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1901-09-05

Senate.

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

QUESTION

MOSSMAN POST-OFFICE

Senator STEWART

- I desire to ask the Postmaster-General, without notice, the questions which stood on the business-paper yesterday in my name -

Has there been any defalcation in the Mossman Post-office, North Queensland?

If so, what is the amount, and has it been refunded ?

Is there to be any prosecution ?

Is the defaulting officer still in the service?

Postmaster-General

Senator DRAKE

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

. There has been a defalcation in the Mossman Post-office, North Queensland.

The amount was £201 25s.1d. It has been refunded.

As the Post-office was in charge of the Douglas Divisional Board, and the duties were discharged by an employe of the board, the matter of a prosecution now rests with that board.

The defaulter was not in the service of the

Post and Telegraph department. The Board have employed another person to do the work of the post-office.

CUSTOMS BILL

In Committee(consideration resumed from 4th September, vide p. 4458).

New clause 184 a (proposed by Senator O'Connor) -

No fastening, lock, mark, or seal placed by an officer upon any door, hatchway, opening, or place for the purpose of securing any stores upon any ship which has arrived in any port from parts beyond the seas, and which is bound to any other port within the Commonwealth, shall be opened, altered, broken, or erased, except by authority; and if any ship enters any port with any such fastening, lock, mark, or seal opened, altered, broken, or erased, contrary to this section, the master shall be guilty of an offence against this Act.

Penalty : £100.

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Senator PULSFORD

- I can but express my regret that when the Vice-President of the Executive Council withdrew the latter half of clause 184, the withdrawal was not final - that he has brought forward the proposal in this new form. I cannot but feel that when Australia is entering upon the thresh hold of nationhood we ought to walk warily, to be careful that we do not break those international laws which have helped to make and strengthen and preserve the rights of Australia, and which we must largely rely upon for the maintenance of our position. In a very interesting work, Hall's International Law, the question of the growth of international law has been very clearly and lucidly discussed. At one time such a thing as international law was not known, but today, to quote from his work, at page 146 -

It has become an uncontested principle of modern international law that the sea, as a general rule, cannot be subject to appropriation.

Then the author goes back three or four centuries, and shows the position of affairs existing at that time.

At page 148 he shows that -

When international law first came into existence the common European practice with respect to the sea was founded upon the possibility of the acquisition of property in it, and it was customary to look upon most seas as being in fact appropriated.

As evidence of this he says in different parts of his work -

Spain asserted dominion over the Pacific and the Gulf of Mexico. Portugal claimed the Indian Ocean and all the Atlantic south of Morocco. Both powers pushed the exercise of proprietary rights to the extent of

prohibiting all foreigners from invading or entering their waters. England claimed dominion over the Channel, the North Sea, the seas outside Ireland, and laid some vague claim to the Bay of Biscay, and to the seas north of Scotland.

That was the position of affairs when the sixteenth century dawned. Gradually all these alleged appropriations have been swept away, and the sea has been allowed by universal consent to belong to all the nations of the world and to be the world's great highway. It is a pity if Australia in the early days of her career is to break in upon the recognised law of the world - a law which in days to come will be a benefit and a strength to her. We are a growing country. In the course of time we shall have steamers of our own sailing from these ports to the great countries of Europe, and we shall gain advantages from this international law. Our steamers will be allowed to call at British ports one after the other, and no Custom-house officers will there be deputed to do that which we, in this new clause and various clauses that have been passed, seek to do. Although the Government profess to be very confident as to the acceptance of the whole Bill by the Imperial Government [I do not think they feel absolutely certain on the point, because honorable senators may have noticed that a day or two ago we had a new clause or an addition to an old clause to be proposed by the Government which ran as follows : -

The collector of Customs may, on payment of duty or otherwise, permit the use of stores. That proposed amendment has been withdrawn - apparently it is not to be proceeded with, but certainly to me it indicated some uncertainty in the mind of the Government, and some intention of leaving a loop-hole for escape so that the dangers which we apprehend might be to some extent guarded against. Yesterday Senator Playford interjected about our foreign-going steamers being heavily subsidized, and suggested that that was a reason why we should step in and make them liable to customs duties on the stores consumed on board while they were on our coast. A great deal of misunderstanding exists with regard to these oversea vessels. They are great vessels - floating palaces ; but they do not return to their owners those handsome dividends which the majority of senators think they do.

Senator Higgs

- How does the honorable senator know?

Senator PULSFORD

- They are maintained at vast expense. Australia, it must be remembered, is not like the old countries - it has not an overflowing population. The steamers come here, calling at port after port, and paying heavy port duties at each place, and if we lay heavier burdens on them the result may not be to our own advantage. I heard an honorable senator ask how I know that these steamers do not pay the handsome dividends which are often attributed to them. I shall give some information with regard to one company which I have taken from the last issue of the Australian Joint Stock Companies' YearBook, by Mr. R. L. Nash. The Orient Company was formed in 1878 with a capital of £466,000 paid up. From 1878 to 1890 the dividend ranged from nothing at all to 5 per cent. The book does not say for how many years it was nil, but I believe that for most of the years it was nothing.

Senator O'Connor

- What has this to do with the clause?

Senator PULSFORD

- I think it has a good deal to do with the clause, because in the other House, as in the Senate, it was largely advocated on the ground of the necessity of protecting colonial steamers against the alleged serious competition of oversea steamers. In the year 1890 the company paid 3 per cent., in 1891, 1892, 1893, and 1894 nothing, in 1895 2£ per cent., and in 1896 21/2 per cent.

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Senator O'Connor

- I rise to a point of order. I am not desirous in any way of cutting short any observations any honorable senator may have to make bearing upon the question before the committee, but I ask whether Senator Pulsford is in order in adopting the line of argument he is now taking? I submit that matter relating to the profits of the Orient Company, or its losses, or the amount of its capital, or whether there is competition or not, has nothing whatever to do with 'the question before us.

Senator Sir Josiah Symon

- On the point of order : I think my honorable and learned friend, Senator O'Connor, is applying a very rigid and restricted rule to the observations of Senator Pulsford. It is impossible to argue this question

unless the principle underlying it is brought under discussion; and the whole argument hitherto has proceeded on that foundation. I myself adopted the same line of argument.

Senator Sir William Zeal

- I would ask the Vice-President of the Executive Council not to be too strict, and not to persevere in his point of order. From my point of view Senator Pulsford is one of the few members of the Senate who do not abuse their privileges.

Senator Higgs. - That is a great reflection on the rest of us.

Senator Sir William Zeal

- Well, several honorable senators do abuse their privileges, but I do not think Senator Pulsford does. Senator Pulsford was showing that the Orient Company had not paid dividends, and that it would be unfair for this Parliament to impose duties upon the Orient and P. and O. Companies during the currency of their contracts with the Imperial Government.

The CHAIRMAN

- The question of the imposition of duty on ships' stores, and also the question of competition between oversea vessels and coasters, have been dealt with in the course of this discussion by the Vice-President of the Executive Council himself, and by other honorable senators who have already spoken. I think that while Senator Pulsford went near to the border line his argument was quite in order.

Senator PULSFORD

- I shall not occupy the time of the committee for many minutes more. I think the information I have given has a useful bearing on the question before us. During the years 1895-6-7, the 'Orient Company paid a dividend of 21/2 per cent. In 1898 it paid nothing, and in 1899 the dividend reached 3 per cent. So that during the last ten years the dividends paid by the company have averaged very little over 1 per cent. I am not able to give exact returns concerning the other companies, because their Australian trade is supported by trade in the more populous parts of the world, where a more profitable business is carried on. I can assure the committee that, taking the aggregate, the great companies whose ships visit Australia pay for stores, for coal, for port dues, and other charges in Australia, something like £2,000,000 a year.. That is not a haphazard guess. I can tell the committee also that within the course of a few days an authoritative statement will be published by the companies concerned, indicating how much each company does spend in Australia. The presence of the oversea companies in Australia is a strength and not a weakness to the coasting lines. The oversea steamers bring them cargo, which they carry to other parts, and in many ways help to sustain and make profitable the trade of the coasting companies.

Senator O'Connor

- Will the honorable senator say how much money is spent by the coasting and Inter-State companies in Australia ?

Senator PULSFORD

- I do not know how much money is spent by the InterState companies. I presume the total does not reach as much as is spent by the oversea companies, though I have no doubt it is a very large sum. This clause is put before the committee on the ground that a serious injustice is likely to be done to the InterState companies if the oversea companies are allowed to carry passengers round our coast's. I would gladly, if it could be arranged, put all the companies on the same footing as regards the duties they pay. But I want to disabuse the committee of the idea that there exists so serious a competition that it can only be met by a breach of international law. That is the only ground upon which I am putting forward these facts. I take it that there are many reasons why we should be careful not to put any clause in this Bill that might cause it to be hung up, and the Tariff probably to be delayed for some time.

Senator Pearce

-That is an old bogey.

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Senator PULSFORD

- Everybody must know that that result may be brought about, and it ought not to be described by any honorable senator as a bogey. What will happen if this Bill does not become law? I presume that the Tariff Will be hung up indefinitely-. That would cause a great deal of trouble and annoyance. I am quite certain, however, that the Imperial Government will do its best to accept the Bill if the objections to it are not too overwhelming. But is Australia to enter upon its nationhood as a petted child Legging an indulgent mother

for that which it is not entitled to under the law of the whole world? The more manly course is for Australia to recognise the standing international law of the world, and not to ask for anything to which it is not reasonably entitled under such law.

Senator CLEMONS

- Before I begin the discussion on the merits of this proposed new clause, I should like to tell the Vice-President of the Executive Council that I am very glad to see the clause in its present form. I recognise that the honorable and learned senator has put before the committee a clear-cut issue, and that if the Bill is passed with this clause in it, the Government will have the fullest opportunity of enforcing their desire. To that extent, therefore, while I entirely disagree with the objects of the clause, I approve of the means which the Vice-President of the Executive Council has adopted to secure that which, in his opinion, is desirable. Without wishing to make any invidious remarks, I cannot help commenting upon the objection raised by Senator O'Connor to the arguments of Senator Pulsford.

The CHAIRMAN

- I will ask the honorable and learned senator not to refer to that.

Senator CLEMONS

- Let me put it in this way, if I may. Senator Pulsford's argument put very strongly before the committee the point that we are all concerned about. The question that is involved is that of preserving our own Australian trade from undue competition.. I say without any hesitation that unless that question was distinctly raised, the committee would never for an instant consent to this clause. I believe the committee recognises that it is going to attempt by something like an underhand method to secure that which cannot be obtained otherwise. That course is to be taken simply in the interests of our local shipping, to preserve it from undue competition.

Senator Dobson

- That should not go forth from the Senate. It is not an underhand design, and it is not a subterfuge.

Senator CLEMONS

- I would remind Senator Dobson that last night he expressed his admiration for this proposed new clause, on the ground that it is something like a cunning device. Does he consider that a cunning device is a sort of thing that should appear in our legislation in the early days of the Commonwealth? I am not anxious to see a cunning device represented in any of our Acts. We are trying to do by underhand means that which we cannot do by direct.

Senator McGregor

- This is a wanton and unjustifiable waste of time.

Senator CLEMONS

- I ask you, Mr. Chairman, whether the words used by Senator McGregor are in order 1

The CHAIRMAN

- The interjection is decidedly disorderly, but as far as concerns the expression of opinion as to whether the discussion is a waste of time or not, I do not consider that the remark was disorderly.

Senator Major Gould

- I ask you, sir, whether the interjection in itself was not disorderly?

The CHAIRMAN

- I have already ruled so.

Senator CLEMONS

- May I ask what your ruling is? Senator McGregor said that this discussion was a wanton and unjustifiable waste of time. " Was the use of those words in order?

The CHAIRMAN

- As an interjection I have ruled the use of the words out of order, and I would ask the honorable senator to withdraw them.

Senator McGregor

- I have no objection to withdraw the remark as an interjection, but it is my opinion all the same.

Senator CLEMONS

- I have no objection to these interjections of Senator McGregor's, but I am concerned in the proper conduct of the business of the Senate. I want to point out in regard to this clause that, possibly, some honorable senators are not aware of the fact that this question has arisen and has been discussed in

Great Britain, and that though a clause of this sort would be considered most desirable in Great Britain, in the opinion of the House of Commons it could not be put into force. A precedent of that sort should have some weight with us, but so far as the division upon this clause is concerned, I am afraid it will not have any weight at all. I still feel it my duty to point out that in Great Britain the House of Commons has been unable to secure the object of this clause, which is as desirable for Great Britain as it is for the Commonwealth.

Senator Pearce

- Could the honorable and learned senator give the circumstances ?

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Senator CLEMONS

- The circumstances are that in, for instance, the case of a foreign-owned boat sailing from London to Liverpool via Southampton, Great Britain has so far been unable to enforce the collection of duties on the stores used on the boat. That is an exactly parallel case.

Senator O'Connor

- Is it because they are unable to do it, or because they do not wish to do it ?

Senator CLEMONS

- The Vice-President of the Executive Council may say that it is because they did not wish to do it, but if he (will read the correspondence on the subject he will find that the matter has been debated seriously for many years, and the best authorities in England are unable to advise that the means we are adopting in this Bill can be successfully adopted in Great Britain. That is a precisely parallel case, because I may inform honorable senators that in regard to British-owned ships trading in British waters, these duties are collected, though in regard to foreign ships trading from London via Southampton to Liverpool, they are not collected. Further, with regard to this question of competition, we all know that it is intended that this clause shall come into operation simply to help our locally owned ships. With the spirit of that intention, I am in no way at variance. I recognise that while we should treat the people of this Commonwealth with absolute justice, we have a perfect right to say that when travelling from one port to another in the Commonwealth on board our own boats they shall pay duty just as if they were on shore. With that proposition no honorable senator disagrees. If the thing went no further there would be no discussion ; but here again the question of competition arises, and on this point I want to remind the committee of something further. I think we may be all agreed that if we adopt means of this sort, retaliation if possible will surely come wherever any Legislature thinks it is within its power to retaliate. In this connexion I refer honorable senators to the case of New Zealand. While they consider that by this clause they will be doing nothing except to help our local shipping, I say that, when we consider the case of New Zealand, it is clear we may be doing something which would injure our own shipping, because New Zealand may retaliate, and if she does, it will seriously affect all ships owned in the Australian Commonwealth and trading with New Zealand. At the present time, if I am capable of interpreting the New Zealand Act, the provision there is not on all-fours with the provision we are attempting to enforce here. They have a very simple arrangement by which they separate the stores on board ships into two classes. They seal down and prevent from use, practically speaking, the bulk of the stores, and another portion of the stores they put in what they call the " victualling class," and they leave them free for consumption from port to port. That is entirely at variance with the proposition of this new clause, and while I do not for one moment say that the New Zealand example should be a precedent for the Commonwealth, I feel it right to point out that the matter is dealt with there, and legislated for in another way.

Senator Dobson

- It is in the direction we want.

Senator CLEMONS

- On the contrary it is in the opposite direction, because it allows the stores set apart for home consumption between the ports to be consumed dutyfree.

Senator O'Connor

- Supposing the seals on the stores sealed up are broken between ports, what happens then ?

Senator CLEMONS

- I am afraid the Vice-President of the Executive Council, does not follow me. What happens in New Zealand is that the bulk of the stores are sealed up, but a sufficient amount of stores is left unsealed and

put in what is termed the "victualling class."

Senator O'Connor

- And they pay duty?

Senator CLEMONS

- No; they are exempt from duty. I admit that only a certain amount of stores is exempt from duty, and that is the amount which the Customs officers think sufficient for the journey from one port to another. Senator Dobson will see that that is entirely at variance with the proposition here.

Senator Dobson

- No, it is in the same direction.

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Senator CLEMONS

- Well I cannot elaborate the argument for the honorable and learned senator any further. What I want to point out with regard to New Zealand is that under this clause we shall treat boats owned in New Zealand and registered there exactly on the same footing as the P. and O., Orient, and German and French lines of boats, and New Zealand enters into the competition. What will follow upon the passing of this clause immediately will be that any boat owned and registered in New Zealand will upon arrival at her first port in the Commonwealth have her stores sealed down, and so long as she trades from port to port within the Commonwealth those stores will have to remain sealed down and may not be used duty free. I think it worth while to point out to the committee that retaliation on the part of New Zealand may speedily ensue with regard to ships owned in Australia, and trading in New Zealand, and they will immediately suffer as the result of passing this clause. Although honorable senators may feel that they are conferring a widespread benefit upon Australian-owned boats, it is clear that in one small instance, at all events, they are going to harass and impede them; and with regard to all Australian-owned boats trading in New Zealand waters, retaliation will necessarily follow, and they will trade from port to port in New Zealand on terms which are not so advantageous as they enjoy at the present time. If honorable senators choose to exercise foresight, they may see the position in which they may be put in the future. If the Australian shipping industry ever does grow to a large extent, and we all hope it will, so long as we have a clause like this upon our statute-book, we may expect retaliation to follow wherever our ships go. If our ships trade even in the waters of Great Britain, if Great Britain could stoop to legislation of this sort, retaliatory legislation may follow there.

Senator Playford

- So long as they treat their own vessels in the same way as they treat ours we cannot object. This is not framed for the purpose of protecting our own people, but for the purpose of getting in revenue, and we say that all vessels trading between our ports should be subject to duty alike.

Senator CLEMONS

- No senator more cordially desires than I do to collect every pennyworth of duty on spirits and tobacco; but I am not going to attempt to collect it by means that I regard as illegal and unconstitutional, or to attempt to collect duties outside our own waters. I say I do not approve of measures like this, because I consider them illegal and unconstitutional, and a bait of £15,000 a year in revenue will never tempt me by legislation to do what I believe to be illegal.

Senator Dobson

- If it is illegal it cannot be done.

Senator CLEMONS

- The honorable and learned senator again misunderstands the question. I say that to attempt to enforce this penalty because a ship comes into a

Commonwealth port with seals broken is attempting to do something which we have no right to do.

Senator Dobson has called this a cunning device.

Senator Dobson

- A skilful device.

Senator CLEMONS

- But the honorable and learned senator has admitted, and must admit, that the breaking of these seals as soon as a ship gets outside the 3-miles limit is a perfectly legal act. Yet he is quite prepared to say that an offence has been committed because a ship arrives in port with the seals broken. That is the position

of the honorable senator and of all why support the Government. If they are prepared to run that risk let them do so ; my concern is simply to enter my protest against legislation of this sort wherever it occurs. It seems to me to be an attempt to do something by a devious and indirect method unworthy of legislation. If it can be done directly, why not do it? Why not introduce a clause in this Bill providing that duties shall be paid on goods carried by all these foreign ships while they are going from port to port? The Government can make the clause perfectly simple in that way, and there will be no occasion for any cunning device in regard to the breaking of seals. If we want to make this provision why not do it straightforwardly, and say that we will make stores on all these boats dutiable? Instead of that the Government attempt by a cunning device to secure their object, simply because they want to save local ships from competition and because they wish to secure £15,000.

