment upon this clause. The chairman of the deputation called upon me and stated that Mr. Kingston had gone fully into the matter with him, and left him under the impression that the Minister was favorable to the amendment, and would see Senator O'Connor in regard to it.

Senator O'CONNOR

- My colleague, the Minister for Trade and Customs, has not communicated with me in regard to the matter. After the Bill has gone through committee and is ready for final adoption, I will see him about it, and if he consents to an amendment the clause can be recommitted.

Clause agreed to.

Clause 173 -

Any owner of goods may comply with the provisions of this Act by an agent lawfully authorized being either a person exclusively in the employment of the owner or being duly licensed in manner prescribed.

Senator O'CONNOR

- An amendment is necessary in this clause, which is rather too far reaching in its present form. It is a very good rule to be followed in those places where there are Custom-house agents, and where the owners of goods may have a number of employes, of whom one may be detailed to look after the Customs business, that only authorized agents shall be allowed to transact business with the Customs, but in cases where goods may be landed at places where there are not licensed agents inconvenience may be caused. I therefore move -

That the word " being," line 3, be omitted, with a view to insert the following words : - "And in all places to which this limitation is declared by proclamation to extend, such agent shall be"; and that the word "being," line 4, be omitted, with a view to insert the words "shall be a Customs agent."

The clause will then read -

Any owner of goods may comply with the provisions of this Act by an agent lawfully authorized, and in all places to which this limitation is declared by proclamation to extend, such agent shall be either a person exclusively in the employment of the owner, or shall be a Customs agent duly licensed in the manner prescribed.

Senator Pulsford

- What is the meaning of the words " this limitation "?

Senator O'CONNOR

- The first part of the clause refers to an agent lawfully authorized, but in places where the proclamation extends to, that agent must be either a person exclusively in the employment of the owner or a duly licensed Custom-house agent.

Senator Major GOULD

- I understand the meaning to be that in a place like Melbourne or Sydney an authorized agent would be either a licensed agent or an employe of the owner of the goods, but in some out-of-the-way place any person could be allowed to act as agent.

Senator CLEMONS

- Does this clause mean that it is only in places that are declared by proclamation that an agent may be lawfully authorized by the owner of goods?

Senator O'Connor

- No; the word "limitation" explains itself. The first part of the clause is general. There is no limitation there. The latter part of the clause is a limitation.

Senator CLEMONS

- That is what I want to understand.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 203-

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

Senator O'CONNOR

- As this clause originally stood it read as follows : -

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

But the words " on demand " were struck out by the committee. The effect of the clause is now that power is given to arrest on sight without warrant when a Customhouse officer or police officer thinks that smuggling is going on, but that power must be exercised with the condition that the person arresting shall give a statement in writing of the reasons for the arrest. Of course, when the demand for reasons is made, one can understand it, and there is no difficulty in complying with the provision after the person has been arrested. But as the clause stands now, whether the person arrested requires a statement of the reasons or not, they have to be given. There is no necessity for the limitation. I propose that the committee should reconsider it, and either restore the words "on demand "or strike out the clause altogether. It is unworkable, and to a large extent neutralizes the power given by clause 202.

Senator Sir William Zeal

- Suppose a person is arrested on a frivolous charge.

Senator O'CONNOR

- Then the person arrested can demand the reasons.

Senator Sir William Zeal

- He may not know that he has the power.

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Senator O'CONNOR

- There are numberless provisions of the statute and the common law which a man is supposed to know.

The clause as it stands is quite useless, and I therefore move -

That after the word "shall" the words "on demand " be inserted.

Senator Sir JOSIAH SYMON

- This is a clause upon which we had a lot of discussion and a division. The committee decided that the words referred to should be struck out, in justice to a man who may be suddenly arrested, not for an offence committed, but on a suspicion on the part of a Custom-house officer that he has been guilty of an offence. All the clause as it stands provides is that the Custom-house officer who arrests - say a person, who may be stepping off a ship- on suspicion of having an extra quarter of a pound of tobacco in his pocket, shall give a statement in writing of the reasons for the arrest.

Senator Playford

- Which cannot be worth much to the fellow when he gets it.

Senator Sir JOSIAH SYMON

- But it is a protection to the liberty of the subject, and is a precaution which will make Custom-house officers careful. The officer will know the law. He is supposed to have the Customs Act at his fingers' ends. Customs officers, like other people, are liable to be carried away by momentary excitement, and may effect an arrest which on Calmer reflection they would not undertake. Senator O'Connor says that the clause as it stands will make the previous clause useless. The clause says that Customs officers may arrest persons on suspicion. I trust honorable senators will not stultify the Senate by restoring these words "on demand." If a Customs officer arrests any person on suspicion he will have formulated in his own mind the reasons for the arrest, and he ought to be prepared to put them in writing at once.

Senator PULSFORD

- - I cannot but express my regret that Senator O'Connor is willing to be the catspaw of Customs despotism.

Senator O'Connor

- Is that in order 'j I am not the sort of man to be anybody's catspaw.

The CHAIRMAN

- It is not in order.

Senator PULSFORD

- I withdraw the expression, and express my regret for having used it. I shall say I am exceedingly sorry that the honorable and learned senator is willing to assist the Customs to a power which will enable them so cruelly to disregard the liberty of the subject. I cannot help repeating what I have said time after time while this Bill has been before us, that there is in it a disregard of the rights of the people, which this Senate ought to be the first to reprobate and to try to avoid. I hope the Senate will insist upon the words taken out remaining out, and that the clause will still provide that an officer who chooses to take the very serious step of" arresting anybody on suspicion shall be required forthwith to give that man a statement in writing of the reason for his arrest-

Senator Lt Col Neild

- I desire to take a point of order on this amendment understanding Order 186, which says -

No question shall be proposed which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative.

This is a matter which has been determined already in the negative.

The CHAIRMAN

- In another committee. This is a fresh committee. It is perfectly in order.

Senator Lt Col Neild

- If you will permit me, sir, to state the case, I think,, with the greatest respect, that the question of the committee has nothing to do with it.. The question is as to the same session, and not as to the same committee. I do not care what may be in May on this subject, because we have a rule of our own which

overrides May. Where we have determined a practice for ourselves, it overrides the British practice. As to this being a fresh committee, I do not understand the phrase. This is a continuance of the business on the one measure. It might just as well be said that it is a fresh committee when we are dealing a second time with Supply. There has been no fresh committee. It seems to me that the phrase that this is a fresh committee is a novelty for which there is no authority. I never heard of the phrase in dealing with the same Bill. There has been no fresh appointment, and no motion to go into Committee to form a new committee. When the order was called on, the President left the chair, and you took the chair as a matter of course. There cannot be two committees sitting on the same Bill. There is nothing in this standing order dealing with a fresh committee ; but it provides that when a question has been settled in substance it cannot be revived in the same session. The object is plainly enough to prevent the continual discussion of the same subject.

Senator Sir Frederick Sargood

- What is the object of a recommittal 1

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Senator Lt Col Neild

- To settle some point that has been left unsettled; to correct some error made during previous discussions. Any one who has any knowledge whatever of parliamentary practice knows that the object of a recommittal is not to reconsider points which have been deliberately settled by a vote.

Senator Sir John Downer

- It certainly is.

Senator Lt Col Neild

- Where there has been a mistake ; but it is not to enable the minority to have an opportunity of fighting a matter over again, which has already been decided.

Senator Sir John Downer

- It is the majority who have to allow it, and if they allow it, it can be fought over again in another committee.

Senator Lt Col Neild

- I hear some novel parliamentary suggestions from gentlemen who evidently have not paid much attention to the propositions they are submitting. I submit that, under Standing Order 186, this being a question which has been resolved in the negative during this session, it cannot be re-opened now.

The CHAIRMAN

- The House of Commons has precisely the same rule as the honorable senator has quoted. The British practice is laid down as follows : -

In passing Bills a greater freedom is admitted in proposing questions, as the object of the different stages is to afford an opportunity of reconsideration, and an entire Bill may be regarded as one question which is not decided until it is passed. Upon this principle, it is laid down by Hatsell, and is constantly exemplified, " that in every stage of a Bill every part of the Bill is open to amendment, either for insertion or omission, whether the same amendment has been in a former stage accepted or rejected."

What took place was that this Bill was reported with amendments to the House. It was then moved by the Vice-President of the Executive Council that certain clauses be recommitted. These clauses are recommitted and reconsidered by a fresh committee, and this fresh committee is at perfect liberty to make any amendments it thinks proper, and may even make amendments which have been dealt with by a former committee.

Senator Lt Col Neild

- I am entitled to appeal against your ruling ; but before doing so I wish to ask if you will be kind enough to read the House of Commons standing order, which you say is the same as the standing order I have quoted?

The CHAIRMAN

- The honorable senator is either going to appeal from my decision or he is not, but he must make no comments unless he is going to appeal.

Senator Lt Col Neild

- I beg to move -

That the committee disagree with the ruling of the Chairman deciding that a question which has been,

vide Standing Order 186, determined during the current session, can be re-opened.

In the House:

Senator Best

- I beg to report that in a former committee in clause 203 the words " on demand " were struck out. This clause 203 at a subsequent stage was recommitted, and the Vice-President of the Executive Council moved that the words " on demand " be restored. I have ruled that the amendment of the Vice-President of the Executive Council, that those words be restored, is perfectly in order. Senator Neild has handed in, in writing, the following motion of appeal from my decision : -

That the committee disagree with the ruling of the Chairman deciding that a question which has been, vide Standing Order 186, determined during the current session, can be re-opened.

ThePRESIDENT.- I entirely agree with the ruling of the Chairman of Committees. In considering our standing orders we must always give effect to Standing Order No. 1, and to the practice which obtains in the House of Commons under that standing order. The paragraph read from May by the Chairman, and which I heard read, puts the case very clearly and beyond all manner of doubt. When a Bill has been referred to a committee, the same committee cannot alter it ; but a subsequent committee is not the same committee. Though undoubtedly, as a committee of the whole Senate, it consists of the same individuals, it is not the same committee. If it were the same committee, every committee of the whole House upon different Bills would be the same committee. This matter is now being dealt with by a different committee under the provisions of Standing Order 308, and I entirely agree with the ruling of the Chairman.

In Committee:

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Senator McGREGOR

- In connexion with the amendment proposed by the leader of the Senate, I should like to say that I think there is a great deal of misunderstanding on the subject, and I should like honorable senators to thoroughly grasp the question before we come to any decision upon it. In a previous clause we gave power to a constable or a Customs officer to arrest any one he suspects of a violation of the law, and on demand he was supposed to give reasons for such arrest. The expression "on demand" was struck out. It might appear in the minds of some people that a constable or Customs officer must be prepared with his reasons as soon as he arrests the party ; but I think honorable senators will see that if that was in the mind of the Customs officer or constable it would not matter even if it was "Jack the Ripper " who was getting away ; he would not arrest him, because it would not be in his power to give him reasons for the arrest at the time. I would suggest that instead of putting in the words "on demand" it would be better to say " as soon as practicable after the arrest," and that would get over the difficulty. It might be an hour or two hours before the officer could supply this written statement. He might in the meantime have to arrest three or four others, and it would be impracticable for him to give these reasons until he had an opportunity of getting writing materials. I think that if Senator O'Connor will accept the suggestion I have made he will find that a majority of the committee will agree to it.

Senator O'CONNOR

- The object I have in view would be quite as well attained by the amendment suggested by Senator McGregor, and I am quite willing to accept the honorable senator's amendment.

Senator O'KEEFE

- When this question was before the Senate on a previous occasion, I voted to have the words " on demand " struck out. I am quite willing to accept the amendment suggested by Senator McGregor, because it will meet my views and probably prevent injustice.

Senator Sir WILLIAMZEAL (Victoria). I submit to honorable senators that it is a very serious matter that a person should be arrested on suspicion of having committed a civil offence and be dealt with as a criminal. A person arrested under this clause might be taken to a lock-up and herded with criminals. I do not think any honorable senator wishes that sort of thing, to occur, and under Senator McGregor's suggested amendment a man arrested under this clause might have to herd with criminals for three or four days. If a Customs officer is going to make an arrest, he will have some previous knowledge of what he is arresting a man for.

Senator PLAYFORD

- He may arrest Lim on sight, because he sees him doing something.

Senator Sir WILLIAM ZEAL

- He knows what a man is doing, and he should be prepared for the consequences.

Senator Sir JOSIAH SYMON

- I understand Senator McGregor's point to be that this might possibly be read as though it meant- that contemporaneously with the arrest a statement of the reasons for it should be given. But the clause does not mean that at all. It imports that the officer arresting shall give the person arrested in this summary way a statement in writing of the reasons for the arrest, but it does not mean that it shall be made instantaneously, but within a reasonable time. I think the words "as soon as practicable after the arrest " may only open up a debatable subject. Who shall decide what " as soon as practicable " may mean ? I suggest that the words used should be " after the arrest," so as to make it clear that it shall not be contemporaneously with the arrest.

Senator Sir William Zeal

- Under that a man might be kept in the lockup for two or three days. The statement should be given within 24 hours.

Senator O'Connor

- If Senator McGregor will accept 24 hours I have no objection.

Senator McGregor

- I have not moved an amendment. I am willing to accept it.

Senator Sir JOSIAH SYMON

- If we use the expression " 24 hours," it may mean that- the man may have to spend a night in the lock-up.

Senator O'Connor

- Well, say as soon as practicable.

Senator Sir JOSIAH SYMON

- That will open up a large question. I suggest that we say 12 hours.

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Senator EWING

- I think we are not wise in modifying the decision of the committee. I am inclined to prefer Senator McGregor's suggestion, but I agree with Senator Zeal that the officer who arrests a man knows, or ought to know, the offence which he is supposed to have committed, and therefore ought to be prepared to give a written statement of the cause of the arrest. If we say that the officer is not bound to give a written statement of the reason for the arrest until 12 or 24 hours, the authorities could lock any one up. For instance, an officer could arrest a man on a ship and take him to the lock-up, and when he was asked for a

Statement of the reason for the arrest, he could say - " We are not bound to tell you for "24 hours." The general rule of law is, that an officer must lay an information before he can arrest a man, and when he lays the information he gives the reason for the arrest. Surely we go far enough when we say that immediately after a man's arrest the officer shall give a written statement of the reason for the arrest. As it may be difficult at times to get writing material, it will be better to say that the reasons shall be given, and, where practicable, in writing.

Senator O'Connor

- Then an uncertainty is introduced.

Senator EWING

- If a man is arrested in the bush, possibly the officer cannot give a written statement of the reason for the arrest ; but if a man is arrested in a town or on a ship, it is absolutely certain that the officer can reduce the charge into writing. We could easily find out whether he was justified in not taking that course. What I wish to accentuate is the right of a man to know the reason for his arrest. There are only two ways of informing a man of the reason for his arrest - viva voce and in writing. Occasions may arise when the officer cannot get material to state the charge in writing. In a case of that kind my suggestion would allow the officer to state the reason viva voce. Otherwise a man might lie in the lock-up for 24 or 48 hours not knowing the charge against him, unable to prepare his defence or to send for witnesses. Supposing that the man is arrested on a steam-boat, and is not told what offence he is charged with, and that the boat sails away with his witnesses within 24 hours to England or- America, how is he to defend himself? If the

committee will not adhere to the clause, it ought to say that, where practicable, the information shall be given in writing. But if that view is not taken, I think Senator McGregor's suggestion is infinitely preferable to any other.

Senator CLEMONS

- In the original clause the words " on demand " were used. The ordinary acceptation of the meaning of those words is " immediately." So that what was originally contemplated was that if the man arrested knew the provisions of the Act, and made a demand, he would get a statement at once of the reason for his arrest.

Senator O'Connor

- As soon as a writing could be given to him - not immediately.

Senator CLEMONS

- At once.

Senator O'Connor

- They would go to the nearest place where they could get writing material, and the officer would give the statement to the man there. I want to make it clear that it is to be given after arrest.

Senator CLEMONS

- If the words of Senator McGregor's amendment are put in, we cannot make the officer do more than he otherwise could do. If you leave out the words "on demand," and substitute "as soon as practicable," you will not compel the officer to give his reasons any sooner. The officer will not be expected, and cannot be compelled, to give a statement in writing any sooner than it is practicable for him 'to do it.

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Senator Major GOULD

- The ordinary rule when a man is arrested is for the constable to tell him at once what is the reason for the arrest, and the lock-up keeper will not take the man into custody unless he is furnished with a statement of that reason. There is no difficulty in giving a written statement of the reason for which a man is arrested. If a constable arrests a man in the bush, and he has no pen, ink, and paper, he cannot give the particulars in writing until he gets to the lock-up.