Senator Dobson

- The sole question is. can we do it in a legal way?

Senator CLEMONS

- I hope I have not dwelt unduly on this question. It has interested me very much. I admit that I was rather nettled by the interjection made just now. I hardly thought I deserved it. At the risk of being deemed egotistical, I would say that this new clause has been drafted practically at my suggestion, and, therefore, any interruption during my speech, when I only intended to speak briefly, seemed to me to be not well deserved.

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Senator STANIFORTH SMITH

- I intend to oppose this clause, because I think we are seeking to impose a penalty on certain people for doing something which is absolutely legal. It seems to me that if a foreign ship comes into Fremantle, for instance, the Customs certainly have jurisdiction over her -while she is in port, and can seal up her stores. But as soon as she goes a distance from Australia exceeding three miles, she is absolutely without their jurisdiction and beyond their control, and there is no law that governs her, and provides that the seals on her stores shall not be broken. Therefore, the seals can be broken with perfect legality. When the ship comes- into Melbourne, Adelaide, or Sydney we propose, however, that the master shall be told - "We will fine you £100 for doing something which we ourselves admit was perfectly legal, and therefore, right for you to do." That is a most extraordinary position for the Government of a nation like Australia to take up. I think that no more admirable word has been used to characterize this provision than that uttered by Senator Dobson when he described this as a " cunning " device.

Senator Dobson

- The honorable senator forgets that I substituted " skilful " for " cunning."

Senator STANIFORTH SMITH

- I am quite willing to admit that the honorable and learned senator is sorry now that he used that word. In my opinion, however, it exactly fitted the case. The Government cannot impose duties on ships' stores, unless they do it in the way of a penalty when the vessels come within the jurisdiction of the Commonwealth. I am not opposed to duties being levied on ships' stores if it can be legally done, but I am convinced that it cannot. If this clause is lost," we must extend exactly the same law to Inter-State boats, and allow them to carry their stores free of duties. I do not think the Government or any one else would make the preposterous assertion that we should differentiate against our own shipping. Other nations are encouraging their mercantile marine, and we cannot impose a penalty against our own boats.

Senator Pearce

- We have already done so.

Senator STANIFORTH SMITH

- If this clause is lost, there is no doubt in my mind that the Government will withdraw the clause making ships' stores on Inter- State boats dutiable, because I am sure they are not going to differentiate between InterState and foreign-owned vessels. Senator Dobson states that he is unable to say whether this proposal is legal or not, and certainly he is a gentleman of considerable knowledge of international law.

Senator Sir John Downer

- The honorable senator knows it is legal.

Senator STANIFORTH SMITH

- I have distinctly said that I think it is not legal. If it is not, then we cannot legally impose a fine on

foreign-owned ships, and we cannot put our own Inter-State ships in a worse position. I am going to vote against this clause, and if it is carried I am going to oppose any duty being put on the stores carried by Inter-State boats.

Senator KEATING

- I intend to support the new clause proposed by the Vice-President of the Executive Council not merely for the reason suggested by honorable senators on the other side that it is intended to give some special advantage to Australian shipping, but because in the State Legislatures it has been recognised that a power similar to this can be exercised ; that legislation similar to this can be enacted and enforced. Now that we have entered into a common union and have to regard the whole of Australia as one fiscal area, instead of six different fiscal areas, we find, I think, the necessity for discharging a duty similar to that performed by State Legislatures with regard to this matter. I have listened to the contention raised by Senator Clemons and the last speaker that to enact legislation of this character is to do something of very doubtful legality. I would point out, however, that so far as that doubt is concerned, it seems to have been disposed of in the State from which I come, because in the Tasmanian Customs Act 1897, I find a section, of exactly similar purport. Singularly enough it also is section 184. It provides that - If any officer of Customs shall place any lock, mark, or seal upon any goods or stores on board any vessel, and such lock, mark, or seal be wilfully opened, altered, or broken, or if any goods or stores be secretly conveyed away, either while the ship remains at her first port of departure, or at any other port or place in Tasmania, or on her passage from one such port or place to another, before the final departure of such ship or on her foreign voyage, the master shall forfeit a sum not exceeding £100.

That provision was imported into the - consolidated statute from sections previously in force.

Senator Major Gould

- Does that simply apply to oversea ships.

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Senator KEATING

- No, to all ships. It simply provides that if -

Such lock, mark, or seal be wilfully opened, altered, or broken, or if any goods or stores be secretly conveyed away, either while the ship remains at her first port of departure, or at any other port or place in Tasmania, or on her passage from one such port or place to another, before the final departure of such ship or on her foreign voyage, the master shall forfeit a sum not exceeding £100.

A vessel might call at Launceston and its stores might be locked, marked, or sealed by the Customs officers there. The vessel might then take her departure for a port on the west or north-west coast, and, for the express purpose of avoiding the responsibility devolving upon him under that section, the master might deviate from his course and go 20, 40, or 50 miles beyond the territorial limit. Then, according to the contention of honorable senators on the other side, it would be an absolutely legal act for him to break the marks or seals. He might go into some other port of Tasmania before starting on his foreign voyage and it would be absolutely illegal and unfair for the State courts of Tasmania to impose a penalty for the breaking of the seals.

Senator Sir Josiah Symon

- Has there ever been a conviction under that section ?

Senator KEATING

- I do not know that there has been, because those who have been trading round the ports of Tasmania have respected that law.

Senator Sir Josiah Symon

- Or broken it with impunity.

Senator O'Connor

- The point is that there have been no tremendous international complications.

Senator KEATING

- There have been none of those international complications which some honorable senators would lead us to believe this clause would involve. I would draw attention to the fact that it is not merely as a protection to our own Australian shipping, nor to confer any particular advantage upon them that this clause is proposed. Honorable senators should recognise that in legislating as we are in this Commonwealth Parliament, we are legislating for the whole of Australia as one fiscal area, and that what



could formerly be done legitimately in the States, taking each as a single fiscal area, can be done by the Commonwealth Parliament in legislating for the whole. We are conferring upon our Customs officers certain duties for the purpose of protecting the revenue. If the master of any vessel, whether it belongs to Australia or the ports beyond Australia, chooses to attempt to nullify those deliberate efforts on the part of the Customs officers to protect our revenue, whether they do so within a port of the Commonwealth, or within or beyond the 3-mile limit, we shall be in a position to say that a penalty shall be imposed upon them under this clause.. It is for these reasons and not for that suggested by honorable senators who oppose this clause, namely, that it is purely for the purpose of putting our own coasting shipping on terms of equality with foreign boats with whom they enter into competition

Senator De Largie

- And which is only just.

Senator KEATING

- And which as Senator DeLargie remarks would only be just. It is for these reasons that I am prepared to support the clause. It is simply a matter of justice. If our own Australian shipping is' compelled to obey a provision of this character, and to pay duty on stores consumed under these circumstances, we do not grant them any advantage in placing a British, German, or French owned ship on similar terms. It is only a matter of justice to them. Apart from that point, however, our State Legislatures have in the past recognised that they have this power, and they have Legislated accordingly. I am confident that if honorable senators will refer to the statutes of States other than Tasmania, they will find similar provisions in them.

Senator PULSFORD(New South Wales). - The extract which Senator Keating has quoted from the Tasmanian Act does not help us in the least. In the State of Tasmania there is substantially no oversea trade, except occasionally with Hobart. No oversea vessels enter one port of Tasmania and go to another port there, so that the inference which Senator Keating desires to draw from the Tasmania Act cannot possibly be applied.

Senator PEARCE

- In refutation of the statement made by Senator Pulsford, I would point out to him that there is a line of steamers which' calls at Launceston and goes on to Hobart and thence to New Zealand.

Senator Major Gould

- What line calls at Launceston and then goes on to Hobart ?

Senator PEARCE

- Tramp steamers usually call at Launceston and Burnie.

Senator Pulsford

- Once in a way.

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Senator Keating

- Tramp steamers call at Stanley, Burnie, Ulverstone, and sometimes Launceston, and go on to Sydney.

Senator Pulsford

- And no passenger ever goes on board them.

Senator PEARCE

- It is not "a question of levying a poll tax on passengers, but levying a customs duty on stores, which may be used by the crew, if they do not carry a passenger. I deprecate the attempt made by Senator Pulsford to intimidate the committee with the idea that if we pass such a provision, the Royal assent will not be given to the Bill. We shall exercise our own judgment.

Senator Major GOULD

- I am sure that honorable senators have no desire to act in an unfair or unjust way. The whole tenor of this debate has been to show that a wide difference of opinion exists between certain honorable senators, first as to whether we can legally do what we seek to do ; and, secondly, if we can, whether as a matter of policy or prudence it is wise to do it. I conceive the law to be that once" a ship gets beyond the 3 miles limit she is absolutely beyond the control of our. Customs jurisdiction.

Senator O'Connor

- That is not so.

Senator Major GOULD

- We may put what seal we see fit on her stores ; we can do what we like and make penalties for breaking the seal, but we cannot follow her and punish her for any offence committed outside territorial limits.

Senator Keating

- We do not follow her. We wait until she comes in again.

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Senator Major GOULD

- While we recognise that, possibly we may not be able to do that we go on to say - " If you come into port with the seal broken, that shall be an offence for which you shall pay a penalty of £100." You might just as well say "we shall punish a ship coming into port for the loss of some spars." It would be just as right for you to inflict a penalty for an offence of that character as it is for the offence which this clause proposes to create: When I submitted an amendment to clause 122, providing that these stores should be given to all ships, I said that I took that course because I did not consider that we could get at oversea ships, and I did not wish to handicap our coasters as against oversea ships. The committee, by a large majority, would not accept the amendment to permit free stores being given to Inter-State, ships ; and there were honorable senators who were prepared to say - "While we cannot get this sum of £15,000 from the oversea ships, we can get the sum of £45,000, which we think we are entitled to, from the InterState ships." My position was entirely different from theirs. Believing that we could not get this revenue from oversea ships, I thought that we ought to ( free our own ships. Of course it is impossible to predict whether a Bill of this character, in consequence of its containing this clause, will be reserved or refused the Royal assent. But we want to be satisfied that we have the legal right to collect customs duties on stores consumed on ships outside our territorial limits. Once we are satisfied that there is a power to do that by law, the Government have made out a very strong case, but the wording of their own clause shows that they do not hold that belief. A portion of the original clause 184 was withdrawn because the Government did not think that it was sufficiently clear and distinct to catch oversea ships. It read as follows : - and if any ship shall arrive in any port with any such fastening, lock, mark, or seal open, altered, broken, or erased, except as aforesaid the master shall be guilty of an offence against this Act.

Why did Senator O'Connor withdraw that part of the clause ? Because he felt that it was not sufficient to state that the lock or mark should be placed on the goods in Fremantle, and that the mere fact of doing that should render the ship-owner liable to a penalty if she came into port with it broken, that being evidence of her having consumed stores on which duty ought to be paid. Therefore the Minister submits this new clause,, which is different in several respects from the original one. It must necessarily be different.. He would not have withdrawn that portion of clause 184 if he had thought that it would carry out his object, in order to submit the present clause, so as to make more clear what the intention is. We find that the whole intention centres in tins - recognising that we cannot get duty on stores consumed outside territorial limits' we should punish the shipowner for coming into port with the seal broken, showing that he has consumed his stores probably at a time when he had a perfect right to do so. If the provision had been that if the seal were broken within territorial limits the captain should be liable to a penalty we could have understood that as being clearly within our powers. And if it had said that it should be *prima facie* evidence, when the ship comes into port with the seals broken, that they were broken within the territorial limits, that would have been a perfectly clear cut issue. I have no doubt Senator O'Connor, would say that the captain of a. ship would probably say - "These seals were broken when we were outside your territorial limits, and therefore when the ship was beyond your jurisdiction." I think it was very fairly designated last night by Senator Dobson as a cunning or skilful device to prevent a man doing that which he could lawfully do, but which we do not want him to do, because it deprives us of a certain sum. It is not reasonable to legislate in that way. If you want to do a thing do it fairly and straightforwardly, and let it be understood clearly and distinctly what you intend. Say what you mean in apt words, and then, if a man commits a breach of the law, punish him if it is made within your legislative power. I do not think the case cited by Senator Keating from the Tasmanian Statute is of very great value to us. We do not find that any prosecution has ever taken place under the provision. Assuming, for the sake of argument, that a prosecution had taken place, and a penalty had been inflicted, we would want to see if it had been carried to the superior court to know whether it was an offence and whether it could be punished. -

Senator Keating

- The absence of any conviction is a very good proof of its efficacy.

Senator Major GOULD

- We must always bear in mind that we cannot insist upon our legislation being carried into effect unless it is legislation which cannot be dissented from by the Imperial authorities. But even taking it that we can insist on the administration of any law we see fit to pass, we have no right to attempt to pass a law which is against all constitutional usage and practice, and against the principles which are laid down as between nation and nation. If I could see my way, even at this stage, holding the view I do in regard to oversea ships, to free Inter-State ships from paying duty on goods consumed on board, I would be prepared to do so, because I think we ought to place all these people on a fair equality. It should be remembered, too, that the States are indebted to a very great extent to the oversea ships for the class of communication they have. The intercolonial lines have been vastly improved within the last few years, in consequence of not only the competition amongst themselves, but the competition of these large oversea ships. There is hardly a man here who would not prefer to travel in a large oversea ship from port to port as against a coasting ship, if he could do it on equal terms. And there is hardly a man who is not prepared to pay his £5 for his passage from Melbourne to Sydney in an oversea ship as against £3 10s. for a passage on an Inter-State ship, simply because of the superior accommodation he gets. The Inter-State ships, recognising that fact, have endeavoured as far as possible to bring their ships in line with the ships that have been given this superior accommodation. We are, therefore, to a great extent indebted to the oversea ships for the comforts and conveniences we have for travelling from port to port, but I do not hold that the State ought to give a bounty for that. Do not think I would give them free stores because they have done all this. In my opinion they are entitled legally to free stores outside our limits, and of course while they are within our territorial limits they are liable to the same laws- as our own ships. Supposing, for the sake of argument, we said the Customs authorities shall put a locker on a ship, and the owner is bound to find accommodation for the man while there are dutiable goods on board, and that when the ship got outside our territorial limits the captain said to our officer, "I am going to break the seals." The officer might say to the captain, "I shall not allow you to do so." But the captain would simply say, "I shall do what I see fit on my own ship." Directly the officer attempted to interfere, the captain might either have him put in irons or placed in durance, where he could not interfere with him. When the ship came into port, if the officer made a complaint to the court, and prosecuted the captain for the act which he had done, the court would say to the officer - "You were outside the jurisdiction of the State. The captain was master of the ship, and had a perfect right to do what he saw fit, and his action in putting you into durance was legal." Are we not therefore creating an artificial offence if we say that we shall punish a captain for coming into port with the seals broken? If honorable senators would only take the trouble to think over the matter carefully and calmly without being carried away or swayed by passion on one side or the other, they would realize that they are attempting to make a legal act an illegal act simply because they think that there are a few thousand pounds at the back of it. It may be that honorable senators have made up their minds to vote blindly for the clause, and trust to chance whether the Bill is reserved or rejected; to take the chance of whether, even if it be assented to within a few months, the courts may be called upon to say whether we have done a legal or an illegal act. All our legislation has to be interpreted, and the courts have a right not only to say what it means, but to say whether we have acted within our constitutional powers. I am sorry that honorable senators will not take the care to look at the matter from this point of view. It is not a party question. It is not a question of the Government against the Opposition. It is simply a matter of protecting the revenue, and doing it legally and justly. I am anxious that we shall not create a difficulty that may easily be avoided. I certainly do not wish to favour one class of traffic against another; but I want both oversea ships and Inter-State vessels to be placed on the same footing in regard to trade around our coasts.

Senator DE LARGIE

- I notice that some honorable senators who oppose this clause think that they have discovered a remedy for getting out of the difficulty of placing foreign ships in an unduly favorable position, as compared with local steamers, by exempting both classes of ships from duty on their stores. But the remedy they propose will only create a greater difficulty, because the moment we commence to make exemptions in favour of shipping, there will be any number of other persons who will claim that they have a greater reason for exemptions. I have no doubt that people living in out of the way back blocks will claim that they

should be exempted from revenue duties as well as those who are interested in shipping. Such exemptions would create difficulties innumerable. We have no idea of the extent to which they would go.

Senator Sir FREDERICK SARGOOD

- I believe the committee are absolutely unanimous in their wish to place both the local trading vessels and the oversea ships on an equality. The desire is that both classes of vessels shall pay duty on the goods consumed within the Commonwealth. The only difficulty is how to carry out that desire. Senator O'Connor has submitted an amendment which is now before the committee, and which, up to a certain point, is quite within the scope of the power of the Commonwealth that is to say, as far as concerns sealing any goods or stores while vessels are in Commonwealth waters. But it is utterly impossible, so far as I can see, to make illegal 'the breaking of the seal outside the waters of the Commonwealth, which is in itself a perfectly legal act. Senator O'Connor has referred to some British Acts of Parliament which enable punishment to be inflicted upon ships in British ports for acts done outside the territorial limits. But I take it that the cases referred to were illegal acts. I cannot imagine that there is any power in any British Act of Parliament to inflict punishment for an act of a perfectly legal character done outside the territorial waters of Great Britain. Therefore I do not think the argument of Senator O'Connor properly applies to this proposed new clause. In order to get over the difficulty, it is now proposed that when a vessel arrives at a second port, the owner may be punished if the seals have been broken on the high seas. Reference has been made to the New Zealand line of steamers. See what would happen in that case. A Union Company's vessel starts from Melbourne with stores sealed. The next port of call is Hobart. I will suppose that the vessel arrives in Hobart with her seals still unbroken. She then has to go all round the New Zealand ports, and afterwards arrives in Sydney - a trip of about three weeks. Surely if that vessel breaks her seals during that trip she is not to be punished upon her arrival in Sydney.

Senator Playford

- She can break her seals as soon as she leaves Hobart for New Zealand.

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Senator Sir FREDERICK SARGOOD

-The honorable senator cannot have read the amendment. It says -  
Which has arrived from a port beyond the seas, and is bound to any other port within the Commonwealth. That clearly provides that if any seal placed upon a vessel in the Commonwealth is broken before she arrives at her next port within the Commonwealth, she will be under a liability. I say unhesitatingly that that cannot be earned out. When this question was discussed before, I suggested that a practical way of carrying out what we want would be to adopt a plan by means of which, by regulations, a charge might be made for every passenger and every member of the crew, that would represent as nearly as possible the amount of duty that would be paid upon the goods consumed. I was under the impression that the Minister agreed with that suggestion.

Senator O'Connor

- I have an amendment that will meet that view.

Senator Sir FREDERICK SARGOOD

- If that be so, clause 1S4a is absolutely needless. What does the amendment mean ? That, although the ships' stores are sealed, arrangements, may be made by means of which stores which are wanted may be consumed between two ports subject to the payment of duty. That is all we want.