Senator MCGREGOR(South Australia). - If we used the word " immediately " many a constable and Customs officer might be under the impression that he had to give a written statement there and then, and the result would be that the officers would not arrest at all. The exercise of this power is necessary when an officer discovers any man violating the law. If there is plenty of time to get a warrant he will take that course. But he might see a man violating the Act, and have to chase him for a mile or two, and then go and chase another man. Cases will arise under circumstances of that kind. " Immediately after arrest " means that the officer has to give a written statement there and then. " As soon as possible after arrest " does not mean any more than " as soon as practicable after arrest." The latter term covers everything. I move -

That the words "as soon as practicable after arrest " be inserted after the word " shall."

Senator Sir JOSIAHSYMON (South Australia). - I think it would be very much better to use the words "immediately after arrest." If you say "as soon as practicable after arrest " you raise a subject for discussion ; the practicability or otherwise immediately comes into question. The great point is to make it absolutely clear that the handing over of the statement of the reasons is not to be contemporaneous with the arrest. It would be very unfair to say to a Customs officer or to a police officer, " You must have this statement cut and dried in your pocket." The whole object of the provision is to enable an officer to arrest on an immediate suspicion occurring to his mind. You cannot expect an officer to have the paper in his pocket, or to be ready to give a statement to the man before his arrest. To make the matter quite clear, the words "after the arrest" ought to be put in, and in the interest of the persons arrested we should use the word " immediately."

Senator O'Connor

- Do not the words of the amendment mean exactly the same thing?

Senator Sir JOSIAH SYMON

- If you say " immediately after the arrest " it fixes the whole thing. It would be monstrous to say that it should be contemporaneous with the arrest, and if we did we should defeat the other clause. I move - That the amendment be amended by the omission of the words " as soon as practicable," with a view to

insert in lieu thereof the word " immediately."

Senator DOBSON

- Every case will have to depend on the circumstances surrounding it, and to put in the word " immediately " is to get back to all the dangers which appeared to me to arise from the words "on demand." Supposing that the constable has caught, or thinks he has caught, a man smuggling in the middle of the night, and takes him to the lock-up, what is he to do if all the rooms are locked up ? If we use the word " immediately " it means that there and then the officer shall give a written statement to the man. " Immediately" means immediately, and "as soon as practicable " means as soon as the constable can get pen and paper and ink, and find the time to write out a statement of the reasons. Does any honorable senator mean to contend that if an officer has caught one man and taken him to the lockup, and he knows where a confederate is to be found, he is not to run after that man, but is to sit down and write out a statement of his reasons for arresting the other?

I do not think that the use of the word " practicable" will open the flood-gates of argument. Every case should be judged by itself. If a man were taken to the police office in the middle of the day, the constable could write out a statement of the cause of the arrest in two minutes if he had nothing else to do ; but if the arrest occurred in the dead of the night, he might not have an hour or two to spare until next morning at 9 o'clock. I hope that the amendment of Senator McGregor will be carried.

Amendment of the amendment negatived.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 213 (Notice of action to be given).

Senator O'CONNOR

- An amendment is necessary in this clause in order to carry out the object of an amendment inserted at the instance of Senator Gould with regard to the notice. Senator Gould moved his amendment upon clause 214 ; but I propose to put it in clause 213, which is the proper place for it. I move -

That the following words be added to the clause : - " unless a justice of the High Court of Australia or the Supreme Court of a State has granted leave to the plaintiff to proceed without notice, which leave such justice or Judge may grant on such terms as he may think just. "

Amendment agreed to.

Clause, as amended, agreed to.

Clause 214 (No evidence to be produced but that contained in the notice).

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Senator O'CONNOR

- I move-

That all the words after the word " served " be omitted.

Senator Gouldcarried an amendment upon clause 213 in the form of a proviso, which was as follows : -

Provided always that the want of such notice shall be no bar to the maintenance of such action if upon motion made for leave to proceed, notwithstanding that no such notice has been given, a Judge of the High Court of Australia, or of the Supreme Court of the State in which such action is commenced, shall be of opinion that there was reasonable excuse for such want of notice. Provided further that no notice required under the provision of the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge who tries the action shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy.

I have provided for these two things in another way. I have provided in the amendment just carried for the first power, by which the action can be proceeded with without notice, and I have provided in the new clause carried yesterday that the notice shall not be deemed to be invalid by reason of any defect or inaccuracy. As the whole thing has been provided for in that way, I propose now to omit the proviso from clause 214.

Senator Major GOULD(New South Wales). - After the explanation made by the Vice-President of the Executive Council, I am quite satisfied with the proposal. The amendment I moved formerly certainly needed recasting, because it was prepared very hurriedly, and I am glad that the honorable and learned senator has been kind enough to recast it, and put it in such a very apt form of words as he has proposed.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 219 (Forfeited ships).

Senator O'CONNOR

- I propose to make an amendment in this clause to carry out an amendment proposed by my honorable friend, Senator Pulsford. At the time he proposed that amendment I had carried one limiting the forfeiture of ships under paragraph (4) to vessels of 250 tons. I did that, believing that I was carrying out a promise made by my colleague in the other House. I have subsequently found that it was under some misapprehension that the limited form of amendment was handed to me. My colleague is anxious to carry out to the fullest extent the promise made in another place, and I am only too glad to be the means of keeping faith in that respect. With that view I propose to make certain amendments in the clause. In the first place, I propose to limit the tonnage of ships that can be forfeited to 250 tons, and then to add a new paragraph to the clause to the effect that where a ship is over 250 tons, in the case of any offence for which she would be liable to forfeiture, she shall be liable to a penalty not exceeding £1,000, and maybe detained until the fine is paid, or security is given. That gives the Customs authorities a sufficient remedy. This, really, has been the law in the United Kingdom for some time, and would, I understand, in actual practice, be quite sufficient to give the Customs all the power that is required. I therefore move - That after the word "boats" in the first line of the clause the words " not exceeding 250 tons registered tonnage " be inserted.

Amendment agreed to.

Amendment (by Senator O'Connor) proposed -

That the following new paragraph be added to the clause : - " The owner of a ship exceeding 250 tons registered tonnage which would be forfeited if the ship were less than 250 tons registered tonnage shall be liable to a penalty of not exceeding £1,000, and the ship may be detained until the penalty is paid or until security is given for its payment. "

Senator PULSFORD

- Under the English Act the penalty is £500, but I previously mentioned that in order to give the fullest security I was willing to make it £1,000. Apart from that the provision is the same as that of the English section.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 220-

The following goods shall be forfeited to His Majesty : -

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

Amendment (by Senator Pulsford) agreed to -

That after the word "size" the words "or weight " be inserted.

Clause, as amended, agreed to.

Clause 223 (Collusive seizures, penalty) verbally amended.

Clause 224-

No person shall smuggle or unlawfully import, export, convey, or unlawfully have in his possession any goods subject to the control of the Customs.....

Senator O'CONNOR

-This clause as it originally stood was amended by the insertion of the word " unlawfully " after the words " convey or," and also of the words "subject to the control of the Customs." It is right that the words " subject to the control of the Customs " should remain in the clause, but I propose that the word " unlawfully," as inserted when the clause was previously before the committee, shall be struck out, as the first word " unlawfully " used in the clause is all that is required. I move -

That the word " unlawfully," line 2, be omitted.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 245 (Defendant as a competent witness).

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Senator O'CONNOR

- I had intended to move an amendment in this clause, but I do not mean to raise the question at the present time, though it may be necessary at a later stage to do so. I may as well explain to the committee at once, that I intended to propose an amendment which would have restored the clause in certain respects to what it originally was. I do not think it worth while taking up time with that now, but if any amendment is made in the other House, I shall feel myself at perfect liberty to open up the whole matter again.

Senator Major GOULD

- I understand that so far as the present Bill is concerned it is to be sent back as it has been amended, and if the other House disagrees with the amendment which has been made by the Senate, the honorable and learned senator will have, of course, a perfect right to raise the whole question again. That is quite Satisfactory.

Senator O'CONNOR

- I wish to make it quite clear that though I abandon the intention to propose an amendment now, I do not forego the right to deal with the matter at a later stage should it come up.

Senator Sir Josiah Symon

- The honorable and learned senator does not pledge the House of Representatives not to disagree with the amendment.

Clause agreed to.

Clause 256 -

If any dispute shall arise between any officer and any person with reference to any contravention of this Act, the Minister may in manner prescribed, with the written consent of such person, inquire into and determine the" dispute, and shall have power by order to impose, enforce, mitigate or remit any penalty or forfeiture which he shall determine shall have been, incurred.

Senator O'CONNOR

- It will be recollected by honorable senators that when clauses 256, 257, and 258 were before the committee, there was some considerable discussion as to whether publicity should be given to the proceedings in the court constituted under those clauses. The result of the discussion was that Senator Higgs moved and carried an amendment in clause 258, which made that clause read in this way - The Minister, in holding any inquiry under this part of this Act, shall hold such inquiry in public and may summon the parties and any witnesses before him, and so on. In looking into the matter, and considering with my honorable colleague the class of cases dealt with under these clauses, it became quite evident that if a court had to be regularly constituted for all these cases, and held publicly, it would really mean that it would be impossible to apply these clauses to a very large number of cases which would otherwise come under them. Of course there are some cases in which witnesses are summoned, but there are a great many cases in which a man may be fined for some breach of the Customs regulations, and for which his goods may be seized, or he may be punished in some other way without any formality. If he made an appeal to the Minister, the Minister would decide the matter, it might be. by ' simply considering the report on one side and the report on the other, and sending for the parties, if they wished to see him ; or by looking at some article for himself ; or by deputing somebody to make an inquiry for him. There are numberless ways in which, by consent of the parties it might be prescribed by regulations how a matter might be heard and considered without the formality of a court open to the public in the ordinary way. I quite sympathize with the view that cases brought before this court ought to be made public in so far as their results are concerned. If a person is fined for any attempt against the Customs, if his goods are seized for an offence, or if a fine is remitted, all that ought to be made public. But I think the end will be sufficiently attained if the decision in each case is made public. I believe that some suggestions on that head were made during the debate on these clauses. What I propose to do, in order to carry out the reasonable view that there shall be publicity as to the results of these cases, and at the same time prevent the court being made so unwieldy in its operations as to be practically useless, is to provide for the publication of the results in the Gazette. I move -

That the words " published in the Gazette " be inserted after the word " order," line 6.

Senator Sir JOSIAH Symon

- Would it not be better to insert the words later ? Otherwise the publication in the Gazette might be an

element in the validity of the order.

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Senator O'CONNOR

- I intend to make it an element in the validity of the order. If we carry the amendment as I propose, the publication in the Gazette will be a necessary part of the proceedings for the validity of the order. That I think will secure all that is necessary to insure 'the criticism and observation of the public which may be desirable in these cases.

Senator Clemons

- It will enable a man's innocence to be made public also.

Senator Sir Frederick Sargood

- The public will never see the Gazette.

Senator O'CONNOR

- The press take these things from the Gazette. As Senator Clemons has said, it will also enable the innocence of a man to be made public. I suggest this in substitution for the amendment which was carried by Senator Higgs, who, I think, can have no other object in view than to have the decisions of these courts made public. If he attains that object, I take it he will not wish also to have the amendment which he carried, and which would largely detract from the usefulness of the court by making its proceedings of such a formal character that the Minister would probably not find the time necessary to give to the hearing of cases.

Senator DOBSON

- As one who called attention to the importance of publishing these decisions, I am inclined to favour the amendment, and I think the object which Senator Higgs had in view will be accomplished under it.

Senator Sir Frederick Sargood

- Certainly not.

Senator DOBSON

- I am quite aware of the grave objections which Senator Sargood has raised to making these matters public. The honorable senator has pointed out that merchants for every little offence or irregularity may be posted as if they were semi-smugglers, and that that being so they will shrink from taking disputes before the Minister, and will prefer to fight their cases out in open court. I can quite understand that there might be decisions published in some cases when it would be far better for the merchants to have the whole evidence brought out.

Senator O'Connor

- It is only by consent that the matter will get into this court at all.

Senator DOBSON

- There is the difficulty that a merchant may be fined for some small irregularity, and may under this proposal find his name published amongst a list of persons who have really been trying to defraud the revenue. I believe that the amendment now proposed will carry out all that is desired, and what I am emphatic about is that we should have a provision under which all decisions shall be published, because we know that there is a practice in all the States under which some men appear by some little favoritism to be able to have their names kept out of the papers when the names of other persons are published.

Senator HIGGS

- The Minister has put the case so very nicely that in ordinary circumstances I should be only too glad to fall in with his views, but this is such an important matter that I cannot do so. I do not mind the amendment itself, but the idea is to substitute it for the provision for a public inquiry in clause 258.

The CHAIRMAN

- Had we not better carry this clause first?

Senator HIGGS

- The clause, if amended, would provide that the Minister "shall have power by order published in the Gazette," but if we insert the words there will be nothing to compel him to publish a decision in the Gazette.

Senator O'Connor

- It would not be a valid order without publication in the Gazette.

Senator HIGGS

- The amendment does not appear to me to secure sufficient publicity, and prevent the big fish escaping while the little ones are brought to book. However, acting on your suggestion, sir, I shall reserve my remarks until we reach clause 258.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 258 -

The Minister in holding any inquiry under this part of this Act shall hold such inquiry in public, and may -
Summon the parties and any witnesses before him.

Take evidence on oath, (c) Require the production of documents.

Allow reasonable expenses to witnesses and costs to successful parties.

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Senator O'CONNOR

- I move-

That the words "shall hold such inquiry in public and " be omitted.

The words "published in the Gazette" were expressly put after the word " order," in clause 256, so as to make it a condition of its validity that there must be a publication in the Gazette. Unless there is a publication in the Gazette, the order is not valid. It insures in all cases publication in the Gazette. It means that the mode of publication of a decision will be such as to indicate what the case really is. It will not only be a statement of the name and of the amount of the penalty, but a full statement of the offence and the subject of fine or forfeiture, and a statement of the decision. That is the only way in which the clause as amended can be properly carried out, and that I submit is all that is necessary. The reason why I object to clause 258 with this addition is that it will make it impossible to apply its provisions, except in cases in which it is necessary to go through the formality of calling witnesses. There are numbers of cases in which the real question may be as to whether there has been an attempt at fraud by putting in an article as belonging to one class instead of another. That is not an uncommon case. It really depends upon what the article is. If the Minister saw that the article was so like the other that any one might reasonably be deceived, and put it under a wrong class, without any intention to deceive, he might come to the conclusion that no fine ought to be made, or no forfeiture incurred. A case of that sort might be decided simply by an examination of the article by the Minister, or by the Minister calling the collector before him, and hearing the statement of the collector, and the statement of the persons concerned, not necessarily on oath, and with all the formality of an open court. Or a matter might be settled by correspondence. The affair might occur at some place away from the centre of administration, and it might be managed by reports and correspondence on both sides. Is there any reason why that should not be done? The Minister is given power in the clause to take evidence on oath, to require the production of documents and to allow reasonable expenses of witnesses. All these powers are needed where it is necessary to have an inquiry, and to summon witnesses before him. But there are numberless cases where that course is not necessary. If you bring to bear the whole machinery of an open court in the ordinary way, and only cases are to be heard which can be heard in that way, you will destroy a very great portion of the usefulness of the clause. Some of the cases which it was intended it should be applied to would be quite unapproachable under a system of that kind.

Senator Dobson

- More publicity would be given than under Senator Higgs', because under that all would depend on the vigilance and attention of the press.

Senator O'CONNOR

- In every case publicity would be absolutely insured by the proposal I make. I am quite certain we all desire to see that there shall be publicity, but at the same time I think we recognise the very great usefulness of a tribunal of this sort, and recognise also that it may have to deal with cases, if it is to be useful at all, which cannot be conducted with the formality which is provided here. We must never forget that the party only enters this tribunal if he thinks fit, and if he does, and we safeguard the interest of the public by the publicity of the order, that is really all we want to do.