Senator CHARLESTON

- What honorable senators desire is, I think, that stores consumed on board ships trading between Commonwealth ports shall pay duty. But there is no attempt made in Senator O'Connor's proposal to exempt goods consumed by a ship whilst on the high seas voyaging between two Australian ports. We have no control over ships on the high seas. Therefore, if we say that it shall be an offence for a vessel to come in to a Commonwealth port with her seals broken, we shall be landing ourselves in difficulties that will place us in opposition to all the international laws. This action, on our part will lead to retaliation on the part of other nations. It has been said that the Tasmanian Act is very similar to the clause now under consideration. But in that Act there is practically a provision for ships' stores to be consumed free of duty. Therefore, it does not apply in the same way as the provisions of this measure are sought to be made to apply.

Senator McGregor

- The honorable senator is mixing up the New Zealand and the Tasmanian Acts.

Senator CHARLESTON

-No, I am not. I will read Section 190 of the Tasmanian Act, which is as follows : -

The stores of any ship arriving at or departing from Tasmania shall, if landed for home consumption, be subject to the same duties and regulations as the like sort of goods shall be subject to when imported by way of merchandise.

That contemplates that stores used on board a ship are free from duty.

Senator Keating

- What difference does that make ? That section deals with the consumption of ship's stores, and we are discussing the breaking of seals.

Senator CHARLESTON

- The object is that we shall be able to inflict penalties upon any overseas ship which has consumed stores while on the high seas. The clause is an attempt to do, in a skilful way perhaps, what we know we cannot do fairly, squarely, and openly. Any clandestine method of that sort, however skilfully devised, is liable to land us in a great deal of difficulty. Therefore, I shall vote against the proposed new clause.

Senator WALKER

- I have listened with considerable pleasure to much that has been said. I like to hear both sides of a question. I recognise that when eminent lawyers differ as to our ability to carry out this clause, it becomes laymen to be very modest in offering an opinion. I also recognise the honesty of the intention of the Government in their proposals. Their object is to get revenue by all legitimate means. They are therefore justified in endeavouring to carry out their wish. But there may be considerable dangers in a proposal of this sort. I am old enough to remember the incident that occurred many years ago, which is known in history as the Trent outrage. Two commissioners of the Confederate States of America, Messrs. Slidell and Mason, were arrested by an American steamer whilst on board a British ship. A British ship is British territory, and the United States and Great Britain were involved in a serious quarrel over that case. Any foreign ship outside the 3-mile limit is foreign territory: and I cannot see that we have any right to exercise control over foreign ships or even over British ships outside the 3-mile limit.

Senator Sir William Zeal

- Does the honorable senator think these are parallel cases.

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Senator WALKER

- Only to this extent. A ship belongs to the country from which it hails, and a German ship three miles outside our coast is German territory, and on German territory they have a perfect right to open their own stores and consume them. To that extent the cases are parallel. I think Senator Sargood's suggestion is an excellent one, and I wish the Government could see their way to adopt it. Personally, I should like to see all stores on coasting and foreign ships alike made free, and when the opportunity comes to bring that about I shall be found supporting the proposal. For the amount at issue, £15,000 a year, I think it is not worth our while making all this trouble. There is surely some danger there may be delay in getting the Royal assent to this Bill, and if such delay takes place where will be our uniform Tariff? I am half afraid that if we pass this clause it will postpone the uniform Tariff, because I am afraid the Tariff will not be brought in until all these machinery Bills are passed. We know that at the present time a vessel is being equipped to go down to the southern seas on a voyage of discovery, and if that vessel calls in at any port in the Commonwealth we are not sufficiently patriotic apparently to let her consume stores in our harbours without paying duty upon them. That is not very encouraging to the cause of science. And I think we should hesitate on that score, too. Senator Dobson yesterday referred to the fact that certain other countries are proceeding on somewhat similar lines, but I think that he, as an old free-trader, will admit that we should not follow a bad example. We want to have communication with the whole world here, and we do not want to confine ourselves only to our own ships. One honorable senator, who is a supporter of the Government, suggested that if this clause is passed we should exempt ships engaged in connexion with mail contracts, because when they entered into these contracts there was no question of this new departure taking place with regard to their ships' stores. The clause uses the expression "except by authority." I understand, according to the interpretation, that authority means the officer of the Customs doing duty in the matter. But how can an officer of the Customs of the Commonwealth be doing duty on

what may be French or German territory? If we were to provide, as has been suggested, that the clause should apply if the seals are broken within three miles of the coast it might have some justification.

Senator Keating

- How could we prove it was within three miles ?

Senator WALKER

- By having an officer of Customs on board as a passenger. He would be able to tell us.

Senator Keating

- We would have his evidence, and the evidence of 60 against him.

Senator WALKER. I think Senator Sargood made a strong case when he spoke of a vessel going from Melbourne via Tasmania and New Zealand, round to Sydney, but I am not sure that that would not be considered a coasting vessel, because she would be going from one port in the Commonwealth to another.

Senator Dobson

- She would be a coaster.

Senator WALKER

- It is possible she would be. I can speak with some little knowledge, when I say that on the Queensland coast we have vessels trading to China and Japan, and those vessels would be very much inconvenienced by this clause. It is not merely that they would be inconvenienced, but passengers going by those boats as far as Thursday Island and to Port Darwin, will find this quite a new departure for them. It is difficult enough now to get people to go up there, but if we are going to increase the expense, I do not know what is to become of this Northern Territory, where during the last ten years, I believe, the population has been decreasing.

Senator Pearce

- Hand it over to the coolies.

Senator WALKER

- Hand it over to Western Australia, where there are so many men of great enlightenment, that they may be able to do something with it. I have detained the committee long enough on the question, but I thought it necessary to express my views, as it is possible there may not be a call for a division, because the Government may give way.

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Vice-President of Executive Council

Senator O'CONNOR

. - I rise for the purpose of putting, as concisely as I can, the answer to those honorable senators who have doubted whether there is any power in the Commonwealth to make this law. It appears to me that honorable senators have discussed this question from much too narrow a point of view, and I wish to place the action of the Government here upon its true ground. I should like to say at once that I think a great deal too much has been made of a phrase which was inadvertently or accidentally used by Senator Dobson in putting this amendment as in some way a device to escape from the law. It is nothing of the kind. It is as I shall be able to show, an exercise well within our power of the right of Australia to make laws for governing the methods in which other countries shall trade with Australia. If there is one principle which must be admitted in this controversy, it is this - that every country must have the right to say who shall enter her dominions, It is on that ground that we are going to make a "white Australia," and whatever question may arise with regard to the sensibilities of other people, we say that we have determined that Australia shall be a "white Australia," and we are going to carry that out.

Senator Clemons

- What has that to do with this question.

Senator Walker

- What about the black people here now ? Are we to send them away.

Senator O'CONNOR

- I cannot follow all the devious workings of my honorable friend's mind. I must keep to the question. On what principle do we enact that we shall shut out everyone who comes here unless he comes within the classification of those whom we wish to be citizens of Australia 1 It is on the principle that every country has a right to say who shall be its citizens, and every country has a right to impose such restrictions as it

thinks fit upon the entrance of persons into the community. On precisely the same principle it is open to Australia as it is to every other country to regulate the manner in which other countries shall trade with Australia. It is open to Australia to regulate the way in which, and the terms on which, shipping shall come to Australia. And it is in pursuance of that power which is inherent in every nation, and which is inherent in Australia too, that the United States have decided not to allow trade around the coast of America to be carried on except by American ships.

Senator Walker

- Does the honorable and learned senator want us to follow their example 1

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Senator O'CONNOR

- It is precisely on the same ground that some of the nations of Europe have enacted similar laws, that is to say, the ground which is essential to the existence of any community that it must have the right to say who shall be members of it, and it must have the right to say who shall trade with it. It is a branch of that same law which enables a country to say on what terms as to compliance with its fiscal laws foreign nations shall be allowed to trade with it, and it is on that principle that the laws of the United Kingdom for over 100 years past have made provision as to the means by which the customs and revenue laws of England shall be carried out. Before I cite some instances of legislation, which I intend to cite to the committee, let me refer to the real principle of this matter, as laid down in a judgment of one of the most learned Judges on such questions, Dr. Lushington, a Judge of the Admiralty Court, in the case of the *ANAPOTTS*, which was decided some time ago. He says this -

I am further of opinion that Parliament has a perfect right to say to foreign ships that they shall not, without complying with the British law, enter into British ports ; and that if they do enter they shall be subject to penalties, unless they have previously complied with the requisitions ordained by the British Parliament. Whether those requisitions be, as in former times, certificates of origin, or clearance of any description from a foreign port, or clean bills of health, or the taking on board a pilot at any place in or out of British jurisdiction before entering British waters. Whether the Parliament has so legislated is now the question to be considered.

That is the principle, and it is clearly nothing more than an extension of the principle I have indicated already which underlies all these things. Then Australia has the right to legislate as to the method in which other countries of the world should trade with it. To show the extent to which that law has been carried in the United Kingdom, there was an Act relating to Customs, and for the protection of the revenue called the " Hovering Act," which was passed so long ago as 1736. A power was given then -by an Act of Parliament, which has been followed from Act to Act in continuation ever since, and it was this- The British Hovering Act, passed in 1736, assumes, for certain revenue purposes, a jurisdiction of 4 leagues from the coasts by prohibiting foreign goods to be transhipped within that distance without payment of duties. A similar provision is contained in the revenue laws of the United States ; and both these provisions have been declared by judicial authorities in each country to be consistent with the law and usage of nations.

That quotation is taken from Wheaton's: International Law, a well-known authority upon subjects of this kind. To show honorable senators that this principle is still followed, I refer them to section 53 of the Consolidated Customs Act of the United Kingdom which provides that -

If, after the arrival within 4 leagues of the coast of the United Kingdom -

That is 12 miles not 3 miles - - bulk shall be broken, or any alteration made in the stowage of the cargo of such ship, so as to facilitate the unloading of any part of such cargo before report of such ship and cargo, or, if any part be stored, destroyed, or thrown overboard, or any package be opened, unless cause be shown to the satisfaction of the Commissioner of Customs, in every such case the master shall forfeit the sum of £100.

Senator Clemons

- Would the honorable and learned senator say what is the marginal note to that section.

Senator O'CONNOR

- I do not know ; I have not read it, and I do not care what it is. I am not in the habit of getting my interpretation of Statutes from marginal notes.

Senator Clemons

- It is - "To prevent smuggling."

Senator O'CONNOR

- I do not care what it is. I simply refer honorable senators to the section itself, which provides in plain terms that no ship, it may be a foreign or a British ship, shall be allowed to alter cargo or to break bulk in such a way as to disturb the position of the cargo for inspection, within 12 miles of the British coast.

Senator Walker

- Is that the law now?

Senator O'CONNOR

- Yes, under the Customs Act. The foundation of that law is that, for the protection of the revenue, it has been necessary to enact that penalties shall be imposed for doing something, or failing to do something, which is necessary for the protection of the revenue, even although that something has been done or omitted a long way beyond the 3 miles which is generally supposed to be the territorial limit of the authority of any country. That principle also rests in other legislation. In the Merchants Shipping Act 1854 it is provided that -

Whenever any injury has, in any part of the world, been caused to any property belonging to Her Majesty, or to any of Her Majesty's subjects by any foreign ship, if at any time thereafter, such ship is found in any port or river of the United Kingdom, or within 3 miles of the coast thereof, it shall be lawful for the Judge of any court of record in the United Kingdom, or for the Judge of the High Court of Admiralty, or in Scotland the court of sessions, or the sheriff of the county 'within whose- jurisdiction each ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of Customs or other officer named by such Judge, requiring him to detain such ship until .... satisfaction be made. That is to say an injury may be committed by a foreign ship on a British ship upon the high seas. It may happen 10,000 miles away from Great Britain, but if, at any time subsequently, the ship which has so offended comes into British waters, it may be seized and detained until satisfaction be made.

Senator Sir Josiah Symon

- And so, in the case of an assault committed on a Britisher in France, if the offender comes into England he can be proceeded against. .

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Senator O'CONNOR

- Yes. I am applying all these illustrations for the purpose of showing that wherever it has been found necessary to lay down certain laws for the protection of British ships or revenue, those laws can be enforced as soon as the person infringing them comes within the jurisdiction, and that it is not an answer to say - "This offence was committed outside the jurisdiction." The answer to that is - "We have made this law for the protection of the revenue. You who have broken it are not controlled by our court as long as you remain outside our jurisdiction, but as soon as you come within that jurisdiction you are controlled by it." It is necessary, for the protection of our revenue and our own shipping, to make a law that all ships, Interstate, foreign, or British, trading round Australia, shall be placed on the same footing. We say to the ship-masters - "If you wish to comply with this law, which we certainly have a right to make, you may trade with us, but unless you comply with that law we will not have you trading round Australia." That is the position the Senate took up when, by a large majority, it negatived the amendment by Senator Gould. I am quite sure that we shall find objectors to the course that we propose. But we must remember that we are entering upon our career as a nation, and that we must lay down, as Australians, an Australian policy for the carrying on of our commerce. I dare say we will displease many. In the ' course of years, as we begin to assert our position, we will displease many people, but we have to see to the interests of Australia and to go straightforwardly on our career. As long as we remember that we are- not only Australians, but also a part of the Empire ; as long as we do nothing which will infringe the rights of other portions of the Empire ; as long as we conserve the rights of Australia, that is all which we have to consider. I have thought it necessary to make these observations upon the general position because it did seem to me that honorable senators who spoke about technicalities in regard to the 3-mile limit appeared to forget the basic principle of this legislation, and that we are legislating and laying down now the terms on which other peoples and communities shall trade with us. I am dealing now with the mere question of



principle. We have already decided the question of policy as to whether we ought to lay down this rule. It would be a very poor kind of legislation if we laid down a law of this kind without providing the means of carrying it out. The means which we propose are precisely the same as those which have already been enacted in the Tasmanian Act which Senator Keating quoted a little while ago. I should like to point out to my honorable friends who are so much afraid that there will be some reservation of the Bill on account of this condition in it, that there was no reservation of the Tasmanian Act, and that so far as we know there have been none of those serious international complications arising from it which they appeared to fear in this case. It is the merest moonshine to say that the British authorities at the Colonial-office would ever dream of interfering with the right of Australia to make its own laws for the protection of its own revenue. There can be no question that we are doing no more under this provision than providing the necessary sanctions and penalties for carrying out the necessary principles which we have decided shall obtain. Senator Sargood seems to think that the law as provided in clauses 122 and 123 with an amendment is sufficient. I do not think it is, because although we might lay down a law that no ship should go round Australia without paying duty on stores consumed during the passage from one port to another, there is no doubt at all that if a ship, while on the high seas, committed an offence which was punishable only directly for the commission of that offence, there would be a great difficulty in obtaining that sanction for the enforcement of the law. Therefore we adopt the principle which is adopted in the Merchants' Shipping Act. We place a seal on the stores. If any ship enters any port of Australia with that seal broken, or commits an offence against our laws, then a penalty is to be imposed. Those are the conditions under which, by our laws, she is enabled to trade with us. If she does not wish to comply with those provisions she need not enter our ports ; but if she does enter them, having broken the law, she is liable, as any of our own ships would be liable, for that infringement. It would be a very bad day for the Commonwealth if, we found ourselves so hedged round by the narrow limitations that honorable senators have referred to as to the 3-mile limitation, that we were unable to protect ourselves from what would be either a very large loss of revenue or, from doing a gross injustice to our own people. I hope the committee will see that not only is this a right thing to do, but that it is absolutely legal and right upon every ground, whether of first principles of nationality, the principles of international laws, or the principles of ordinary justice.

New clause agreed to.

Senator O'CONNOR

- Senator Gould, it will be remembered, carried an amendment of clause 214 with regard to proceedings upon notice. As a simple matter of drafting I have made some amendment, and intend to add his proviso to clause 213, to which it properly belongs, instead of clause 214, and to insert a new clause to carry out his object. The new clause is to follow clause 213, which provides that-

No proceeding shall be commenced against any officer for anything done in execution of or by reason of his office until one month next after notice in writing shall have been delivered to him or left at his usual place of abode - and so on. I move -

That the following new clause be inserted to follow clause 213 : - "213a. No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the court is of opinion that the defect or inaccuracy would prejudice the defendant in his defence."

I propose on recommittal to add at the end of clause 213 the words -

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.

Senator Major Gould

- That is to make up for an omission.

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Senator O'CONNOR

- No ; I am putting the proviso in another place, and in another form. It properly ought to go after clause 213, and I am putting it there in a different form. The honorable and learned senator will have an opportunity of seeing that it is right when the Bill is properly printed and reported.

Senator Major Gould

- That is perfectly correct.

New clause agreed to. -

Senator Sir FREDERICKSARGOOD (Victoria). - I more -

That the following new clause be inserted to follow clause 254 : - "The owner or occupier of any licensed warehouse shall, previously to the issue of any certificate in respect to goods stored in such warehouse, cause the rate of rent payable for the goods specified therein and' also the Customs quantities of such goods as furnished by the proper officer of Customs, to be marked on the certificate thereof, and no person other than the proper officer of Customs shall erase or alter any such Customs quantities as marked. Penalty : £100." .

It is rather difficult to know exactly where this clause ought to come in, but I propose to insert it after, clause 254 in the part dealing with offences. I fail to see any more suitable position. It is a copy of section 17 of Act No. 1081 of Victoria. Dr. Wollaston in his notes refers specially to that provision being passed with a view to prevent a repetition of some very serious frauds which occurred some years ago in connexion with dealings with bond certificates. Bond certificates practically pass like bank notes from one hand to another ; large sums at times are advanced upon them by banker\* and others, and they are also a symbol of delivery. A bond certificate may pass through two- or three hands, perhaps more, before the goods are taken out of bond. Therefore it is highly necessary that some precautions should be taken to insure that bond certificates are not tampered with.

Senator Dobson

- Is there a clause in the Bill referring to the giving of bond certificates?

Senator Sir FREDERICK SARGOOD

- No ; and that is one of the difficulties I see in dealing -with the subject. I -wish to ascertain from Senator O'Connor what effect this Bill, when it comes into force, will have upon the Victorian Customs Act, which contains not only practically all the former contains, but other sections dealing with Customs matters. Will the whole of that Victorian Act go by the board, or only such sections as are dealt with in the Commonwealth Act 1 It is practically the same question as was raised the other night on the Excise Bill. The question of adulterations is dealt with in the Victorian Excise Act, but not in the Commonwealth Bill, although the latter proposes to repeal the whole of the former.

Senator O'Connor

- When once we legislate on Customs matters our power is exclusive, and all legislation on Customs matters comes to an end in the States. Of course this Bill will come into force on a , day to be fixed.

Senator Sir FREDERICK SARGOOD

- If we have not some such provisions in the Commonwealth Customs Act the State Acts will all go, and there will be no law to ' protect the dealer in bond certificates from fraud.

Senator O'Connor

- What my honorable friend refers to is what is ordinary when the warehouse certificates do pass from hand to hand. There is no machinery in this Bill for dealing with that matter.

Senator Sir FREDERICK SARGOOD

- If the Victorian Act is superseded in a short time by the passing of this Bill, what position will Victorian holders of bond certificates be in 1 They will have no protection against fraud.

Senator Dobson

- I should, like the honorable senator to incorporate all the sections in the Bill.

Senator Sir FREDERICK SARGOOD

- I did not like to print the whole of the sections relating to bonded warehouses until I had ascertained the view of the Ministry as well as the view of this committee. I have moved the insertion of this provision in order to ascertain from the committee whether it is advisable to include all the sections which deal with the bonding of goods, and the protection which is required in dealing with such goods. I think it is absolutely necessary to do so, otherwise we shall be in a terrible fix by-and-by, and fraud will be rampant.

Senator O'Connor

- In what way ?

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Senator Sir FREDERICK SARGOOD

- By the altering of the bond certificates. This is what Dr. Wollaston says on this clause in his notes : - ' The proprietor of the bond has of course his lien for rent and charges, and must give up the goods to the legal holder of the certificate when these are paid. Cases of difficulty, however, occur where a seller is

also proprietor of the bonded warehouse in which the goods are bonded, and the purchaser, having become insolvent, and transferred the certificate without having paid for the goods, the seller claims his right to stop in transitu. In such a case, it is doubtful if the bondholder, holder of the certificate can claim delivery.

It was in consequence of a bond certificate having been altered to a very considerable amount, and a fraud involving £4,000 or £5,000 having occurred, that the section I cited was passed. If it was necessary in connexion with the trade of Victoria, it will be equally necessary, I take it, in connexion with the trade of the Commonwealth. I have been requested by those who deal in bond certificates to bring this question before the committee. I believe that the provision should be included in the Bill, especially since I learn that once it comes into operation the Victorian Act will be superseded. I shall be glad to hear what Senator O'Connor has to say on that point.

Senator O'CONNOR

- No doubt the matter is an important one, but if it involves the question of whether we ought to legislate here to any greater extent than is absolutely necessary for dealing with the Customhouse interests in warehoused goods. Senator Symon made an observation the other day which I think is well worthy of attention, and that is that we must be careful not to over-load the Bill. Every clause which does not strictly appertain to Customs matters ought to be carefully scrutinized before it is inserted. I can quite understand that, before the union, Victoria might find it very necessary to enact her laws regarding warehouse certificates as an Act relating to Customs. In other States that has not been done; the law with regard to warehouse certificates is left to the common law, or to the law merchant, or it is dealt with in separate statutes. In Victoria the Legislature thought fit to make special enactments in a Customs Act. At common law, or according to the law merchant, which is the same thing, the warehouse certificate has the effect of passing the property [represents from hand to hand; in fact, a certificate, although it is the title of property, is really treated as the property. That will be so in the Commonwealth, and that will be so under the Customs Act. When this Bill is the law of the Commonwealth, a warehouse certificate for goods will convey the property in the goods just the same as it did before it was passed. It is a constructive delivery of the goods, and the mere fact that the provisions of the Victorian Customs Act have been superseded does not in any way affect the common law attribute of the certificate which is to pass the property in the goods.

Senator Sir Frederick Sargood

- We had the common law before the Commonwealth was established, and this legislation was found to be necessary in consequence of a decision by the Full Court here.

Senator O'CONNOR

- I am speaking now of the right of property. The effect of passing bond certificates from hand to hand remains just the same whether the Victorian Act is in force or not.

Senator Sir Frederick Sargood

- The question was the stoppage in transitu,.

Senator O'CONNOR

- That is not the matter I am dealing with now. That being the general effect of the common law in regard to warehouse certificates, is it necessary for the Commonwealth by a Customs Act to interfere in any way in the dealings with the certificates? It would be a rather serious departure from the principle of attending simply to what concerns the revenue, or such matters of health and public welfare as we have dealt with already in regard to prohibited goods. This is really part of the mercantile law. It ought to be left to the mercantile law. It is very much better to simply confine this Bill within the limits we have laid down, and leave this question to be settled by legislation in the States or by the ordinary rules of the common law. Then there is this difficulty to be considered. The effect of a warehouse certificate, how it is to be dealt with, how the property passes with it is a matter of State legislation. Of course we can enact as to what is to be done, by our Customs officials, but we cannot by a side wind alter the law in regard to these particular documents, simply because they happen to pass through the hands of our Customs officials in any way.

Senator Ewing

- In Western Australia it is regulated by a Sale of Goods Act.

Senator O'CONNOR

- Exactly, and that bears out what I have been saying. No doubt my honorable and learned friend will be able to bear me out that this is mercantile law and not customs law. If we once made the departure which Senator Sargood suggests, it would be hard to know where to stop. Unless our system under the Bill is a complete one in regard to these certificates, we shall probably do more harm than good.

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Senator DOBSON

- Again we have to thank Senator Sargood for bringing before us out of his great experience a very important matter, and I hardly think the remarks of Senator O'Connor completely exhaust the subject. This may come under the regime of the law merchant if you like ; but in the Customs Acts of Victoria and Tasmania, there are three or four sections which govern and regulate the matter. Senator O'Connor points out that our jurisdiction is exclusive. If I find four sections in the Tasmanian Act, and several sections in the Victorian Act, which regulate the dealing with goods in bond by the issue of certificates and the transfer of them, then I take it that these sections would not be interfered with by the Federal Parliament legislating in regard to Customs duties. If Senator O'Connor is right - and I doubt it - then see the position we are in. He then would say that every State can make its own law for regulating the dealing with goods in the bonds of the Commonwealth, so that you would have six States, each passing its own Act in different ways. It is very important indeed to know whether the State Parliament or the Federal Parliament has the jurisdiction, but considering that it is a Customs matter, and that the warehouses will be the property of the Commonwealth, and the Customs officials Federal officers, I am inclined to think that the first State member who raises the point that the States cannot possess control or interfere with or regulate the procedure of Commonwealth servants in a bond will shoot home his argument, and that the law which Senator O'Connor has foreshadowed will be found to be wrong. The honorable and learned senator also said that bond certificates, although not mentioned in this Bill, are well known to the law merchant and pass the goods by delivery. That is all very well, but what about the law of Bills of Sale? In the same way the law of Bills of Sale of a State may conflict with the law merchant. We all know that the statutory law regulating bills of sale would absolutely override that transaction. We may have varying laws with regard to bond certificates, but it would be a mistake to have six States legislating at their own sweet will when we can claim that this is a federal matter, and can have one law dealing with it. I cannot see that we are going beyond our powers or that we are encumbering the Customs Bill by incorporating in it two or three sections dealing with the goods in the Commonwealth bonds. The four sections which I hold in my hand from the Tasmanian Act provide, first, that the certificate may be issued in the prescribed form. Senator Sargood has pointed out that the Collector of Customs in Victoria has known gigantic frauds to be committed on account of the falsification of the form" in which the certificates were issued. Therefore, we should have a certain prescribed form of certificate. The second section provides for effecting the legal transfer of the certificate, and would override a bill of sale or override the law merchant. It goes on to say that the fact of this certificate being transferred by the holder of it would vest in the transferee the absolute property in the goods. Then the next section says that the delivery of the certificate shall be an authority to deliver the goods ; and the following section, which is an exceedingly useful one, deals with the question of the vendors' right to stop goods in transitu.

Senator O'Connor

- That is one of the provisions I was referring to as a provision which should not be in a Customs Bill:

Senator DOBSON

- It seems to me that while we are dealing with Commonwealth bonds it is not an improper time to deal with this subject, though I quite see that there are arguments against dealing with it. I should like to see Senator Sargood move two or three additional clauses, which would make the law complete ; and if the committee agrees to do that, it could be left to the States to say whether they would abide by the decision.

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Senator EWING

- It appears to me that we are approaching a principle in regard to this question. In days gone by, the various States have inserted in their Customs Bills things not directly pertaining to the Customs. Probably there was nothing really objectionable in that, because was not likely to bring about any kind of complication; but if the Commonwealth Parliament insert in a Customs Bill anything not strictly applicable

to the Customs, or not for the "peace, order, and good Government of the Commonwealth," they will be going clearly outside their powers. In whose hands at the present time does the making of laws regulating the sale of goods lie? Undoubtedly, that branch of legislation cannot under the Commonwealth Act vest in the Federal Parliament. It still remains in the hands of the States. The effect of saying in this Bill that the property in goods shall be transferred upon the delivery of a bonded certificate would have the effect in some cases of absolutely nullifying the existing law of the various States. We have not the power to make laws with regard to the transfer of property. We have not power to make laws affecting the bankruptcy laws of the States, unless we legislate directly upon bankruptcy. In Western Australia, the sale of goods is dealt with by the Sale of Goods Act. In that Act there are sections dealing with this particular question of the delivery of property. If we insert in this Bill clauses which clash with the Western Australia law, we are clearly legislating in a direction in which we have no power under our constitution to legislate. I submit for the consideration of Senator Sargood that this is not a matter which comes under the general words, "peace, order, and good government." It is not a matter which comes under the heading of the specific legislative powers conferred upon the Commonwealth Parliament. All laws in regard to mercantile considerations are retained in the hands of the States.

Senator Dobson

- The Customs is the one subject in regard to which we have exclusive jurisdiction.

Senator EWING

- True, we have exclusive jurisdiction in regard to Customs, but is the law saying that property shall vest on the handing over of certain documents a matter to be dealt with by customs law? It surely has nothing to do with customs law. It is merchant law. It is law to be dealt with under the Sale of Goods Act.

Senator Dobson

- Are not the goods under the control of the Commonwealth when they are in a bond?

Senator EWING

- May I suggest that in dealing with an insolvency, goods may be under the control of the Commonwealth. They may be in the hands of all sorts of parties. But it is an insolvency law which regulates them in the event of bankruptcy.

Senator Dobson

- Quite right ; I see the difficulty.

Senator EWING

- Then again the goods are in a warehouse, but the document under which the transfer is to take place must be regulated by the merchant law, and has no more to do with the customs law, strictly speaking, than any other class of legislation we may seek to bring about.

Senator Sir FREDERICKSARGOOD (Victoria). - The question has resolved itself into a purely legal one, as to whether the Commonwealth has or has not the power to deal with mercantile transactions. If the legal authorities of the committee are against me, it will be absurd for me to put my opinion against theirs.

Senator O'CONNOR

- The objection does not apply to this particular clause to the same extent, but it is the system of dealing with the certificates that I referred to. I do not know that this particular clause might not be a part of a customs law, but I object to dealing with the question at all in a Bill of this kind.

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Senator Sir JOSIAH SYMON

- I rather agree with Senator O'Connor that this particular clause is not open to the same objection as the other sections from the Tasmanian Act which have been mentioned by Senator Dobson. To my mind it is as clear as possible " that the Commonwealth has nothing whatever to do with the legal effect of these bonded certificates, and has no power whatever to legislate as to the rights or relations existing between the vendor and the purchaser with regard to the sale of goods in a warehouse. Nor has it any right to legislate with regard to incidental matters, such as stoppage in transitu, which involves a great many difficulties with regard to the rights of a vendor as to goods before they reach the purchaser. But I am not so sure that it is not perfectly competent for the Commonwealth to legislate as to what shall be done under a certificate issued by a person who may be described as its own officer - namely, its licensee, as the owner or occupier of a bonded warehouse. It is perfectly competent for the Commonwealth to say that its licensee shall not issue a bonded certificate unless it contains certain specified particulars ; and,

so far as this clause deals with that, I concur without much hesitation in the view of Senator O'Connor that this may be included in the Bill. It is, I am inclined to think, quite within the power of the Commonwealth. It is important to bear in mind that the moment this Bill receives the Royal assent, and is brought into operation by virtue of a proclamation, it supersedes all our local laws dealing with Customs. What effect it may have on that composite kind of legislation, which may consist in a local Customs Act dealing in part 1 with Customs and in part 2 with matters of health; or matters between vendor and purchaser, or matters not

Strictly coming within the designation of Customs, I do not exactly know. Senator Dobson suggests that the local legislation would remain in full operation, because it could not be superseded by Commonwealth legislation dealing exclusively with Customs. So far as concerns Customs legislation pure and simple, all local legislation is overridden by the Commonwealth law. But if a particular part of a local Customs Act deals with a number of other subjects outside the scope of what is generally understood by Customs, I should be inclined to think that that would remain in full force and effect. If, therefore, this provision with regard to stoppage in transitu were embodied in a local law like that of Tasmania, I should be disposed to think that that local law would remain in operation, and that the Commonwealth Customs Act would not repeal it. Therefore, the fear as to the inconvenience which might arise from the immediate repeal of that law in Tasmania would be groundless.

Senator Dobson

- I agree with that view, but Senator O'Connor cannot blow hot and cold at the same time.

Senator Sir JOSIAH SYMON

- Senator O'Connor says it would not be outside the powers of the Commonwealth to legislate with regard to what the bonded certificates shall contain. But I would point out that the last two lines of Senator Sargood's amendment, which offer the safeguard in regard to the continuance of these certificates, provides that -

No person other than the proper officer of Customs shall erase or alter any such Customs quantum titles as marked, should be left out, because that is a forgery. It should be dealt with by means of the ordinary criminal law. Therefore, it seems to me that if Senator Sargood were to rest content with merely proposing the first part of this clause and none of the other clauses with regard to stoppage in transitu it might be beneficial, and would at any rate be quite within our power to enact.

Senator PULSFORD (New South Wales). - I am bound to say that I think it would be wise for Senator Sargood to withdraw this proposal. In the course of a lengthened business experience, I do not remember ever knowing of bond warrants being issued with the authority or in any way under the responsibility of the Customs. It must be borne in mind that a warrant is a document of some importance. It represents value, and a responsibility attaches necessarily to the issue of it. I do not see that it is desirable either to load this Bill with any legislation on the subject, or in any way to run the risk of subjecting the Customs department to any liability with regard to a bond warrant which may be irregularly drawn in any shape or form.

Senator Sir Josiah SYMON

- This will not subject them to any liability.

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Senator Sir JOHN DOWNER

- I agree with all the honorable and learned senators who have spoken. Senator Sargood must have forgotten that the Constitution does not change either the locality of the owner or the goods. Goods in bond in South Australia remain in bond in South Australia, and so also with Victoria, New South Wales, and every other State. They are dealt with by the owners on the spot, according to the laws which regulate dealing with goods in the various States. Because we have a general control over goods for the purpose simply and solely of collecting revenue, we have no authority to impose additional laws regulating the method by which the owners of those goods shall deal with them. Beyond the payment of duties of customs, they can deal with them amongst themselves. If we had to go into the question we would find that in some States, New South Wales and South Australia for instance, they have not thought it necessary to pass any legislation on the subject. This question of warehouse certificates is quite apart from the region of the Government altogether. The Government have nothing to do with it. It is simply a method by which private individuals deal with property which belongs to them, but which happens at the

time to be in bond. It will not go out of bond until the duty upon it is paid, and that is all that the Government have to consider. The law merchant has been found enough everywhere. Senator Sargood says that here it has not been found sufficient, and that the law merchant has been found capable of evasion. I did not know it. I thought it was quite sufficient to cover all questions between individuals, and which the State has nothing to do with. Supposing one individual defrauds another in the course of dealing with goods that happen to be in bond, what has that got to do with the Government, who are merely holding the goods until the duty is paid? The Government exercises no further control, and does not care who is the owner of the goods. It gives them up the moment the Government lien is satisfied. The position occupied by the Government in the matter is that of a species of mortgagee in possession, and when their lien is satisfied the duty of the Government is gone. In my opinion the law merchant ought to be sufficient. Although it seems to have been found insufficient in Victoria, it has been found sufficient everywhere else. I am also perfectly clear that if the law is insufficient, this is not the place to deal with it. It ought to be dealt with in a separate statute, and the Customs Bill should not be encumbered in any way by reference to it.

Senator Sir FREDERICKSARGOOD (Victoria). - There seems to be considerable difference of opinion on this subject, and apart from the question of its advisability, the question of the power of the committee to introduce this clause into the Commonwealth Customs Bill has been raised. In the face of the differences of opinion, and in the face of the fact that the Minister does not deem it necessary or advisable to include the clause in the Bill, I do not think I should be doing right in pressing it. I therefore propose, with the consent of the committee, to withdraw the amendment.

New clause, by leave, withdrawn.

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Senator Lt Col NEILD

- I move -

That the following new clause be inserted to follow clause 255 : - "The Governor-General shall from time to time appoint in each of the States of the Commonwealth three persons to constitute a board to be called 'Commissioners of Customs,' who shall hold office for a term of three years (any two members of such board shall form a quorum), and shall with open doors hear and determine disputes between any officer of the Customs and any other person respecting any matters whatever relating to the customs, which may be submitted to their judgment by the comptroller or any collector on behalf of any such officer, or by the person preferring any complaint against such officer, or by any person who shall be dissatisfied with the determination of the comptroller or any collector, or by the Minister in respect of any matter relating to the customs."

The object of the new clauses I have given notice of is to permit of a method of appeal, which, in the State I have the honour to assist in representing, has been found to work with very great acceptability and usefulness. It is proposed that there shall be a board of commissioners in each State to whom it shall be possible to refer all disputes under the Bill ; not only disputes as to value, but all disputes as to compliance with the provisions of the Bill. Any person aggrieved may seek the reference. Any officer of Customs may seek a similar reference, and the Minister himself, if at any time in doubt upon any point, can make a similar reference to the board, and the board being clothed with sufficient power to secure judicial consideration of the complaint or the matter at issue, a final decision may be arrived at in a manner which, I venture to think, will prove of use in the future as it has in the past, and will be absolutely advantageous to all persons concerned. If it be necessary to apply to the Supreme Court or the High Court to settle questions of this kind, enormous expense and very great delay will result. The clauses I submit are, with the necessary verbal amendments, absolute copies of provisions which have been the law in New South Wales for many years, and have worked with very great acceptance there. I believe the Vice-President of the Executive Council would not deny the assertion that under the operations of similar provisions in New South Wales, the carrying of Customs disputes into the law courts is practically unknown. That may have a disadvantageous aspect for lawyers, because I do not suppose £5 a year is spent in the law courts in New South Wales in the settlement of questions such as would be dealt with by the board of commissioners I propose. In view of what the Chairman has said I shall be justified in making a passing reference to the clause of which Senator Sargood has given notice. I wish only to show the wide difference in one respect, and a difference which, I venture to think, is in favour of my own

proposals. The clauses I have given notice of propose that there shall be certain persons appointed for terms of years, to whom shall be relegated any disputes or questions. Senator Sargood's proposal has this great difference, that under it persons are to be appointed in respect of each dispute. That, I think, is a tremendous disadvantage. I take the case of an importer who, having imported goods, had a difference with the Customs department, and seeks the intervention of a board of this kind in a matter of appeal. His appeal would come under the clauses I propose, before a body of gentlemen who, acting year in and year out, arrive at decisions in similar cases in a similar way. If we are going to leave each separate dispute to be dealt with by individuals newly appointed, we run this risk : I import some goods, and have a dispute with -the Customs department. It is remitted to two or more gentlemen appointed by the Governor in Council under Senator Sargood's proposal, and they give a decision adverse to the Customs department. But we can readily understand that on a fresh reference to the same court of appeal, it is probable that two or three fresh authorities would be invoked, and we might find that the decision given in one case would be absolutely nullified by the decision in the next. It seems to me that if matters in dispute under such a Bill as this are to be left to the decision of varying tribunals, we shall have varying decisions, and it is on that account I conceive the clauses I submit have a distinct advantage as compared with the clause submitted by Senator Sargood. I propose that each commissioner shall be appointed for three years. I think that will be better than that we should have haphazard appointments made from time to time to deal with separate cases. I do not think we should like a system of conducting our law courts in this manner, when instead of having regularly appointed Judges acting year in and year out, we should have a separate appointment for each separate case. It seems to me that the principle of Senator Sargood's amendment is bad.