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Senator HIGGS

- I think the Minister is about the worst possible judge we could get to try breaches of our laws. All

politicians, I suppose, are bound to be subject to a certain amount of political influence. We may give way to that influence unconsciously. I do not think we are in anything like the same position as 'a magistrate or a Judge. We have provided a number of pains and penalties for contraventions of the Act. Senator O'Connor has told us that a very great many cases are to come before the Minister. I submit that if we had publicity given to the trial of these cases the Act would not be infringed so frequently. The disgrace attendant on the publication of particulars of prominent persons trying to take an advantage of the public revenue would prevent them from infringing the law more than once. The Minister's proposal partakes of the nature of a star chamber. If a secret tribunal to which the public are not- admitted is allowed, we shall be led to believe that the laws are like cobwebs - that the wasps can break through while only the small flies are caught. The Minister will have his time very largely taken up with his ordinary duties,, and, therefore, he will be only too glad, if he wants the revenue protected, to allow the ordinary magistrates and Judges to administer the law when breaches are discovered. As to conducting an inquiry by correspondence, is justice likely to be administered by the Minister whose time is taken up with the routine of his office, and the work in the Cabinet? Only those persons with large social and political influence would be able to get the ear of the Minister, and when they did get his ear, then the Minister, for various reasons, social and political, would be inclined to give way, and allow the offender, if not to escape scot-free, to get off with a very light penalty. I believe that we shall have the Act administered by a gentleman with as strong a backbone as any other politician in Australia.

Senator Clemons

- Temporarily.

Senator HIGGS

- Temporarily may cover a period of several years. I do not fear that the present Minister may give way to such influences, but in times to come we may get a Minister from the side to which Senator Clemons belongs, who may not have a backbone. I object to secret inquiries, and I hope that the committee will stick to the clause as it has been amended.

Senator Sir FREDERICK SARGOOD

- I am very glad to hear Senator Higgs lay down the law so absolutely in favour of his amendment. It is the wish of the representatives of the commercial community that it should be retained. They strongly oppose this star-chamber business. It is stated by the Minister that this proposal for an open inquiry cannot be carried out. My answer to his statement is that Senator Best, who, for six years, occupied the position of Commissioner of Customs, conducted all these inquiries in open court. The importers, as a whole, thank that honorable senator for having adopted as a permanent arrangement that which was only occasionally followed by some of his predecessors. If there has been a dispute between an officer and any person with reference to a contravention of the Act, we are perfectly willing, in a large number of cases, to leave the decision to the Minister ; but we are absolutely against leaving it to a star chamber. We are also quite willing that the award shall be published, but let all the proceedings appear in the daily press. The press do regularly attend these inquiries. We know that there is a great deal in the evidence as to the amount of innocence or crime in particular cases, which cannot possibly appear if only the award is made public. Let me mention a case which happened to me a good many years ago. In those days invoices were very much more lengthy, and covered more sheets than they do now. A shipping clerk had a long invoice to pass. At the bottom of one page the total was £411, but in carrying that over to the next page he reversed the figures, and made it £114. The first intimation I had of the mistake was a request from the Commissioner of Customs to come and explain the matter. I knew nothing about it, and the shipping clerk did not know of it until his attention was called to it. If that case had been settled under the clause, and only the result published in the Government Gazette, it would have looked very black indeed.

Senator Dobson

- No; it would have read " Sargood fined £-5 for a mistake on the part of his clerk."

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Senator Sir FREDERICK SARGOOD

- No, for a contravention of the Act. The Commissioner insisted upon my dismissing that young man. I thought it was a most cruel thing to do, because the mistake was absolutely unintentional. If a matter of that sort had been inquired into in open court, the public would have seen at once that it was a pure mistake. Constant differences of opinion occur in which there is not an atom of criminality. The officer may

think from his surroundings that he is being got at, and that there is a contravention of the Act, but the evidence which would be produced would be so unmistakable that the public would see that it was an ordinary accident which might happen in any case. I can give another illustration : In the days when these inquiries were remitted to the Minister and held privately, the Minister fined a merchant £1,000. Those who knew of the transaction were under the impression that the fine to meet the case ought to have been nearer £5,000. That very same night the Minister dined at the house of the man who was fined.

Senator EWING(Western Australia).I entirely agree with what has been said by Senator Higgs. It will be seen that under this clause there is nothing to compel the Minister to allow a man to be heard in his own defence and to call his witnesses, but public opinion, if there was publicity, would compel the Minister to take evidence. I will give an instance of my experience of the working of a similar provision in Western Australia when I was acting as solicitor for a party. A man had contravened the provisions of the Customs Act, and admitted that he had done so. I, on his behalf, consented to the Minister of Customs deciding the matter under a section of this kind. I wrote to the Minister, and asked that my client should be heard, and that evidence should be given on his behalf, saying that although it was a technical offence, there was really no intention whatever to defraud. The next I heard of the case was that a fine of £20 was inflicted. "When asked why we were not allowed to call evidence, the Minister said - " I am not bound to sit here and listen to evidence, and am not going to. You have submitted to my arbitration, and I fine you £20." That is a case that could not have happened if publicity had been allowed.

Senator Playford

- The honorable senator could have brought it before the local Parliament.

Senator EWING

- What was the good of bringing it before the Western Australian Parliament ? One might as well have talked to the man in the moon. A complaint about an act of administration by such a Government as was then in power in Western Australia would have been laughed out of the chamber. Certain persons for whom I have the greatest respect would have got up, and in the loudest tones possible would have said that justice had been done. That was the method of administration in Western Australia, then. It is quite useless to say that these matters should be brought before Parliament. Does Parliament want to be worried by this kind of thing? We are here for legislative purposes, not to be bothered by all sorts of paltry disputes. The principle involved is a very sound one, namely, that when the Minister is placed in a position of responsibility, and given the power of imposing very large penalties, if the parties desire it the public shall be in the position of not only hearing the decision but of knowing the evidence upon which it is founded. This can only tend to the sound administration of justice, the interest of the public, and the purity of the department.

Senator Sir JOSIAH SYMON

- I only wish to point out, as a very strong reason for supporting the amendment, that there is a broad distinction between disputes or differences in relation to Customs matters that are in contravention of the Act, and disputes not in contravention of the Act. Yesterday, the committee passed a new clause dealing with matters of difference not involving a contravention of the Act - that is, matters of mistake or inadvertency. In those cases, the inquiry may be made by the Minister, who may inform his mind in such manner as he thinks fit, without any publicity at all. That is a perfectly fair position to take in relation to such matters. But this amendment relates to contraventions of the Act, and implies offences wilfully, if not fraudulently committed. In the case of an inadvertent failure to comply with the measure, there is no reason whatever why there should be publicity, but I certainly agree that there should be publicity, both in the interests of the accused and the department, in cases where a wilful contravention or fraud is implied. It is not necessary to assume that the Minister will be liable to political influences. He may or may not be. But without assuming it, in cases where an importer is alleged to have wilfully defrauded the Customs, it would be very much better for the case to be dealt with by the Minister sitting as a judge, and that full publicity should be given to what takes place.

Senator Sir JOHN DOWNER

- I think Senator Sargood is taking rather a different attitude upon this proposal to that which he adopted originally. The very object of this intermediate inquiry was to prevent the necessity for a public inquiry, which, although it may be upon an innocent subject, may be very offensive to a number of people, and cause trouble, pain, and worry.

Senator Sir Frederick Sargood

- As opposed to the expense of an action.

Senator Sir JOHN DOWNER

- What I mean is that it would be well to have an inquiry made by reliable people, as to which there would be no publicity nor any of the machinery of the law courts. If the inquiry is to be made public we surround it with the machinery of the law courts, because we bring in formality and elaboration of detail, which I understand it is the very object of the clause to avoid.

Senator Sir Frederick Sargood

- That has not been the case in Victoria for the last six years.

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Senator Sir JOHN DOWNER

- The clause which has been passed really does not do anything. The Minister can hold an inquiry in which he can review the actions of any officer under him, including the collector, in any way he pleases. He can do that publicly or privately, just as he pleases, and in the end pronounce his decision. The clause really makes no difference. It is practically putting into an Act of Parliament the power which the Minister exercises at present. But when the Minister decides, whether in his ordinary capacity as a Minister or under the express words of this measure, his responsibility does not end there. He is not a judge in the sense that a judge is to be always free from attack so long as no dishonesty is imputed to him. He is a Minister responsible to Parliament, and, whether he acts under this measure or apart from it, Parliament can always overhaul his conduct and inquire why he acted in a certain manner.

Senator Sir Frederick Sargood

- And if he has a majority in Parliament he can practically do what he likes.