Senator Dobson

- Can the honorable senator give us any idea of the cost of these commissioners t

Senator Lt Col NEILD

- In New South Wales a sum which I think altogether in excess of requirements is paid. There £600 a year is paid, or £200 to each commissioner.

Senator O'KEEFE

- For one day a week.

Senator Lt Col NEILD

- For at least one day a week, and I think that is at the least double what is necessary. I have, as honorable members will see, left a blank for the amount to be paid. I think that it is a matter well within the competency of the committee to deal with, and I shall propose a remuneration by fee according to their sittings.

Senator Dobson

- Have they many cases in New South Wales ?

Senator Lt Col NEILD

.- I do not think they had had many for some years past. I think they have had but very few indeed, as there are so few articles subject to duty.

Senator Dobson

- What I want to get at is, do the importers go to the collector of Customs with their disputes or to this board ?

Senator Lt Col NEILD

- In the case of differences they go to the board undoubtedly. Many of the disputes arise in connexion with manufactured articles that contain more than one article in combination. Honorable senators will agree that there is great ground for disputation as to what is the proper duty to charge in respect of an article which consists of different articles compounded together. To take an illustration, which will be readily-understood by honorable senators, I may refer to a case which occurred in New South Wales, where there was a difference as to the duty payable upon chocolate creams. Honorable senators know that chocolate creams are composed of a thin coating of chocolate filled up with sugar and maizena. The question arose as to whether they should pay a duty of 3d. per pound as chocolate, or 1£d. per pound as confectionery. Honorable senators will readily appreciate that there are scores of articles in connexion with which a similar difficulty might arise. It is very much better that such matters in dispute should come before a permanent board of mercantile nien, for settlement than before a board of gentlemen appointed



in respect of each appeal. I think that the appointment should be made for a term of years. That is practically the only difference between my proposal and that made by Senator Sargood.

Senator Dobson

- What is the use of this clause when the Governor-General can under the clause which is to follow it disallow every order the commissioners make ?

Senator Lt Col NEILD

- That is a very pertinent question. The only answer I can give is that I claim no originality in making these proposals. They are simply a copy of the law, which has worked so well for years past.

Senator Dobson

- But it is so strange. The honorable senator proposes to appoint a board of experts, and yet the Governor-General, who is really the collector, may disallow everything they do.

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Senator Lt Col NEILD

.- I do not understand the necessity of the words referred to, because an appeal of this kind should surely be final. Mercantile men appointed for this particular purpose should be more likely to arrive at a fair, unbiased, and satisfactory decision than even the high authority of the Governor-General in Council. I dare say the Vice-President of the Executive Council will not disagree with that proposition, because really the clause relates chiefly to trades disputes. I am strongly of opinion that there should be some such method as is indicated in one of the two amendments. Let me say at once, however, that I am perfectly satisfied if it be the wish of the committee to fall in with Senator Sargood's proposal, although I prefer appointments for a term of years, to the uncertainty which surrounds occasional appointments. So far as these half-a-dozen clauses are concerned, the matter will be settled by the decision of the committee with reference to the first. If the committee adopt that clause it will be open for them to adopt either the whole of the clauses or to omit some and leave the rest as matters to be dealt with by regulation. I know there are a number of details as to forms in the clause, which might be provided for by regulation ; but- my object in inserting the whole of them was that I might submit to the committee, without reservation or alteration, not absolutely necessary, such clauses as had been found to work well. I took it that the committee would prefer, if they adopted anything of the sort, to have an assurance that they were adopting a provision which was adequate, and which had worked well.

Senator Dobson

- But the honorable senator cannot tell us how far this board has been made use of. Does it work well ?  
Do the Government get anything for the £600 a year ?

Senator Lt Col NEILD

- I have already said that I consider the emoluments given in New South Wales as extravagant.

Senator Charleston

- The commissioners would have a much wider area to cover under the Commonwealth.

Senator Lt Col NEILD

- Perhaps there would be a larger number of items to deal with. There is a proposal, however, for a board to be appointed for each State. It necessarily follows that a dispute in Hobart cannot be settled satisfactorily in Melbourne, and that a dispute in Perth is not likely to be settled satisfactorily in Sydney. These are matters which to be settled satisfactorily must be settled on the spot, and on that account I do not know that the work will be so very much-

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larger than it would be in Victoria, for instance, under the system which has hitherto prevailed here. I certainly say that the payment of £200 a year to each of the three commissioners would be extravagant. It would be better to provide a fixed sum for each sitting. I desire the right of appeal to be granted in these cases,, and I consider that the appointment of a board for a term of years would be preferable to the uncertainty which would surround the gazetting of occasional boards.

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Senator O'CONNOR

- I quite agree with what the honorable senator last said, that it is desirable, if there is to be a commission at all, that it should be a commission with some definite status, and that the commission proposed by Senator Sargood would really be very ineffectual, even for the purposes for which he proposes it shall

act. In view of the general framework of the Bill,' and the whole manner in which the question of dispute has been dealt with, however, I must oppose this amendment. It seems to me that it would be overloading the Bill with a system which, would be expensive and unsatisfactory. Senator Neild will pardon me if I point out first of all what powers we have already given in the Bill. In the first place, clause 160 provides that -

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

If the owner makes proper entry he shall be entitled to the delivery of the goods. He deposits the amount of duty demanded, and if he does not bring an action within six months to substantiate his claim, that becomes the amount of duty payable. If he does bring an action within six months then the matter is decided by the court. That is the first remedy given, and it enables any person who has a dispute with any Customs officer , 'with regard to the amount of duty payable on goods to have that matter settled in any court by the highest authority. There is 'a proviso that this provision does not apply to cases where there has been an undervaluation, or in respect of which an attempt to avoid payment of duty has been made. That provision would satisfy any person who wished to resort to the law courts to have his case settled,, and at 'the same time it protects the revenue by providing that that resort to the law courts shall be had only when the duty demanded has been deposited. There is another provision in clause 256, that if any dispute shall arise between any officer and any person with reference to any contravention of this Act, the Minister may, with the written consent of the party, 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. That would apply to any breach of the Customs laws where there had been a contravention of the Act.

Senator Sir John Downer

- Does the Minister take that action?

Senator O'CONNOR

- I presume he decides finally. He would have the responsibility of decision. The reason I give that answer is that it is necessary to distinguish between a certain class of cases and others. As a matter of practice, the following rule has been carried out to a large extent : A dispute may arise between two persons as to the amount of duty properly chargeable. The matter is decided by the collector in the first instance. Then the party interested writes a letter to the department : complains that a mistake has been made by the collector, and that the Minister ought to take a certain view of it. The Minister may then send for the collector, or appoint an expert to inquire into the matter ; or he may send for the person himself, and have a conversation with him about the matter. He may take any steps he thinks fit to ascertain the facts. Then he decides the matter, and either remits or imposes a fine. In the latter case, the party has his remedy in the court. If he thinks the Minister has acted improperly, he can proceed to law. That is the practice at present. The Minister of Customs, like any other person at the head of a department, is responsible for the actions of his officers, and can undo the action of any of them. On representations made to him as the head of the department, he inquires, and if he thinks the official concerned has acted hastily or improperly, then that officer's decision is reversed. Clause 256 proposes to establish that practice into a recognised legal tribunal.

Senator Lt Col Neild

- That is akin to the practice in Victoria.

Senator O'CONNOR

- Yes.

Senator Lt Col Neild

- But in addition to that principle, the Victorian law provides for appeal.

Senator O'CONNOR

- I am quite aware of that. I am pointing out now what the remedy is under this Bill. I am quite aware that there is one class of case which is omitted in these two provisions, namely, that in which a dispute may arise over a matter which is not a contravention of the Act. It may be a dispute as to the particular class of dutiable goods under which a certain article ought to come. That is the case referred to by Senator Neild. No doubt there ought to be some power to deal with a dispute of that kind without taking the matter into

court under the first clause I have referred to. There is no other way of doing it, because clause 256 only applies to cases in which there has been a breach of the Act, and to apply to the Minister in the case I have just referred to would not be applicable. Therefore, in a matter in which there has been no contravention of the Act, there should be some method by which the whole matter may be settled. I have a proposal to put forward after full consideration and discussion with the Minister of Customs. It is to insert the following new clause after clause 259 -

Any matter of difference arising under this Act, or in relation to the Customs, and not involving a contravention of this Act, may, at the request of the parties interested, be referred to the Minister for decision, and thereupon the Minister shall in such manner as he shall think fit inform his mind of the circumstances, and finally decide the difference.

Senator Sir John Downer

-What an extraordinary expression.

Senator O'CONNOR

- Perhaps the honorable and learned senator will hear the reason for it.

Senator Lt Col Neild

- The phraseology is scarcely serious.

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Senator O'CONNOR

- Perhaps the honorable senator does not know the reason why such phraseology is necessary. If all these questions which arise between the mercantile community and the Customs officials were to be brought into court and solemnly decided in open court upon the hearing of evidence we should never get to the end of the settlement of these questions. A large number of these questions depend on technical matters. Certain goods are imported, and there is a dispute as to what particular class of dutiable goods they come under. The way to settle the dispute is by looking at the goods, or a sample of them, and deciding what they are, or by having them analyzed and deciding what they are, or by getting the evidence of persons skilled in a particular trade and saying what they are. All these questions may be decided, not necessarily by having a court solemnly opened and witnesses called and going through all that elaboration. The Minister and the parties may agree to some expert being appointed to hold an inquiry, and to say what they are, and the Minister may then decide accordingly. Or it may be that the whole matter may be decided upon documents. The party interested may write a letter setting out his view, and the collector may send his view in a letter, and the whole question may then turn on the construction of the Tariff Act or the Customs Act. They leave it to the Minister to decide; there is no need to call any witnesses and go through the formality of opening a court. The Minister decides by consent of the parties and between the parties on that statement. If these matters - to which the principles of procedure in courts of justice are altogether inapplicable - cannot be decided in some expeditious way such as I intend to propose, there is no use in not pursuing the ordinary method. If you establish a tribunal for settling these matters without going into court, no advantage is gained, unless you give the person who is to decide full power to inquire in any way he thinks fit and to come to a conclusion by taking any means he can to satisfy himself or to inform his mind. I recognise that it would be a very great convenience to the mercantile community and to the Customs officials if there were some way by which the one hundred and one matters which come up for discussion day after day might be settled. But I take it that the remedy would be very seldom availed of, even by the parties interested, if they had to go through all the process of a court over the matter of a few pounds worth of duty. My contention is that the provisions which we have made and propose to make are quite sufficient. Where there is a dispute about a duty which has to be referred to the court, the first clauses I cited are sufficient. Where there is a contravention of the Act in some trivial matter, and the parties do not intend to go before the court, then if they consent there is no reason why the Minister should not settle the matter with as full publicity, at all events as to his decision, as can possibly be desired. Then, as to matters which do not come within either of those classes, I submit that this new clause will meet the whole of the case. What does Senator Neild propose? He proposes an elaborate system of a duly constituted court. These three commissioners have to be paid; I do not care whether it is £200 or £100 a year. Considering the enormously important matters which they would have to decide - matters concerning the revenue to a very large extent - no court ought to be constituted in that way, and with such powers. The commissioners, according to my honorable

friend's proposal, are to be constituted a court before which any person who has a dispute with the Customs will be entitled to go. Is it reasonable to suppose that these men will give up the rest of their business to attend to such matters? It is, quite clear that they will be persons who are engaged in business, I presume Custom-house business, and who will give a certain portion of their time to the decision of these questions, and will be paid £100 or £200 a year, as the case may be. That will be an exceedingly unsatisfactory tribunal. To take men from the very class who are interested in the decision of these questions on one side only, and to constitute them as a court and put before them the decision of matters of the highest moment to the mercantile community and to the revenue--

Senator Lt Col Neild

- One of the commissioners in New South Wales for a length of time was chairman of the Chamber of Commerce, and the others well-known business men and not Custom-house agents.

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Senator O'CONNOR

- I did not say Custom-house agents, and I did not intend to convey that idea. What I said was that they were interested in business at the Custom-house, and were taken from the class of persons dealing with the Custom-house. My honorable friend bears me out, because I take it that the chairman of the Sydney Chamber of Commerce was a leading merchant, and I dare say that the other two members were leading merchants. Although I can quite understand that the parties may by consent refer a particular matter to a merchant or to a tribunal of merchants, it is a wrong thing in the interests of the Commonwealth to have questions of revenue involving very large sums, as it may be, left to the decision of persons who are drawn from the sections of the community largely interested in such dealings with the Customhouse. But Senator Neild has seen that it would be impossible to leave the decision of these questions to this tribunal without any control by the Minister, and therefore, he gives the Minister control over the boards' in new clause B -

Provided that all acts, matters, and things done and performed by the board of commissioners shall be subject to the disallowance of the Governor-General.

If the decision of the board is subject to disallowance by the Minister, does that really carry us any further? If the Minister is to finally decide, you have all this expensive paraphernalia of a board for considering the matter and yet its work and its inquiries may be completely nullified. Is not that going through a most expensive process?

Senator Dobson

- It is taking it out of the hands of the Minister, and then giving it back to him.

Senator O'CONNOR

- Yes, it shows the futility of the proceeding. It is a wrong principle to hand over the practical administration of the Customs to a board, and it is not necessary, because you have first of all the tribunals of the country to which everybody may have resort, and if you do not wish, to go to the ordinary tribunals then you have either the proceeding before the Minister, where there has been a contravention of the law, or the proceeding which I intend to propose, where there has not been a contravention of the law. We would overload the Bill with unnecessary procedure if we inserted this provision, spend a large amount of money unnecessarily, and hamper and delay the operations of the Custom-house and the importers, and weaken the strength and the uniformity of administration which is absolutely essential in Customs dealings. That brings me to another objection, and a very strong one. This proposal contemplates the constitution of a board of three commissioners in each State. You cannot have uniformity of decision about these things unless the cases are all submitted to the Minister.

Senator Lt Col NEILD

-Col. Neild. - Is there uniformity of decision in the law courts?

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Senator O'CONNOR

- Yes: the law is laid down uniformly. Under this proposal in New South Wales you would have one decision as to a duty or rate of duty, or a class, in Victoria another decision, and in Queensland another. Unless all the decisions were brought continually under the review of the Minister, how would you have uniformity? If decisions are to be given in every part of Australia- do you get any "forrader." For these reasons I think that the Bill had better be left as it is?

Senator Sir FREDERICKSARGOOD (Victoria). - The Minister has very fairly stated the case. There- are only two courses open to the importer. One is to face an expensive law suit, the other is to leave the matter - involving perhaps a very small amount, but an important principle - absolutely in the hands of the Minister. Ministers come and Ministers- go, and there are not many Ministers of Customs, judging from my experience, who know anything about the subject, and indeed it: is not to be expected that they should. If it is left absolutely to the Minister, it is left- to the decision of a gentleman who, of his own knowledge, can know very little- about the matter, and he will have to take such evidence and opinions as he can obtain. Speaking not merely for the merchants of Melbourne, but for the Associated Chambers of Commerce of the Commonwealth, who have taken the- matter up, and who know what has been the experience of the past, I ask, not merely for the protection of the revenue - because, as citizens, the merchants are just as much interested in that as any other class of citizens- - but in the interests of trade, that these clauses shall be agreed to. There are quite a- number of cases of honest difference of opinion between the landing-waiter on the one side, and the merchant on the other, as to the classification in which goods and the component' parts' of the goods should be put. I could tell honorable senators of extraordinary decisions that have been given during the seventeen years when I was chairman of our, trade. . I have known -a decision to be given at ten o'clock in the morning and. an entirely different' decision to be given at three in. the afternoon by the same Minister. I have known my own house to get goods in the morning on- which we paid 25 per cent, duty, whilst my neighbours in the trade got precisely the same kind of goods in the afternoon free of duty altogether. These are facts that there is no overcoming.

Senator O'Connor

- -How many cases- have been decided by the commissioner in New South Wales during the last five years ? I have ascertained that there have been only twelve.

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Senator Sir FREDERICK SARGOOD

- But it must be remembered that in New South Wales they have not had many duties. In Victoria we have had a large number of duties. Hence the necessity for seeing that the Act is properly administered. In Victoria, the decisions that have been given would fill a very large volume. Years ago they were very voluminous, and necessarily must be so. If it is felt to be necessary that there should be an intermediate course between the experts on the one side, and leaving ourselves absolutely in the hands of the Minister, who may make the most egregious mistakes, I suggest that what has been the- law in Victoria should be embodied in this measure. The question is, what kind of a board should be appointed ? My amendments follow the ninth section of the Victorian Act, condensed so as to bring it into harmony with the wording of this Bill. I provide that there shall be a board of two or three members. I do not approve of the boards being paid. Such boards have frequently been utilized in "Victoria in past years, and on no occasion have they been paid. It will be a mistake also to have only one board. One board could not possibly know all the intricacies and niceties in connexion with different classes of goods. There needs to be power in the hands of the Minister to say - " Such and such a dispute has occurred in the drapery trade, or in the ironmongery trade, or , in the grocery trade,, and such and such men, who are experts, shall be appointed a board to deal with it." This is following out the principle of what are called on the continent, and also in London, tribunals of commerce. A large number of commercial disputes have been settled in this way, by experts in the' various trades being called upon to deal with them. In London, during the last six years, this system has been put in operation, and honorable senators would be perfectly astonished at the large number of cases which have been settled in a few hours, which would formerly have been tried by the law courts and taken months to settle.

What is wanted is some rapid mode of decision; and, speaking with a great many years' practical experience, I know of no better means than that I am now suggesting. I have served on many of these boards myself at the wish of various Ministers of Customs. I am, therefore, speaking with some knowledge as to how the matter is worked. To compel the merchants either to accept the decision of the Minister or to go to law is to place them in an unfair position. They do not want to waste time and money by going to law, but, on the other hand, they are unwilling to leave themselves in the hands of a gentleman who necessarily knows little or nothing about the matter in dispute, and who probably is able to devote very little time to it, having regard to his other Ministerial duties. It is said that it is desirable that

there should be uniformity. That uniformity can hardly be obtained under the Bill as it stands. I do not hesitate to say, as a merchant, that it would be impossible for me to deal with the intricacies of a trade of which I know nothing. The principle of my amendment is the same as that of Senator Neild, but I do not provide for the payment of the boards, because there is no need for it. To my knowledge, during sixteen or seventeen years, not a penny was paid for this purpose in Victoria. On the other hand, the Customs obtained the services of the very best experts in all the trades. What more can the Government want ? I agree with the Minister that the decision of the experts should be final so far as the importer is concerned. But bearing in mind that the matter involves the collection of the revenue, I do not think, speaking as an old Minister myself, - that it would be right that the Minister should be tied absolutely by the decision of what may be called irresponsible men. Let the Minister get the benefit of their experience and advice, and then exercise his own judgment as to what is best in the interests of the Customs. But the decision should be final so far as the merchant is concerned. He should elect whether he will go to the Minister and accept his decision absolutely, or go to law, or consent to the appointment of a board.; but he should not be able to change his mind because the decision of the experts does not please him. I submit my amendment because 'it appears to me that it will meet the case, and will be much shorter than that submitted by Senator Neild.

Senator Lt.-Col. NEILD (New South Wales). - The Vice-President of the Executive Council has very properly said that there have been very few appeals in New South Wales. But that statement is capable of an explanation. During the five years there has been a singularly reduced Customs 'Tariff in New South Wales. Very few articles are there taxed through the Customs. There have been no ad valorem duties, and it is notorious that these disputes particularly arise over ad valorem duties, and not over fixed duties.

Senator O'CONNOR

- In Victoria there have been no decisions during five years.

Senator Lt Col NEILD

- In Victoria, according to what Senator Sargood has told us, there have been some charmingly eccentric decisions given by Ministers of Customs. Does the Minister think there is any prospect of absolute uniformity in the administration of this measure throughout the Commonwealth, except by process of piling up precedents ? That is the only way by which uniformity can be established. There will be collectors of Customs at Perth, Brisbane, Adelaide, Hobart, Melbourne, and Sydney, and subcollectors at Rockhampton, Newcastle, and other places all round the 7,000 miles of coast line. Is it possible that there will be uniformity in the decisions of the Customs officers under these circumstances ? The Vice-President of the Executive Council said that there is uniformity in the law courts. I thought it was recognised that there was nothing less uniform than the sentences imposed on prisoners in the law courts. It must be remembered that there are continual changes in the manufacture of goods, and for that reason alone there must be the greatest opportunity for varied decisions upon disputed points. There is one point upon which I should like some explanation from the Minister. How in the world can one Minister sitting in Melbourne, or Sydney, or in the future hamlet we shall dignify with the title of capital, have before him in any convenient way a representation of the different disputes ? The tribunal which I have indicated, and which is indicated by the amendment of Senator Sargood, is one to which all persons aggrieved could have access. They cannot come from Perth to Melbourne to settle a little dispute, and, as Senator Sargood has pointed out, a dispute which may appear to be small at the time may underlie grave issues for the future. How can an importer come from Perth or from Townsville to Melbourne or Sydney to submit questions of this kind to the Minister ?

Senator Sir Josiah Symon

- The disputes would all be heard ex parte.

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Senator Lt Col NEILD

.- They would be heard ex parte, and I was going to point out in addition that the Customs department, having free postage and free telegrams, could always be present with the greatest amount of knowledge for their side of the question. Where is the man with the grievance to come in, and what show has he got ? We have had some little experience of the difficulty in securing the appearance of witnesses for an inquiry in connexion with a matter which is before a committee of the Senate affecting Western Australia, and which I shall not indicate more clearly. I think the clause suggested by the Minister is not only

valueless as an appeal, but dangerous, and there is very little in it in alteration & of what is already in the Bill. I hope that the committee will accept either the proposal I submit or that submitted by Senator Sir Frederick Sargood in preference to that submitted by the Minister. There is no doubt that the Minister's mind must necessarily be tainted by the official environment. He must have, of consequence, some little leaning and conscious or unconscious bias in support of the officers of the department he presides over. I am not saying anything that can be misunderstood in suggesting that the views of his officers must impregnate the Minister's mind to some extent in matters of this kind. I can see that there are some advantages in Senator Sargood's proposal as against my own, as it will permit of the appointment of a board constituted of gentlemen particularly acquainted with the subjects that come before them ; but, as against that, under the proposal I make, we would have more uniformity from a permanent or semipermanent tribunal than from the fluctuating appointments which Senator Sargood's proposal indicates.

Senator DOBSON(Tasmania).- There are really three amendments before the committee, and of the three I prefer the Minister's clause, and next, that submitted by Senator Sargood, because I think great advantages might be derived from a board appointed of special experts to decide each question as it arose. This debate appeared to me to have a considerable practical interest ; but, since it began, I have gained information which leads me to suppose that it has chiefly a theoretical interest. Senator Neild has given us information which the Vice-President of the Executive Council gave us before, to the effect that very few disputes have been settled by this tribunal in New South Wales; and I am inclined to think that the £200 a year was paid to the three commissioners in New South Wales for nothing. Knowing that the Chairman of Committees had been a Minister of Customs for some years, I had a conversation with the honorable and learned senator a few minutes ago, and I asked him how this board of experts had acted in Victoria during his term of office. I found, notwithstanding all Senator Sargood has told us, that throughout the whole five years during which Senator Best was Minister of Customs in Victoria there was never a single appeal from his decision, and the honorable and learned senator believes that, during ten years, hardly any case whatever has gone before the Victorian commissioners. The evidence given me by the Chairman, when I applied to him, makes this question appear much more theoretical than practical. It appears to me that the Vice-President of the Executive Council has met both the amendments by showing that the honorable senators who have introduced them think that the tribunals they suggest should not have a final decision. That seems to me to be a fatal objection to the amendments suggested. In Senator Neild's amendment, the whole of the effect of his clauses is nullified by the proviso at the end of one of them, which reads - provided that all Acts, matters, and things done and performed by the boards of the commissioners shall be subject to the disallowance of the Governor-General . So that after arguing as the honorable senator has done, that we should not leave this power in the hands of the Minister, who may be prejudiced in favour of collecting the highest amount of revenue, and who would give a decision from unconscious bias to get 25 per cent, instead of nothing, the honorable senator's clause absolute]]" gives the whole thing back again to the political control from which he hoped to remove it.

Senator Lt Col Neild

- Will not the honorable and learned senator admit that the Governor-General in Council has the right to annul any sentence of any criminal court 1

Senator DOBSON

- Certainly not. If the honorable senator thinks that where in the case even of an inferior court a penalty of £5 has been inflicted, the Governor-General in Council may say it shall be £7 10s. the honorable senator has need to read a little more law. Senator Sargood's amendment has the same defect in it, for he provides that -

Such order shall be of equal force and effect as if the same had been made by any justice or justices having any jurisdiction in the matter and may be .enforced accordingly unless the party against whom such order is made shall within one week after receipt of notice thereof give notice in writing to the Minister that he refuses to abide by such order.

It appears to me that the effect of the amendments submitted by both honorable senators is to make the whole of the decision under the tribunals they wish to provide for absolutely nugatory, if, on the one hand, the Governor-General likes to disallow them, and if, on the other, the importer says that he will not abide

by them.

Senator Sir Frederick Sargood

- I purpose leaving those words out of my amendment.

Senator DOBSON

- Then the honorable senator must fall into the trap set for him by the Vice-President of the Executive Council, who points out that the honorable senator's suggestion is for a tribunal of unpaid persons to settle important points which really ought to go before a law court.

Senator Sir FREDERICK Sargood

- It compels the Minister to take the advice of experts.

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Senator DOBSON

- I should be glad to hear what Senator Sargood has to say to the evidence of the Chairman of Committees, that during his term of office there were no appeals from his decision, and that during the last ten years there have hardly been any of these cases submitted to the commissioners. I understand a very little about the subject, from having been in office for a year or two ; but I know that the questions that arise are most complicated and numerous, and no one but a commercial man would imagine that they are as numerous as they are. I take it, however, that every schedule of customs duties brings all the findings upon these questions up to date, and that the schedule under our uniform Customs Federal Tariff will so define and prescribe the duties payable on different articles ; that, in the arrangement of it, advantage will be taken, of all the decisions, and that in future there will be fewer cases.

Senator Sir Frederick Sargood

- With a constant change of goods it is impossible.

Senator DOBSON

- The honorable senator shakes his head, and I tremble when I remember his 50 years of experience, but it does appear to me that in the future disputes of the kind must be fewer. I point out also that in the case of most of the disputes the settlement of the question is generally a matter of common sense in applying a certain set of duties to particular articles, such as the question referred to of the chocolate creams, as to whether they should be charged for as chocolate, confectionery, or as an article unenumerated. I can quite understand that in the case of softgoods, electrical machines, and goods of that sort, an expert would be of use in assisting the Minister in coming to a decision ; but in most of the cases any man of common sense could decide the question as well as an expert. I point out that if the proposal of the Vice-President of the Executive Council is to be defeated, and I hope it may not be, the honorable and learned senator might improve the clause he submits by providing in it that the Minister may, if he likes, call in a couple of experts to help him, and that then the decision of two out of the three shall be binding.

Senator O'Connor

- He has the power to do that anyhow.

Senator Sir Frederick Sargood

- I make it compulsory that he shall have experts.

Senator DOBSON

- I am inclined to think he might take the advice of 50 experts privately, but I do not think he has the power to call in anybody to sit with him in hearing and deciding a case.

Senator O'Connor

- Not to sit with him, but he may have the benefit of the experts, knowledge.

Senator DOBSON

- I think it would be well to give power to the Minister to call in experts to assist him in any technical matter. Honorable senators who have spoken of the ignorance of the Minister have forgotten that sitting with the Minister, whoever he may be, will be the collector of Customs of the State in which the dispute arises, and the comptroller of Customs, and he will have the benefit of the technical knowledge they possess. He will in every way be made au courant with the whole of a dispute, and will have to assist him all the technical knowledge of officers who have been in the service for perhaps from 20 to 40 years.

Senator Lt Col NEILD

- That has not been the experience in Victoria, apparently.



Senator DOBSON

- I am afraid in that instance the Minister did not sufficiently inform his mind. Another point is that we ought not to encumber this Bill with too many ways of settling disputes. In clause 160, clause 256, and the amendment proposed by Senator O'Connor, I think ample justice is done to the importer, and that he will be assured against any wrongful imposition of duty.

Senator Sir JOHNDOWNER (South Australia). - I am rather disposed to agree with the substance of Senator Sargood's amendment. So far as the form of it is concerned, however, I think it requires alteration. For instance, every dispute, however trifling the amount involved, should not be the subject of this elaborate machinery. There ought to be some provision as to the amount to be in question before a dispute can be referred in the way proposed. But the substantial question after all is whether there should be any choice for the importer between taking the judgment of the collector and going to the court. Is there to be nothing between? Senator Dobson said just now that there were questions of difficulty as to values that required great skill to be brought to bear in their determination. Are those questions to be determined finally by those whose interest it is to fix the duty as high as possible? Or, is there to be no other remedy short of going to the court? Of course my honorable friends on the Ministerial side will say that the collectors of Customs never try to place the duty at the highest rate. I say they do. Speaking from experience, I say they assist their Treasurers, and they get all the duty out of Customs they possibly can. They assess the value of the duty on the goods at the highest possible rate in order to produce that result. That must be the experience of every man who has thoughtfully considered the matter. Then the person aggrieved goes from the collector to the Minister. The Minister, however, is also interested, not in an improper way, but interested in the unconscious way in which every man is interested where a matter in which he is personally or professionally concerned is involved. It is ridiculous to say, for example, that a lawyer is not interested when he is acting for his client. He is, in my opinion, as honest as the day, but he cannot be without prejudices in favour of the side for which he is retained. And so it is in all other cases. The question here is whether, after the collector has levied the duty, there is to be no remedy for the aggrieved importer short of the expensive machinery of appeals to the court. I am speaking in no way about what the Ministerial amendment very properly provides for. There are cases in which there are unintentional, contraventions of the Act. Directly the guilty element comes in, the element of intent to evade or defraud, I would leave the matter for the Minister to deal with in the way he thinks best. But we are dealing with cases in which there is no fraud intended. Senator Sargood says that questions will inevitably arise in regard to values.

Senator Sir Frederick Sargood

- And classifications : the rate of duty which the goods are to be charged.

Senator Sir JOHN DOWNER

- Exactly ; and the particular schedule of the Act which would apply to a particular case. These are questions involving great delicacy of consideration, on which many men may entertain different opinions. I understand the proposal is that in those cases, in which there is no offence against the Act, but simply a dispute relating to the working out of the Act, the importer shall not be left between the devil and the deep sea - the collector and the court.

Senator McGregor

-. - Which is the devil?

Senator Sir JOHN DOWNER

- I put the collector as one and the deep sea as the other. Senator Sargood's amendment is that there should be some reasonable process involving no expense to the Government and involving no great delay, by which, in these matters, the Minister could better inform his mind. It is really, if I may so put it, a compulsion on the Minister to inform his mind on the subject, because after all the collector has done the Minister need not act upon his decision. He can act as if the order had not been made. Practically it is a statutory obligation thrown upon the Minister to inform his mind properly, because the Governor-General is, of course, the Minister. The Governor-General will do what the Minister decides should be done.

Senator Sargood says his proposal can be carried out without any expense. He says that after many years of experience in Victoria-

Senator Sir Frederick Sargood

- After seventeen years' experience in a large number of cases.

Senator O'Connor

- The Chairman says that during his term of office as Minister of Customs in Victoria, extending over nearly five years, there were no cases.

Senator Sir Frederick Sargood

- I am not speaking of the last five years.

Senator Sir JOHN DOWNER

- So far as New South Wales is concerned, I understand that its laws are so beneficent that there is no necessity for a court being paid at the rate of £200 per annum per member. So far as Victoria is concerned, however, there is a great conflict of testimony between the Chairman and Senator Sargood as to whether or not there have been many such cases.

Senator Sir Frederick Sargood

- I am not speaking of what happened during the Chairman's term of office as Minister, but I have sat on dozens of such boards:

Senator O'Connor

- But not within the last five years.

Senator Sir JOHN DOWNER

- I suppose Senator Sargood would say that during the years that he presided on these boards he settled the principles on such just lines that further appeals became unnecessary.

Senator McGregor

- Then what is the use of continuing the practice ?

Senator Sir JOHN DOWNER

- Because the principles are not settled, so far as the Commonwealth is concerned. The proposition of the Government is that the Minister may inquire. That he may and does do now. If the Collector of Customs of South Australia, for instance, gives a decision, the duty is thrown upon him by statute, but his Treasurer overhauls him and inquires into the matter. If the Treasurer disagrees with him, the decision is altered or reversed, as the case may be. Therefore all that is proposed in the Government amendment is a re-enactment of the existing practice that the Government, who are the ultimate judges, shall inform their minds in the way they think fit.

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Senator O'Connor

- But the new clause also provides that they can finally decide the matter. They have not got the power now. That is the difference.

Senator Sir JOHN DOWNER

- Therefore it is a limitation, and not an extension. It is a limitation because at present if a man applies to the Minister, and he does not like the Minister's decision, he can do what he pleases. If he appeals to the Minister under this proposed new clause, however, the Minister's decision is to be final. Therefore, this proposal, which is meant to be a benefit to the importer, is practically a limitation of the power which already exists. I hope Senator Sargood's clause will be amended so that it will not, apply to cases in contravention of the Customs Act. I do not think it was ever intended to apply to cases in which offences had been actually committed.

Senator Sir Frederick Sargood

- What words would the honorable and learned senator suggest 1

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Senator Sir JOHN DOWNER

- The honorable senator could easily introduce the words suggested in the Ministerial amendment.

Senator Major GOULD(New South Wales). - I do not know whether there is any possibility of an arrangement being made between the honorable senators in charge of the three amendments. But I think the committee is generally agreed that there should be a provision of this character, so that a dispute might be terminated without recourse to the law courts. There was a great deal of force in the address of Senator Downer. All his arguments went strongly in favour of the amendment of Senator Sargood. It is true, with regard to Senator Neild's amendment, that there are some objections in the way of expense. I was in hopes that a new clause might be devised which would be acceptable to every one. I understand

that Senator Neild will be prepared to withdraw his amendment in favour of a modification of that suggested by Senator Sargood, if such an arrangement can be agreed to by the committee. It has been pointed out very strongly that the amendment suggested by the Government would put the Minister in a very much stronger position than he is in under the Bill. Of course, it would be open to any man who was dissatisfied with the determination of the collector to appeal to the Minister, but at the same time it would be known that if the Minister declined to revise that determination, or if he acted in an unsatisfactory way, it would not be binding on the appellant. Under the clause suggested by Senator O'Connor, however, the Minister would become sole arbiter. A dissatisfied importer would be invited to appeal to a tribunal that could not by any means be of a satisfactory character, because he would be appealing from the collector to the Minister with a knowledge that if the Minister decided against him, it would be absolutely binding and conclusive. I do not believe that any cases would be referred to the Minister under such a provision, except on some very minor question where it did not matter very much how it was decided. No matter of importance would be referred to the Minister if the importer held a strong view contrary to the collector's. It would have to go to the law courts. I understand that the object is to prevent this, if it can be avoided, by means of an inexpensive tribunal. Either Senator Sargood's amendment, or Senator Neild's amendment, would be the middle way. One would go from the Minister, who to a large extent is interested in upholding his officer, to two or three independent persons who might be trusted to give a fair decision, and I do not derogate from the honesty of intention on the Minister's part. I hope that the committee will see its way to accept one or other of the amendments. It will be very serious if we find that a tribunal of this kind is to cost us a great sum. That question will have to be considered very carefully before we pledge the Commonwealth to such an expenditure, if we can attain the same object by a less expensive course of action. Under the amendment of Senator Sargood, as I believe it will be altered, we would get what we require, and would be striking a middle course, as between the decision of the collector and driving a man into the law courts. If Senator Neild intends to adhere to his amendment I will vote for it, but from the temper of the committee, I do not think there is a reasonable chance of its acceptance. I think there is a better chance for Senator Sargood's amendment. I believe that Senator O'Connor if consulted, while he might very naturally feel inclined to stick to his own proposal - would not regard Senator Sargood's as a very serious inroad on the power or authority of the Customs or on its ability to get a fair duty and a fair consideration.