Senator Sir JOHN DOWNER

- It appears to me that that is an argument against any inquiry except in the law courts. I agree with the intermediate course. A person who is accused need not go to the Minister at all unless he likes. It is suggested by Senator Sargood that persons go to the Minister for corrupt motives, or because, perhaps, the importer is a man of means, and the Minister will let him off with a fifth of what he ought to pay, because he will ask the Minister to dinner. In cases like that, the House of Parliament in which the Minister sits is perfectly competent to deal with him. I think it will be wiser to leave the clause as it is.

Senator Lt Col NEILD

- In the clause I submitted to the committee yesterday, I advocated the hearing of these matters in public. The committee was against me on the subject, and as I always like to bow to the will of the majority, I am prepared to bow to that will as expressed yesterday, and vote for the striking out of the words. I am prepared to do anything possible in favour of an informal settlement. If these settlements are to be matters of publicity, it will be necessary for them to be conducted in a more formal manner than would have been necessary under the informal method that was advocated on both sides yesterday.

Senator PULSFORD

- I am surprised and a good deal disappointed at the tone of Senator Neild's remarks on this subject. The clause proposed by him yesterday dealt with a certain method of making inquiries. The committee did not adopt it. But that is no reason why Senator Neild should seek to sustain the despotic powers which the clause, if amended in the manner proposed, would give to the Minister. If I were a Minister holding an inquiry into a matter of this sort, I would sooner have it conducted in public, so that there might be no possibility of suspicion, than in private ; and then in case a dispute arose there would be witnesses who would be able to certify to the fairness with which I conducted the inquiry. In view of the amendment before the committee I ask honorable senators to look at clause 259. They will then realize the importance of such an inquiry being held publicly. Under that clause a penalty of £20 may be inflicted if any person fails to obey a summons or refuses to be sworn as a witness, or refuses or fails to produce any document, or, being sworn as a witness, fails to answer any questions put to him. This shows the powers which are put into the hands of the Minister and intensifies the importance and necessity of such inquiries being held in a public manner.

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Senator WALKER

- After the forcible illustration given by Senator Sargood of the evils of private inquiries I cannot do

otherwise than support Senator Higgs' amendment. I also take advantage of Senator Pulsford's remark to enjoin Senator Neild to remember what he said previously, that if he could not get a whole loaf he would take a half loaf, hope that on consideration he will see that his duty is to support the amendment.

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

The committee divided -

Ayes 13

Noes 11

Majority 2

Question so resolved in the affirmative.

Amendment negatived.

Clause agreed to.

Senator Sir FREDERICK SARGOOD

- I move -

That the following new clause be inserted, to follow clause 173 : - " At any port where persons acting as agents for transacting any business relating to the clearance of any ship or baggage shall be required to be licensed no person not so licensed or not being the duly appointed clerk to any person so licensed shall act as such agent or clerk, and no person, whether so licensed or appointed or not, shall make, or cause to be made, entry of any goods without being lawfully authorized for that purpose by the owner of such goods, provided that no penalty shall extend to any person lawfully authorized to pass entries, nor to any owner of any goods acting himself in respect thereof.

Penalty : £50."

We have a provision in the Bill as to the form in which entries shall be passed - by the owner of the goods, by a person permanently in his employ, or by licensed agents. But so far as I can see, there is no provision for persons who may act or attempt to act, or represent themselves illegally, as licensed agents. It must not be imagined that all goods are imported by what are called importers. A large number of private people and also very small firms import goods, and it is desirable that means be adopted to prevent these people from being imposed upon by parties advertising themselves as licensed agents, and by that means getting possession of documents affecting goods. This proposed new clause is already in the Victorian Act. We have found it necessary in Victoria to have such a clause for the protection of those who are not in the habit of importing goods continuously, and consequently do not know the ordinary run of the port, and who having no employe of their own to deal with the matter, do not know whom to go to as being legally licensed.

Senator O'CONNOR

- I think it will be much better not to encumber the Bill with a clause of this kind, which is really going outside its province. All through we have laid down the principle that the Bill shall deal with anything that is necessary for the collection of the revenue, and incidentally it deals with the protection of the public in proclaiming certain goods as prohibited. That is the extent to which we have gone, but this seems to me to be going a good deal further. This would be undertaking to institute a sort of inquiry into the conduct of these agents. If a man is guilty of fraud as an agent, there is a way of dealing with him under the ordinary criminal law. This clause would put the duty upon the Customs authorities of inquiring whether persons were duly authorized to act as agents or not. Why should that burden be put upon them when, if a man who is not authorized acts as an agent, his action does not bind his principal ?

Senator Sir Frederick Sargood

- He will get possession of the documents.

Senator O'CONNOR

- He will get possession of the documents, but he may be dealt with under the ordinary criminal law. It is for that reason that we refused yesterday to interfere in the matter of warehouse certificates, and on the same principle we should now refuse to interfere here. The object of the proposal is to secure the punishment under the Bill of persons who have not committed a fraud upon the Customs, but who have committed a fraud upon other persons in relation to the Customs. There is no doubt that the Victorian Act may deal with many things which are beyond the scope of a purely customs law, and that may be quite right where the State has the whole field of legislation to itself.

Senator Sir Frederick Sargood

- To save time I will ask leave to withdraw the proposed new clause.

New clause, by leave, withdrawn.

Bill reported with further amendments.

Senator O'CONNOR.-I move-

That the adoption of the report be an order of the day for Wednesday next.

Senator Major GOULD

- I hope that the Bill, as amended, will be circulated as early as possible, and that it will be printed in such a way as to show the amendments in black letter, and the words omitted in erased type.

Senator O'Connor

- The difficulty in this instance is to have that done within the time.

Senator Major GOULD

- I suggest to the Vice-President of the Executive Council that it would be a great convenience to honorable senators if, in dealing with important measures which may take three or four weeks in getting through committee, we could have the Bills printed from week to week, showing, in the way I have suggested, the work which has been done by the committee.

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The PRESIDENT

- That is a matter which ought to be the subject of a standing order.

Motion resolved in the affirmative.

BEER EXCISE BILL

Vice-President of the Executive Council

Senator O'CONNOR

. - I move -

That the Bill be recommitted for the purpose of reconsidering clauses 3, 5, 8, 20, 27, 37, 42, 48, 52, 54, 57, schedule 3, new clauses (a), (b), (c), to follow clause 27, a new clause to follow clause 51, and new clauses to be proposed by Senator Staniforth Smith.

Question resolved in the affirmative.

In Committee :

Clause 3 -

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 State Acts relating to the excise on beer.

Senator Sir FREDERICK SARGOOD

- I have asked for the recommitment of this clause, because the clauses to which Senator Staniforth Smith drew attention when the Bill was last in committee dealing with the adulteration of beer are included in the Victorian Customs and Excise Act, and the question arises whether this clause 3 would not repeal the whole of that Act, in which case these clauses dealing with adulteration would go by the board, and in Victoria we would be absolutely unprotected in the matter. In other States I understand that the matter is dealt with under Health Acts, and they would not be affected in the same way. I would like to hear the Vice-President of the Executive Council answer the question as to whether this clause 3 would repeal the whole of the Victorian Act.

Senator O'Connor

- I can only tell the honorable senator that it entirely depends upon the form in which the Victorian sections are, and whether they deal with excise or not.

Senator Sir FREDERICK SARGOOD

- I think they do, for the clauses which Senator Staniforth Smith desired to have inserted in this Bill are part and parcel of the Customs and Excise Act of Victoria. I did not expect this matter to come on for consideration to-day, and as it is a purely legal matter I do not feel justified as a layman in suggesting what amendment of the clause may be necessary. I have been discussing the subject with legal members and with legal gentlemen outside the Chamber, and I am bound to say there is a difference of opinion as to the extent to which this clause repeals the State

Acts. I discussed the question with the Attorney - General, and I must confess that he did not seem to me to be clear as to whether this clause would repeal the whole of the Victorian Act. I think I am justified under the circumstances in appealing for the assistance of the legal members of the Senate to have the

matter put right.