Senator Sir FREDERICKSARGOOD (Victoria). - Perhaps it will save time if I indicate the amendments which I believe will carry out the suggestion of Senator Downer. In my new clause, I propose in sub-clause (.1) to strike out the words " as to whether the provisions of " with a view to- insert the words " between any officer and any person as to the classification of goods, or the rate of duty to be paid on same," and in sub-clause (3) to strike out first the words " either prosecute the offender or, " and then all the words after the word "accordingly." It will then be restricted to differences of opinion between any officer and any person as to the classification to be paid on the same.

Senator Lt.-Col.NEILD (New South Wales). - I was anxious to see some provision for an appeal. It does not matter to me in the slightest degree from what source it comes. I should have been quite prepared to withdraw my clause in the interests of one that appeared to be more useful, but Senator Sargood has now amended his clause in a manner which restricts its usefulness materially, and he proposes to limit its operation wholly to disputes as to the rate of duty.

Senator Sir Frederick Sargood

- And classification.

Senator Lt Col NEILD

- The rate of duty is dependent on the classification. My amendment goes further, and provides for the reference of a lot of little technical differences as to observance or otherwise of matters under the Act. Again, Senator Sargood proposes to deal with a dispute between an officer and any person aggrieved. My clause affords the Minister as well as any person aggrieved, or any officer, an opportunity for obtaining technical advice. It proposes to empower the Minister to evoke the services of this board to settle difficulties - to aid him, in fact, in the transaction of business of which he probably has no personal knowledge. If Senator Sargood proposes to stand by the revised amendment, I am afraid that I shall have to stand by my amendment whether it is carried or not. I conceive that it is my duty to fight to a finish a principle I believe in. If Senator Sargood is prepared to move his clause in the original form I am prepared

to withdraw my clause and support his ; but he has now fined it down until it has lost its virtue ; and, therefore, I cannot take the interest in it which I otherwise should have done. Senator Dobson criticised very strongly the provision to be found in Senator Sargood's clause and my own, namely, that there was an authority given to the Governor-General in Council to disagree with the decisions of the proposed boards. There is nothing so very heinous as he seemed to indicate in the proposal, whether it comes from Senator Sargood or from myself. It is well known that in the administration of the criminal law the Governor in Council exercises large powers. Some analogy may be drawn between the administration of the criminal law as between an accused person and the whole body of the people represented by the authority, and the interest involved in the Customs Act, where there is an individual who has to pay, and all the people on the other side are concerned in the payment and are represented by the authorities. The Governor of the State has, under the operation of the criminal law, three powers, which he very commonly exercises. He has the power to remit or reduce fines though the matter has been dealt with finally by the law courts. He remits portions of sentences : and, under the authority of law, he also exercises the prerogative of mercy and sets aside the decision of the highest court in the land. In view of the fact that the Governor in Council in a State is empowered to exercise those three great privileges, surely there is nothing very unreasonable, in dealing with such a matter as the administration of the Customs Act, about the power retained by the Crown to disallow the decision of an inferior tribunal, and nothing that absolutely destroys the value of the proposition that is to be found in the clause as submitted by Senator Sargood or myself.

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Senator PLAYFORD

- I should be very much inclined to say "a plague on both your houses " and on both your amendments ; because, within my experience in the management of Customs business - having passed the present Tariff in South Australia, and having had the administration of it for some years - nothing of the sort is wanted. Necessarily a new Tariff requires a considerable amount of interpretation after it is first inaugurated. It can be well imagined that all sorts of disputes naturally arise. I had hundreds of cases to decide. There is no law in South Australia which gives direct power to the Minister to inquire into matters connected with the administration of the Customs. But the Minister is naturally appealed to by persons interested when they object to the decision of the head of the department. I have had hundreds of cases brought before me in which I have asked the opinion of experts, and then I have used all the common sense God gave me to decide them. In not one single instance was the right of appeal to the courts against my decision exercised.

Senator Staniforth Smith

- Perhaps the honorable senator let them off too lightly.

Senator PLAYFORD

- I tried to administer the law as I found it, and naturally endeavoured to get on behalf of the Government all the duty that I thought it was entitled to. Although Senator Downer has informed the committee that it is his experience that the collector of Customs always takes the view that enables the highest possible duty to be obtained, my experience is that he endeavours to get what he believes to be the legal duty and nothing more. On the other hand I think it will be found that the importers try to get in their goods at the lowest possible rate. Naturally they do that, because it means money in their pocket. But to the collector of Customs or the Minister it does not matter a farthing whether the goods come in at a low or a high rate. My experience is that the law is administered fairly and honestly. Matters in connexion with the Tariff have been brought under consideration in the various States for a great many years, and most of the points which are likely to be raised have been decided either in one State or another. So far as ad valorem duties are concerned, the trouble is to decide whether goods shall come in upon say the 20 per cent, list or the 5 per cent, list, or whatever it may be. Within about twelve months after the passing of a new Tariff, I issued a Customs handbook in which was set forth every article we could think of, and opposite the article we placed the information whether it was free or liable to a duty, whether the duty was an ad valorem rate or a fixed rate, and so on. It will be found that in one State or another almost every conceivable point has been decided, so that it will be comparatively easy for the head of the Customs department of the Commonwealth to decide whether any article should be placed upon one list or another. The matter should be left for the Minister to decide. Uniformity is of the utmost importance.

Under the proposal now made we may have one of these little tribunals sitting at Perth, and another sitting at Brisbane, deciding exactly the same thing, &gt;and the two bodies may come to different conclusions; whereas, if the matter is left in the hands of the Minister, there will be one decision throughout the Commonwealth. If an importer is not satisfied with the decision, he can go to the law courts and test the matter. Surely he can desire nothing more. I believe it will be better not to adopt either of the proposals now before the committee, even including that of the Government, which to my mind is the least objectionable of the three.

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Senator O'KEEFE

- It seems to me that the chief merit to be found in the proposal of Senator Neild, is that the board of experts which was appointed in Sydney, resulted in twelve decisions being given in five years, for which three men drew £1,000 each. Three commissioners in that State, drawing £200 per year each, dealt with a dozen cases during five years and drew £3,000 between them. I do not think we want any officers of that kind in connexion with the legislation of the Commonwealth. We have quite sufficient legitimate expenditure that will have to be borne. Both the amendment of Senator Sargood and that of Senator Neild endeavour to insure that the Minister shall be fully cognizant of the facts of any dispute. But the amendment that the Vice-President of the Executive Council intends to move insures that quite as fully as either of the other two amendments.

Senator Lt.-Col. NEILD (New South Wales). - I have already pointed out the objection I have to Senator Sargood's amendment in its restricted form, as it applies wholly to disputes as to duty and not as to the many other matters under the Bill as to which it may be desirable to effect a private, cheap, and quick settlement. I think I shall be accomplishing what I desire by withdrawing my amendment, and in due course supporting the clause to be proposed by the Vice-President of the Executive Council with a slight amendment.

New clause, by leave, withdrawn.

Senator Sir FREDERICKSARGOOD (Victoria). - I move -

That the following new clause be inserted to Follow clause 255: - "If any dispute shall arise between any officer and any person as to the classification of goods, or of the rate of duty to be paid on same, the person aggrieved may apply in writing to the Minister, stating the grounds of complaint, and thereupon the Governor-General shall depute two or more persons to inquire into and report upon such dispute in the prescribed manner -to the Governor-General. Upon such inquiry witnesses may be summoned and examined upon oath."

I propose to deal with the three sub-clauses of the clause as it appears on the notice paper as new clauses. The other two clauses, in the form in which I intend to submit them, are as follows: -

No person summoned as a witness- shall, without reasonable cause or excuse, neglect or refuse to attend upon being tendered reasonable expenses. Penalty: £20.

The Governor-General shall determine such dispute, and make an order accordingly, notice whereof shall be given to the parties to such dispute forthwith. Such order shall be of equal force and effect as if the same had been made by any justice or justices having jurisdiction in the matter, and may be enforced accordingly.

Senator Sir JOSIAHSYMON (South Australia). - I confess that I do not like this proposed new clause in its present shape. I agree that it is well in the case of disputes under the customs law that there should be some intermediary, so as to prevent, if possible, the necessity of going to the law courts. Although I have not had the experience that my honorable friend Senator Playford has had in connexion with the administration of the Treasury and the Customs department, I know that in the State of South Australia there is only one instance within the last 30 years of a difference with regard to the classification of goods between the Customs and the merchant, which has come before the law courts. That was a dispute with regard to the classification under which chicory should be imported. I think that came on for settlement some twenty years ago, and, so far as my experience and acquaintance with the proceedings in the law courts there is concerned, there has never been another case. The defect of Senator Sargood's provision is that it does not take away from the department the decision of these questions. All that it does is to make it compulsory on the Governor-General, which means the Ministry, to call in the aid of experts, not for the purpose of deciding the question, but for the purpose of inquiring and reporting. We had an

animated debate not long ago as to what was the meaning of "inquiring and reporting," and whatever might be the result in that case, so far as this is concerned, it can only be something in the nature of a report to inform the mind of the Minister. I may say that I thought originally that this selected number of persons was to decide the matter, but the sole point in the amendment suggested by Senator Sargood is to make it compulsory upon the Governor-General to depute two or more persons to inquire and report, and it leaves the decision of the question exactly where the proposal of the Minister in the original Bill places it. The Minister, under the honorable senator's proposal, may appoint two or more persons, whom the parties having the grievance may consider the least fit in the world to decide the question. 'The Minister may choose two lawyers because in his opinion it may be a question of law, whereas the importer aggrieved may say that it is a question as to what the particular goods are imported as, or what their constituent elements are. I see little or no advantage in a new clause which makes it compulsory upon the Minister to adopt a particular method of informing his mind. Then the honorable senator's 'clause provides that after a decision has been come to by the tribunal, and an order made - Such order shall be of equal force and effect as if the same had been made by any justice or justices having jurisdiction in the matter.

But I point out to the honorable senator that there may be many disputes arising under the Customs Bill which could not possibly come before justices in the ordinary sense. The dispute I referred to in connexion with the classification of chicory was one which could never have come before a justice at all. That portion of the clause will, therefore, have to be reconsidered before we can put it into the Bill. The honorable senator then goes on to provide that the order may be enforced, unless the party having the grievance -

Shall within one week after the receipt of notice thereof give notice in writing to the Minister that he refuses to abide by such order.

I confess I cannot see what possible result could happen from that. I suggest to Senator Sargood that he might recast his amendment so as to provide for a fixed tribunal to decide the matter finally. If anything of that kind could be framed I should support it. Failing that, I see no gain to the administration of the Customs department from a provision simply compelling the Governor-General to

I appoint persons to be chosen by the Minister according to his own opinion of a case, and merely to inquire and report. It would be a cumbrous arrangement and would not produce finality, which is what we want. It is obvious also that it would not give us uniformity, and certainly we must have in every State the same interpretation of a Tariff which applies to all the States in common. Unless the clause is recast in the way I suggest I prefer the clause suggested by the Minister, but I think that after the Minister has informed his mind in such manner as he may think fit according to that clause, he should hear both parties before deciding. The clause says that where there is a difficulty the matter may be referred to the Minister for a decision, and thereupon - the Minister shall in such manner as he thinks fit, inform his mind of the circumstances.

I suggest that after the word "circumstances" there should be added the words "and shall after hearing the parties finally decide the matter."

Senator O'Connor

- That would probably make personal attendance of the parties compulsory. '

Senator Sir JOSIAH SYMON

- Probably, but not necessarily. We might say "after hearing the parties if they so desire." I know that in the administration of the Crown Lands Act in South Australia, it was found advisable to have a provision to enable the parties in a matter to be heard and they were heard in many cases by a declaration or a statement made in writing, and if the Minister chose he might hear them orally. That would secure absolute justice, I think, and I should be content with the administration of this Customs' Bill, if after the Minister informed his mind of the circumstances, the parties to a dispute could come before him if they thought fit.

Senator Sir Frederick Sargood

- Does the honorable and learned senator mean the Minister personally? How could people come here from Western Australia ?

Senator Sir JOSIAH SYMON

- Why not?

Senator Sir Frederick Sargood

- Look at the delay.

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Senator Sir JOSIAH SYMON

- It would be nothing in comparison with the importance of the settlement of questions arising under the Tariff.

Senator Sir FREDERICKSARGOOD (Victoria). - I put the question just now to

Senator Symon, because I wanted to ascertain what the honorable and learned senator meant by the Minister. Under clause 9 of the Bill, the Minister can delegate his powers, and, as a matter of fact, the Minister will have to delegate his powers very largely, or the whole business of the Custom-house must come to a standstill. If the idea is that the Minister is to personally hear all these complaints, I do not hesitate to say that it will be utterly impossible to carry it out. We are very apt to forget that we have ceased to be separate States, and that while it was possible in any one of the States for the Minister to deal personally with a matter arising in that State, it is absolutely impossible where the Minister will be dealing with the Commonwealth as a whole. The delay caused in going to and fro, and bringing witnesses, would render such a proposal as that suggested absolutely impossible. The object of my amendment is that the Minister's representative in each of the States, who will be the State Collector of Customs, shall be compelled to take expert evidence in the hearing of these matters of dispute. I am speaking now not merely for the commercial public of Victoria, but on behalf of the associated Chambers of Commerce of the whole of the Commonwealth, who, through their chairman, have seen me upon this matter. Surely the opinion of so large a body of practical men is deserving of some consideration. After many years of experience in the working of these Acts, they know where the greatest difficulties arise. The delay in getting goods very often means very heavy loss, and the delay at times is so great that merchants frequently pay a great deal more than they believe they are honestly entitled to pay simply for the sake of getting possession of their goods. We do not feel it to be just that we should be asked to submit these important matters solely to the dictum of the Minister, and we want the Minister or his representative, the Collector of Customs in each State, to be compelled to take expert evidence if that can be obtained. If the amendment suggested by the Vice-President of the Executive Council can be amended so as to provide that the Minister, or the person to whom he delegates his power, shall hear evidence in these cases, I shall be perfectly satisfied, as I believe that will meet the whole case.

Senator DOBSON (Tasmania). - The honorable senator who has just sat down keeps on saying that it is impossible for the Minister to inquire into all these cases, and at the same time he reminds us that the Minister has power to delegate his authority to other persons. I take it that a dispute in Western Australia would be delegated to the Collector of Customs in Western Australia. There is no doubt that any dispute as to the construction of the Tariff and the payment of duties would be delegated to the head of the Customs department in the State in which the dispute arose. We have lately seen certain criticisms in the press in reference to the department of the Postmaster-General. I am not saying whether those criticisms are deserved or not, but there is a great deal in them if we do try to centralize all these departments. Never let us forget that we owe a duty to the various States. Let us remember that in all the States there are important and responsible officers who have been carrying on the work of the Customs and the Post-office department for many years. It is a mistake to think that because we have got an Act of union, these men are less capable of carrying out their functions than they were before. We will make a terrible blunder if we keep on centralizing all these departments. We want to do exactly the contrary, and to make the heads of the different departments in each State, and particularly the Collectors of Customs, feel that there are greater responsibilities resting on them now than there were before the union, and that more will be expected of them. Still, whenever the Minister delegates to him the right to settle these disputes, he is the man who will settle them. Therefore, it appears to me that what Senator Sargood desires he will, to some extent, obtain, but if he is still dissatisfied, I would point out that the evidence from New South Wales and from his own State, and the evidence given by Senator Playford, from South Australia, absolutely shows that we are talking about something that really is not going to happen. The more we go into the matter and examine the practical evidence, the more we see that this appeal in theory has no existence in fact. It appears to me that the Collector of Customs or the various Ministers who have held office must have been perfectly angelic in the past. They have skinned the goose so nicely that no one

has ever appealed against the skinning.

New clause negatived.

Senator O'CONNOR

- It is not necessary for me to explain my proposal in regard to the insertion of a new clause to follow clause 259 at any great length. I make it after consultation with the Minister for Trade and Customs. It is to meet a gap in the Bill ; to give an opportunity to persons who wish to have these questions decided finally by the Minister in cases where there is no contravention of the Act, that this proposition is put forward. The suggestion has been made by Senator Symon that it will be necessary to insert in the proposed new clause words to the effect that the Minister shall hear both sides. It seems to me that that is unnecessary. The mere fact of the Minister being given power to decide the matter means that there must be power to decide it after hearing the representations of both sides. Otherwise how could he decide the matter ? I object to any alteration of the clause, because if it is expressly provided that the Minister is to hear both sides, that may mean that it will be absolutely necessary for him to do so, although it may not be essential to call evidence and witnesses in certain cases. The Minister has the power to adopt that course if he sees fit, or to send for experts if he desires. He has power to hear representations verbally or in writing under this clause, and it is impossible to suppose that he would deal with these disputes without hearing both sides. Inasmuch as he is to be set up as a tribunal to decide these matters, I take it that he would be a court subject to the jurisdiction of the higher courts.

Senator Sir Josiah Symon

- Oh, no.

Senator O'CONNOR

-I hope the honorable and learned senator makes that statement with a certain amount of doubt?

Senator Sir Josiah Symon

- I have no doubt whatever. Does the honorable and learned senator think a mandamus would go to the Minister ?

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Senator O'CONNOR

- If the Minister were constituted a court, which I think he would be by the consent which is provided for, it is not at all certain that he would not be liable to have his decision reversed if it was contrary to natural justice. It would be such if he refused to hear both sides. However, that is going into a question of law which is unnecessary. I am opposed to the suggested amendment, because it seems to me that it would take away the usefulness of this power. After all, we must remember that the person aggrieved is not forced to accept this tribunal. If he chooses to go to it, however, he must be prepared to trust to the Minister's sense of right and justice. I think the new clause I propose to insert carries out the views of the majority of honorable senators, and at present I do not consider that the further amendment suggested is necessary. I move -

That the following new clause be inserted to follow clause 259: - "Any matter of difference arising under this Act, or in relation to the Customs, and not involving a contravention of this Act, may, at the request of the parties interested, be referred to the Minister for decision, and thereupon the Minister shall in such manner as he shall think fit inform his mind of the circumstances, and finally decide the difference."

Senator Sir John Downer

- Why not say that the Minister shall be required to hear both sides.

Senator Sir JOSIAHSYMON (South Australia). - My honorable and learned friend's suggestion is an excellent one, but it involves interference with the earlier portion of the Vice-President of the Executive Council's clause. My proposal comprehends everything. The clause provides -

Thereupon' the Minister shall in such manner as he shall think fit inform his mind of the circumstances - - Without touching the earlier part of the clause we may add the words " shall after hearing the parties " finally decide the difference. Honorable senators will see that the effect of this clause is to give the Minister absolute and autocratic power to decide a question without, if he pleases, hearing both the parties, or giving the person aggrieved an opportunity of appearing before him. He may, on his own ipse dixit, inform his mind simply through his officers and decide the question. That would be contrary to natural justice, and if, as Senator O'Connor says, any Minister seeking to do right would give the parties an opportunity of being heard, there can be no objection to inserting these words. It would make the



matter perfectly clear, and inspire those who may seek to avail themselves of this opportunity of settling disputes, without going to law, with confidence in the tribunal. It must commend itself to all of us that the parties should have an opportunity of being heard, and that there should not be the possibility of a decision being given behind their backs.