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Senator O'CONNOR

- The principle is really a very simple one, though I admit there may be some little difficulty at times in the application of it. Under section 109 of the Constitution, when a law of the State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid. But the law of the Commonwealth only prevails where it is within the powers of the Commonwealth, and if the Commonwealth makes a law upon a subject which it has not the power to deal with, its law in respect to that subject is waste paper. I have not the Victorian Excise Act before me, and am not able to make a statement upon it, but whatever the sections of that Act are, the principle is precisely the same, and those sections which deal with excise, and are necessary to deal with excise, become repealed by the mere fact of the enactment of the Commonwealth law. But those sections which deal with matters outside excise, and are not necessary in order to collect excise, are not repealed by the Commonwealth law. It does not matter in the least whether we put it in this Bill or not. We might say in this Bill that we repeal all State Acts relating to excise, but that would not in the least affect a portion of a State Act which did not relate to excise. If we go beyond the provisions of the Constitution, our enactment is invalid, and if we do not make any statement at all about repealing a State Act, the effect of our Commonwealth enactment, in so far as it is within the powers of the Commonwealth, will be to repeal the local Act. I think that, by the alteration of one word in the clause, the matter might perhaps be made more clear. We might say -

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 State enactments relating to the excise on beer.

The word "enactments" means provisions of an Act, and one Act may consist of 20 or 30 different enactments. The use of the word "enactments" in the clause might make it more plain that what we are dealing with is only those parts of the State Acts which deal with excise. If the honorable senator has any doubt on the subject of the clause as it stands, I am willing to use the word "enactments" instead of the word "Acts"; but we do not settle the question here, and it would be very unwise if we did. It would be very unwise if the Commonwealth in its legislation were to assume to repeal.

Senator Sir Josiah Symon

- It has not the power to do so. That is the automatic effect of our legislation.

Senator O'CONNOR

- That is so, and it is only for clearness in legislation, and in order to point out to the States, as well as to our own Parliament, what we are doing that it is advisable to have these words. I believe myself that the course followed in the Customs Bill is better, under which there is no reference at all to any other enactment. But there is no reason why this provision should not stand as a statement of the effect of our legislation. If it is put in it is plain that it refers to different sections of different Acts, and it picks out for exclusion only those which relate to excise.

Senator Sir Frederick Sargood

- I am much obliged to the Minister for explaining this, and willingly follow his advice.

Senator CLEMONS

- Senator Sargood has raised a very interesting question, but the explanation Senator O'Connor has offered - of course in good faith - does not cover the real ground of his complaint. The difficulty we are confronted with is not solved by making this Commonwealth Bill, which is entitled an Act relating to excise on beer, exclude all State enactments. The real difficulty we are confronted with is that Commonwealth enactments are excluding the operation of the State Acts. So that the converse is what Senator Sargood really wants. We had many instances of that in the Customs Bill. We also had instances of it in the Post and Telegraph Bill. It is the effect of some clauses in Commonwealth Bills that is producing the disturbance which Senator Sargood has pointed out. It is not the effect of the Commonwealth Bill on some sections of a State Act which is the trouble. We find in a Bill dealing with excise on beer, a clause which we never thought necessary in a Bill dealing with duties of customs. I submit to Senator O'Connor that clause 3 is not necessary for the purposes of Commonwealth legislation, and it certainly will create the disturbance which Senator Sargood has properly called attention to. In my opinion it is desirable to strike it out in order to avoid confusion.

Senator Sir Frederick Sargood

- We had the clause in the Post and Telegraph Bill.

Senator CLEMONS

- We had not the clause in the Customs Bill, and it will produce trouble if it is retained in this Bill.

Senator DOBSON

- Many weeks ago I foresaw that trouble of this kind might arise, and I suggested to Senator O'Connor that the moment a Bill is printed as settled by the Cabinet a copy should be sent to the Attorney-General of each State for his report, and expressly he might see that no provision in State Acts was repealed which it was not necessary for the Commonwealth to repeal. Senator Ewing made the very same suggestion publicly in the Senate. I am very sorry that some one did not take steps to see that we should have a report from the law officer and the parliamentary draftsman of each State on how each Bill would affect State legislation. Whether we retain or omit clause 3 in this Bill it cannot possibly affect the Constitution. I take it that if there are sections in any State Act referring to the adulteration of beer, the clause as it stands will not repeal them. It is only where the State law is inconsistent with a law which the Commonwealth has the right to pass, that the former goes and the latter prevails. But where there is no inconsistency, and where it is not necessary that the State law should be repealed, it cannot possibly be repealed ; and therefore I take it that all sections referring to adulteration do not refer to the exercise of power within the meaning of clause 3. But if there is any doubt about it, the committee might either adopt the amendment suggested by Senator O'Connor, or put in the words " State Acts in so far as they relate solely to excise on beer."

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Senator Major GOULD

- It does not appear to me, after listening to the arguments, that there is any value in the clause. The only trouble is that it may have a tendency to mislead people who are not acquainted with the provisions of the Constitution.

Senator O'Connor

- You want the first part, decidedly. You want it to apply positively to excise duties which may be imposed by the Parliament.

Senator Major GOULD

- Supposing that the clause ends at the word "Parliament," that will meet everything which is necessary. We cannot do more than the Constitution gives us power to do. If the Minister thinks it is desirable to have the first portion of the clause, well and good ; but I think it would be almost better to leave it out, or, if not that, to omit the last two or three lines.

Senator O'CONNOR

- The last portion of the clause, if it is amended as I suggest, can do no possible harm, and it is put there with the view of showing to the States what the operation of the Bill is. It does not carry its operation beyond that provided for in section 109 of the Constitution. In all the State Excise Acts you have certain machinery for the collection of excise. All portions of those Acts which are necessary for the collection of excise come to an end when this Bill becomes law, but any portions which deal with something else do not come to an end at that time. It is right in passing this legislation that we should make it apparent to the States that we do not repeal those Acts. We have no power to repeal them. We have power of legislation over a certain field, and when we come into that field the State legislation withdraws. That is really the position, and so we use what appear to me the proper words. The clause cannot have the effect of repealing any portion of the State Acts which deal, not with excise, but with something else ; for instance, adulteration. It is impossible for us to pick out those sections now. It must be left to the operation of time. With regard to Senator Dobson's suggestion, we saw that there would be very little use in supplying the Attorney-General of the States with federal Bills as introduced, because they might eventually take a shape which, in many respects, was different from the original. There will be some arrangement made by which, as a matter of official routine, a copy of every Act will be sent to the Government and to the Governor of each State. I would prefer to have the clause in this shape, with the amendment I suggest to my honorable friend.

Senator CLEMONS(Tasmania).- I have no doubt whatever that none of clause 3 is wanted, but if the Vice-President of the Executive Council says it is desirable to retain the first portion of it, I am not going to

propose to eliminate the whole clause. I move -

That all the words after " Parliament, " line 2, be omitted.

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

The committee divided -

Ayes 8

Noes 14

Majority..... 6

Question so resolved in the negative.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 5 (Definitions).

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Senator Sir FREDERICK SARGOOD

- There is a definition of beer in this clause -

Beer means any liquor upon which, under the name of beer, any excise duty imposed by the Parliament is payable.

In clause 8 it is provided that no person shall make beer unless he is licensed, and under clause 54 it is provided that all beer made by any person who is not licensed shall be forfeited to the King. Reading the three clauses together, it appears to me that it would be utterly impossible for a private person to brew beer. Under the Victorian Act the wording is -

No person shall carry on the trade or business of a brewer.

It seems to me either that words of that kind should be inserted in clause 8, or in the definition of the meaning of beer, which should be framed so as not to include beer brewed for the use of private persons. I take it that it is not intended to confiscate beer brewed by private persons for their own use.

Senator O'Connor

- The honorable senator is quite mistaken in his reading of the definition.

Senator Sir FREDERICK SARGOOD

- I will not move an amendment upon this clause.

Clause agreed to.

Clause 8 -

No person shall make beer except pursuant to this Act, nor unless he is licensed to do so under this Act, or under a licence already granted under some State Act.

Penalty: £100.

Amendment (by Senator Sir Frederick Sargood) proposed -

That after the word "shall," line 1, the words "make beer" be omitted, with a view to insert the words " carry on the trade or business of a brewer."

Senator O'CONNOR

- It may be well to follow the Victorian Act sometimes, but we should be careful not to drag in by the head and the heels every section from the Victorian Act which we think is likely to fit in with this measure, without properly considering the difference between the framework of the Bill and that of the Victorian Act. It is quite clear that the clause cannot deal with any beer except that which is subject to excise.

Parliament may make any beer excisable that it thinks fit, and Parliament would make excisable beer produced, not in a private household, but in the ordinary course of trade. This machinery for the purpose of collecting excise duty is made to apply to all beer subject to excise duty, but it does not make a person who brews beer in his own home liable, unless we provide also for imposing an excise duty upon the beer made in private households. With regard to the change of expression, I have not had the advantage of reading the Victorian Act ; but from what I know in general of its provisions the machinery of the Act is put in a different way altogether from this. The reason for using the words "no person shall make beer, except in pursuance of this Act " is that we do not want only to get at a man who is carrying on a brewery, but at men who may make beer for the purpose of evading payment of duty, and yet may not be carrying on a brewery at all.

Senator Sir Frederick Sargood

- If the honorable and learned senator is satisfied that the clause will not have the effect I have

suggested, I will not press the amendment.

Senator O'CONNOR

- I am perfectly satisfied it will not.

Amendment, by leave, withdrawn.

Clause agreed to.

Clause 20-

No brewer shall -

Sell spirits in his brewery or except by permission of the collector at any place within 50yards thereof.

Penalty: £100.

Senator Sir FREDERICK SARGOOD

-I asked the question in connexion with this clause, why wines were not included, and I understand now that they have been omitted by mistake. I move -

That the words " wine or " be inserted after the word "sell," line 2.

Senator O'Connor

- I have no objection to the amendment.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 27 -

The duty payable on any beer shall be paid by the brewer before the beer is removed from the brewery, but when the brewer has a delivery store more than one mile away from his brewery from which store he delivers all beer which he bottles, the collector may grant such brewer a permit to remove all beer bottled at his brewery to such store, and in such case the duty shall be paid on all such beer in bottles at and before it is removed from the store. Provided that any brewer having more than one brewery may transfer beer in bulk under permit from one of his breweries to another for bottling purposes.

Penalty : £100.

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Senator O'CONNOR

- It will be remembered that an amendment was carried by Senator Dobson in this clause, the effect of which was to allow a brewer to have a store in connexion with his brewery, and to allow him to convey beer or bottles containing beer from his brewery to his store. It was pointed out that there might be a good deal of hardship in not allowing a man to carry beer from his brewery to his own store unless under a permit, or unless duty were paid on it, and stamps put upon the vessels in the same way as if there was a removal from the brewery for sale. An amendment was made which had the effect of treating the store and the brewery as. one, and making the removal upon which duty was payable on the beer the removal from the store. That amendment, it has been found, would involve a great many consequential amendments in the following clauses ; and I have had some amendments drawn up which will put the clause in such a shape that the consequential amendments necessary will be very few indeed. I propose now to strike out the honorable senator's amendment so that the clause shall read -

The duty payable on any beer shall be paid by the brewer before the beer is removed from the brewery.

I propose to stop there and follow that by new clauses which have been printed. We have not come to them at present, but it is necessary that I should now refer to those clauses, the first of which provides that a brewer may, under permit from the collector and subject to the prescribed conditions, transfer beer in vessels from one brewery to another carried on by him, and transfer beer in vessels or bottles from his brewery to a delivery store ; and that no such transfer under the clause shall be deemed to be a removal. The next clause provides for the affixing of the permit on the transferred vessels, and a third clause provides that all beer so transferred shall be accompanied by a cart-note which identifies it, and there is a penalty attached to a breach of the law in that respect. With a view to inserting afterwards the new clauses to which I have referred, I now move -

That all the words after the word "brewery," line 3, down to and inclusive of the word " purposes," line 13, be omitted.

Senator DOBSON

- The Minister has, I think, correctly stated the effect of his clause, and, as it gathers up, the two objects of my amendment in better phraseology and necessitates fewer consequential amendments, I have much

pleasure in accepting the amendment.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 37 (Refund for bad beer).

Senator DOBSON(Tasmania). - I joined in getting the clause recommitted in order that I might ask the committee to reconsider its decision on my amendment. The other day I moved an amendment to strike out one-eighth with a view to insert one-half as the quantity of beer to be taken from a vessel, and to provide that if it was not more than one-half and the rest went bad, they could ask for a refund, but the committee decided against me. During the discussion Senator O'Connor told me privately - not confidentially - that as a compromise he would consent to one-fourth. He is not bound to that statement, nor am I bound to accept one-eighth. The reason why I suggest one-fourth as a fair compromise is because brewers cannot carry on their business without taking back from the publicans all the beer which has gone bad or turned sour, or is even a little " off." Whether the publicans, in order to get fresh beef, keep a cask in which they put the dregs and washings up I am not here to discuss. I do not think the publicans at large do that sort of tiling. It is hard not to give the brewers an allowance for the beer which goes bad, as they have to give an allowance to their customers in a far more liberal way than I suggest, and on every gallon of the beer which they replace they pay duty. In these hot climates, and with heat waves passing over Australia, very often gallons of beer may go bad through no fault of the brewer, and on this beer duty is paid. Senator O'Connor reminded me the other day that in the first instance it was thought that no refund should be allowed off more than a mere sample taken out to test the beer. But we have got beyond that point, and we find that as a matter of justice the brewer is entitled to a refund on account of a well-known practice between him and the publican.

Senator O'Connor

- If imported beer goes bad there is no refund of the duty paid.

Senator DOBSON

- I am quite aware of that fact. I can recollect the days - 30 years ago - when one bought bottled ale with fear and trembling, but now, I understand, most of our bottled beer is tolerably good. I take it that exporters from foreign countries must take that risk; but here, where the beer goes bad through the effect of the hot climate, and when it is proved to the satisfaction of the collector to have gone bad, according to the principle of this Bill, it is simply a question of the quantity. If out of eight gallons of beer more than one goes bad, no refund can be claimed, although six-eighths of the whole quantity may be unfit for human use, and the brewer may have had to allow for the whole of this beer to the publican. I move - That the word "eight" be omitted, with a view to insert in lieu thereof the word "fourth."

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Senator O'CONNOR

- I hope that the committee will adhere to the decision it arrived at, after very full consideration. It is considered fair that, where practically the whole consignment of beer goes bad, on its return under certain conditions, the brewer shall be entitled to have the duty refunded, and one-eighth is mentioned, because that is considered a very full quantity to allow for practically sampling the beer. But it never was intended that the brewer shall not run the risk of sending away beer which may or may not become bad, that he shall stand absolutely on velvet if it goes bad, and get a return of the duty on so much as is sent back. Is there any reason why he should be treated any differently from a person who imports beer? The importer has paid the duty on his beer before he gets it to distribute.. If the importer gets no consideration from the Customs why should the brewer get any ? It would be almost a premium for carelessness, in sending out beer to the country, if the brewer could get a refund of the duty on whatever quantity was sent back. The brewers will be careful not to send out beer which is likely to go bad, because if they do they will not get a refund of the duty if the badness is not discovered until more than an eighth is consumed.

Senator Major GOULD

- I agree with the opinion expressed by Senator Dobson. Very often the beer is in good condition when it is sent away to the country, but it has to travel for a considerable time and in transit it goes bad, and so much of the beer as may be taken back by the brewer because it is bad should be exempted from payment of duty. The brewer has to make allowance to the man who sent back the beer. It is not probable that a brewer would take back beer unless he was satisfied that it was bad. But the Government are

protected by the fact that the collector, as well as the officer, has also to be satisfied that it is bad. The return of the beer entails a loss on the brewer as well as the customer, because there is cost of carriage to and fro to be paid, and as the returned beer has to be replaced with beer on which excise duty is paid, the State loses nothing on the transaction. The loss really falls on the brewer and the publican. It is merely a matter of absolute justice that this amendment should be made. It does not provide a means by which the Government can be taken advantage of, or fraud can creep in in the collection of the duties.

Amendment negatived.

Clause agreed to.

Progress reported.

ORDER OF BUSINESS

Senator CLEMONS

- I wish to ask Senator O'Connor if he can give some indication of the work for next week? It seems to me that after the Excise on Beer Bill has been finished we shall have a choice between the Public Service Bill and the Post and Telegraph Bill.

Senator O'CONNOR

- As the business paper stands at present it is my intention to go on with the Customs Bill until it is finished ; next the Excise on Beer Bill until it is finished ; and then the Acquisition of Property Bill until it is finished. If no urgent taxation measures come up from the other House in the meantime it is our intention to go on with the Public Service Bill.

Senator Dobson

- Will there be a general Excise Bill coming up before the Tariff?

Senator O'CONNOR

- I cannot tell the honorable Senator that at present.

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16:10:00

Senate adjourned at 4. 10 p.m.