If it were merely proposed to give the power to the Minister to inquire and report it would be different, but the effect of this proposal would be to enable him to absolutely decide the difference. He is not bound to hear evidence.

Senator Sir John Downer

- I think it would be all right if we said " shall inquire into the circumstances and finally decide."

Senator Sir JOSIAH SYMON

- That would make the clause wider. It would make it obligatory on the Minister to call evidence. I think it would be sufficient to say, " shall after hearing the parties, if they so desire, finally decide the difference."

Matters may arise as to which there may be a doubt and as to the accuracy of the information which the Minister may have obtained, and it is only fair that an opportunity of being heard should be given to the man who has 'got a grievance' and who has availed himself of this chance of evading the necessity of going to law. There is an end to the whole business immediately the Minister gives his decision. If he chooses, as of course he may do, he can call upon the parties to give their information, and the only effect of this amendment will be to make it obligatory on him to do so. In that connexion I would say I am sorry that I misunderstood Senator Sargood before, because I certainly did not intend to deal with the matter of delegation. I thought his question was merely as to who was the Minister.

Senator Lt Col Neild

- I have an earlier amendment to propose.

Senator Sir JOSIAH SYMON

- Very well.

Senator GLASSEY

- It seems to me that the honorable senator who has just spoken is far too exacting in urging the acceptance of the few words he has proposed. Although he has heard Senator Playford's speech - the speech of a gentleman who has long administered the Customs department in South Australia.

Senator Sir Josiah Symon

- Senator Playford approves of my amendment.

Senator Playford

- I do not object to it.

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Senator GLASSEY

- Senator Playford says that hundreds of cases came under his own observation during the time that he held office, but that in no instance was any attempt made to dispute or upset his decision. Surely the Minister who administers this measure will be guided by common sense and reason, and the very fact that the parties apply to him to consider disputes of the kind in question is sufficient, to my mind, to guarantee that the Minister will hear both sides. I think that Senator Symon is far too exacting, and somewhat inclined to split straws, if not hairs, in regard to some of these provisions. It is cutting matters too fine to imply that a Minister is not to be guided by that which is reasonable and fair and equitable when a dispute arises. I have confidence in the Minister who administers this department, and I think that if the proposed new clause is passed without amendment it will meet all requirements.

Senator Lt.-Col. NEILD (New South Wales). - Exception was taken to the cost in connexion with the clause which I moved just now, and I have therefore reduced the whole matter to a few words. I move - That the proposed new clause be amended by the omission of all the words from " to," line 5, to the end of the clause, with a view to insert in lieu thereof the words ' ' three persons, who shall hear and determine such difference."

The CHAIRMAN

- I shall put the question that only the words from " to " down to " circumstances and " be omitted, as I understand that an amendment is to be moved on the concluding words of the clause.

Senator O'CONNOR

- That is, shall be referred, whether the Minister or the parties like it or not. That is the honorable senator's

old clause over again. Of course, I object to the amendment because it is really all his clauses boiled down to a few words, and it contains all the objectionable features of them.

Senator MCGREGOR

- I hope that Senator O'Connor will stick to his clause as it is. I think that the amendments which some honorable senators propose, although they may do no harm, will do little more good than a poultice on the foot of an iron wheelbarrow. We do not like to waste time. There has been a wanton and unjustifiable waste of time. I think there has been an intention to alter the phraseology, just for the sake of altering, because there will be very little change in the meaning if these amendments are made. Taking the clause as it is, does any one imagine that the Minister will decide anything without knowledge ? Will he not make an inquiry to justify himself in taking one side or the other ? Do you think that public opinion, or even the Parliament, will permit a Minister to retain the position for any length of time who did not give decisions based on inquiry, and having some appearance of justice ? I hope Senator O'Connor will resist any attempt to alter the clause.

Senator STEWART

- I do not rise to support the amendment or the clause. There is a great deal of unnecessary verbiage in the clause. These words are entirely unnecessary -

In such manner as he shall think fit, inform his mind of the circumstances,

Surely the reference to the Minister for a decision involves all the rest? Why load up the clause with unnecessary words ? If the Minister who fathered the Bill in another place was severely draconic in his wording, here, at any rate, we have gone to the other extreme. I propose to move the omission of all the words after the word "decision."

Senator Major GOULD(New South Wales). - My objection to a clause of this character is that it would make the Minister a final arbiter in matters of dispute. That I think would defeat the value of the clause, because men who had matters of very great importance in dispute would not care to refer them to the Minister. If a decision is to be given by the collector, I decline to believe that he will decide without hearing what can be said on each side, if it is really a matter of dispute. When the collector has given his decision, what more natural than that the Minister will be inclined to support it ?

Senator Sir Josiah Symon

- His disposition would be that way.

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Senator Major GOULD

- Yes. You mayor may not get additional evidence, and then the Minister determines finally, a matter of very great importance which possibly would be determined differently if it had gone to the court. In such circumstances, an importer would not be likely to refer any important matter to the Minister, and therefore it would defeat the value of the clause. On the other hand, if we make an amendment such as that indicated by Senator Neild, we should have a determination given after hearing the evidence by three persons entirely disconnected with the department. The Minister would have an opportunity of seeing that fit persons were placed on the tribunal. And we can rely upon it that the decision so given would be without bias as to the collector or the Minister's feelings.

Senator O'Connor

- But the parties need not come before that tribunal unless they like.

Senator Major GOULD

- If it is an important matter the parties will not come before the Minister, and so the clause will become of little value. On an unimportant matter, a man would be quite willing without such a provision to appeal to the Minister from an adverse decision by the collector.

Senator Sir Josiah Symon

- No man would proceed under this clause if the Minister's decision were final.

Senator Major GOULD

- If we cannot accept an amendment such as that indicated by Senator Neild, I do not see my way to vote for the clause suggested by the Minister. I admit that if the clause is carried it will not do any harm, but it will do no good. It will only load up the Bill.

Amendment (Senator Lt.-Col. Neild's) negatived.

Senator CLEMONS(Tasmania).- I would suggest to Senator O'Connor that if he will insert the words "hear

and determine" and leave out a great many other words he will improve his clause in the direction indicated by Senator Stewart, and I believe in a direction which would be satisfactory to a good many others.

Senator O'CONNOR

- I cannot accept the suggestion of Senator Clemons. The words "hear and determine" used in that connexion might mean that the Minister could only decide after hearing evidence on oath. It is for the very purpose of avoiding that limitation that the clause is drawn as it is. Numberless cases, perhaps the great bulk of the cases, which will be decided under the clause will be cases in which the parties would represent their grounds in writing or through representatives. They would be represented in letters on each side; they would get reports by experts probably. The Minister might inform his mind not only by evidence heard on oath, but in any way he thought fit, and that is the reason why the clause has been drawn in its present form. I cannot accept an amendment to insert the word "hear and determine" because that would imply that there must be a hearing either on affidavit or on evidence taken on oath, and it would shut out the great bulk of cases which it is intended to cover by the clause.

Senator Sir JOHNDOWNER (South Australia). - I do not take the view of the Minister. This matter cannot come before the Minister except by the consent of the parties interested. The Minister can always prevent a matter being referred to him. It can only be done by the consent of both parties, and if there is any danger of expensive inquiries resulting from a reference, the Minister can always prevent it, because he can say there shall be no reference. But if there be a reference, why resort to new-fangled terms when we have old and well-determined words, which are both terser and more understood in the English Constitution? If the Minister does consent to a reference to himself, then let him consent to hear and determine the matter. Why not strike out the words "finally decide," and insert the words "shall hear and determine the difference." It is a dangerous thing to use new-fangled words. No doubt this phrase - "inform his mind of the circumstances," has been very carefully considered, but I do not think they are good words as a matter of draftsmanship. If we say "and thereupon the Minister shall hear and determine the difference," Senator O'Connor will say - "Yes, but that might require evidence to be taken on oath." Not of necessity. If the parties force the Government to it, certainly; but if they do not force them to it, certainly not. I do not think there would be any difficulty at all. There is not very much difference between us upon the matter. It is more a question of whether we should use words which have a clear signification, or words which may be the subject of judicial inquiry and decision, and may cause inconvenience.

Senator CLEMONS (Tasmania). - The committee should be much indebted to Senator Downer for the explanation he has given. I now move -

That after the word "and" where last occurring, the following words be inserted: - "shall hear and determine."

I move that amendment with a view of afterwards moving to leave out the words "finally decide."

Senator O'Connor

- The amendment would take away all finality.

Senator CLEMONS

- The words "shall hear and determine" will give all the finality we want.

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Senator O'Connor

- I object to the amendment for the reasons I have already given.

Senator CHARLESTON (South Australia). - It is necessary to insert the words which Senator Demons has moved for the purpose of making the clause of any value. Unless they are to be inserted, we have argued hours to no practical purpose whatever. The Minister will have power under other clauses of the Bill to deal with other matters, but we are now anxious that he should have power to deal with, a difference of opinion as to what duties should be paid on certain goods. We are desirous that the parties shall be heard before the Minister decides. Unless this amendment is made the Minister may simply take the word of the collector, and decide the matter without hearing the parties at all.

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

Ayes ... .. 13

Noes ... .. 13

Question so resolved in the negative.

Amendment negatived.

Senator Sir JOSIAH SYMON

- Since the amendment has been negatived, I intend to vote against the clause, which is perfectly unnecessary. No importer would ever avail himself of a clause involving a final decision by the Minister, so as to debar him from having any other remedy ; whereas, under the other provisions of the Bill, if he chose to dispute the decision of the Minister, other remedies would be open to him.

Senator O'CONNOR

- It is an extraordinary argument to use, to say that we shall be overloading this Bill by inserting this clause in it, after honorable senators have spent hours in discussing amendments of their own. They cannot get amendments in the shape in which they want them, and therefore they say that no such proposal is required at all. Those who take the view that there should be some way by which cases which need not go into court may be decided by a clause of this kind, will vote for it as it stands.

Senator Lt Col NEILD

- Because some of us do not like the clause in its present form, and have unsuccessfully tried to amend it in order to make it useful, that is no reason, as the Vice-President of the Executive Council seems to indicate, why we ought to vote for it now. I oppose the clause, because it proposes a pretended remedy which will not be of the slightest value.

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

Ayes ... .. 15

Noes ... .. 11

Majority ... .. 4

Question so resolved in the affirmative.

New clause agreed to.

New schedule 2a agreed to.

Bill reported with amendments.

Senator O'CONNOR

- I propose now to move that the Bill be recommitted for the reconsideration of clauses 28, 49, 69, 123, 136, 173, 203, 213, 214, 219, 223, 224, 245, 256, and 258. Some of these clauses I have promised to recommit; there are others the recommitment of which I am asking for the purpose of considering amendments which are found to be necessary, and some are being recommitted for the purpose of making consequential amendments.

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Senator Sir FREDERICK SARGOOD

- I desire to have the Bill recommitted for the consideration of clauses 52a, 150, and 198, and a new clause to follow clause 173.

Senator CHARLESTON

- I wish the Bill to be recommitted for the purpose of reconsidering also clauses 94, 135, and 149;

Senator PULSFORD

- I desire to have the Bill recommitted for the purpose of considering clauses 50, 60, and 220.

Senator O'CONNOR

-I consent to all these clauses being included, simply because it would take longer to discuss the question than to discuss the clauses themselves. I -do not, of course, in any way assent to any amendments which may be suggested. I therefore move -

That the Bill be recommitted for the consideration of clauses 28, 40, 50, 52a, 60, 69, 94, 123, 135, 136, 149, 150, 173, 198, 203, 213, 214, 219, 220, 223, 224, 245, 256, 258, and a new clause to follow clause 173.

Senator GLASSEY

- Might I be permitted to ask whether in view of the enormous number of clauses it is proposed to recommit, it would not be desirable to have a postponement of the matter, in order that the amendments proposed may be printed and circulated, so that we may have an opportunity of seeing exactly what they are?

Senator O'CONNOR

- I might answer the honorable senator by saying that all the amendments I intend to propose have been already printed and circulated. With regard to the others, I feel that honorable senators are by this time so saturated with this measure, that they will have no difficulty in picking up any amendment that may be suggested.

Senator Sir JOSIAH SYMON

- I agree with Senator Glassey. Clause 245, I think, was one of the clauses mentioned for recommitment by the Vice-President of the Executive Council, and if my recollection is correct it is the one in which there was the un-English provision for making an accused person, on the assumption that he is guilty, competent and compellable to give evidence, and handing him over to the tender mercies of the prosecuting counsel to cross-examine him as an adverse witness. If it is intended now to recommit the clause for the purpose of restoring that provision, we certainly should have some notice of it.

Question resolved in the affirmative.

In Committee :

Clause 28 (Working days and hours).

Senator O'CONNOR

- This clause is recommitted in pursuance of a promise I made to Senator Macfarlane that I would look into the matter; to see whether the words " working overtime " would include the case of holidays, supposing that men were asked to work on holidays. The clause will give the Minister absolute power in a case of the kind, and if men do go to work it will be on overtime. As the honorable senator is not present, I think it right to make the statement, and I am sure the honorable senator would be satisfied with the explanation I have given.

Senator Major GOULD

- The honorable senator asked me to pay some little attention to this matter, and I understand from what the Vice-President of the Executive Council has said that it is perfectly clear that the Minister will have power to permit working on public holidays where the circumstances render it necessary, and will also have the power to allow overtime.

Senator O'CONNOR

- I have no doubt at all that there would be power. I have consulted the Minister for Trade and Customs. He tells me that there is such a power, and that it is intended to administer it in that way ; to permit work to be done on any day, whether it is overtime on an ordinary working day or an ordinary holiday.

Senator Major Gould

- Would it not be well to make that clear ?

Senator O'CONNOR

- I think it is perfectly clear.

Clause agreed to.

Clause 49 (Prohibited imports).

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Senator O'CONNOR

- It will be remembered that paragraph (a) of this clause originally classed amongst prohibited imports any work which is, or appears to be, an infringement of copyright. That was amended in committee by introducing practically the provision in the Victorian Act. I promised at the time to look into the matter, and, if necessary, to recast the clause so as to bring it into conformity with the desire of the committee in passing that amendment as to the shape it should take. I have drafted a new paragraph to meet that view, and at the same time it is made to include any kind of work as well as a book. All modern legislation is in that direction. The word " book " is used in the Victorian Act but it is intended to include drawings and photographs and matters of that kind. In addition to that, the clause as it stood originally protected only copyrights in Australia or in the United Kingdom. I propose to enlarge that provision by extending it to copyrights in any part of the King's dominions. I move -

That paragraph (a) be omitted with a view to insert in lieu thereof the following : - '(a) Any reproduction except by permission of the proprietor of the copyright of any work copyrighted in the King's dominions, and of the existence of which copyright and date of its expiration written notice has been given to the Minister by or on behalf of the proprietor of such copyright. "

Senator Sir Josiah Symon

- The old clause referred to the King's dominions.

Senator O'CONNOR

- Yes ; I have altered it so as to make it apply to works copyrighted in any part of the King's dominions. The form has been altered, because in all these forms in the statutes a very clumsy method has been adopted of putting in the first place the thing which it is not desired to prohibit, and inserting in the second place that which it is desired to prohibit. We have reversed that position.

Amendment agreed to.

Senator O'CONNOR

- I now propose to amend paragraph (b) of this clause. The paragraph originally read - False money and counterfeit sterling, and any coin or money not being of the proper standard in weight or fineness.

It was pointed out that that might prohibit the introduction of foreign coins imported as curiosities. An amendment was inserted so as to make the paragraph read -

False money and counterfeit sterling, and any coin of the realm, or of any British possession, or any money purporting to be such, not being of the established standard in. weight or fineness.

I propose to amend that by inserting after the word " coin " the words " or money," and to make the paragraph read -

False money and counterfeit sterling and any coin or money of the King's dominions, not being of the established standard in weight or fineness.

That really carries out the object of the committee, and puts the matter in a more precise way.

Senator Major Gould

- It is difficult to follow the amendment.

Senator O'CONNOR

- The Bill will be reprinted and circulated before the third reading.

Senator Major Gould

- The trouble is that we may have to get the clause recommitted.

Senator O'CONNOR

- There will be no difficulty about that if any mistake is made. This amendment is simply a matter of drafting.

Senator Sir JOSIAH SYMON

- We are not being treated fairly in this matter. I am sure the Minister does not desire to treat us unfairly, but the proceedings are operating in that direction. We are dealing with a provision which has been amended. We cannot possibly carry all the amendments in our heads, and we ought to have a print of the Bill, showing the way in which the clauses have been amended already. This paragraph has been amended, but I can not remember in what way. My honorable and learned friend, after consideration, proposes to make it more perfect by a further amendment; but we cannot tell how that will operate. We might as well be out of the chamber. It is simply making a farce of considering these amendments, and making fresh ones upon them, unless honorable senators have a Bill in front of them showing the alterations which have been made already. We might have had the Bill reprinted in advance, omitting the new clauses, or something of that kind. Certainly it is impossible for us to tell what the effect of this suggestion is. We wish to facilitate the passage of this Bill ; but still, I think, some consideration ought to be given to honorable senators. Before amendments are made on clauses which have been amended already in committee, we should have the clauses as amended before us.

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Senator O'CONNOR

- I am very anxious that the committee shall have every opportunity of considering these amendments. The amendment we are now dealing with is only a verbal one. I have read the paragraph as it stood, and I have read what I propose, and I have undertaken that the Bill will be reprinted and circulated amongst honorable senators before the third reading, so that they will have an ample opportunity of reconsidering all these clauses. If it is found that there is any clause which needs further amendment, inasmuch as it does not carry out the intention of the committee, then it can be recommitted. I shall not object to any clause being recommitted under such circumstances. If that course is not taken it will be necessary to defer the consideration of the Bill until next week.

Senator Sir Josiah Symon

- Could not a reprint be obtained by to-morrow ?

Senator O'CONNOR

- No ; the Chairman will have to go through the Bill and certify to it before it goes to the printer, and will be impossible to have it reprinted by to-morrow. If the course I propose is followed, there will be no difficulty in the way of placing the Bill, as reprinted, before honorable senators on Monday or Tuesday. I ask them to grant this concession, for the purpose of advancing the consideration of this measure by at least a day. I appeal to honorable senators, who I know are anxious to see the Tariff introduced to help me by going through the Bill to-night and to-morrow ; trusting to the reconsideration of the clauses as a whole on Tuesday. They will have ample time before Wednesday, for which day, I hope, the third reading will be fixed, to see whether it requires any alteration.

Senator Sir FREDERICK SARGOOD

- On one or two of the clauses which are recommitted there is a possibility of considerable discussion taking place. For instance with regard to clause 150 relating to the genuine invoice, a deputation waited upon the Minister for Trade and Customs again to-day. The chairman of the deputation waited upon me just before dinner, and said that so far as they could see, they had impressed the Minister with the necessity of the amendment being made, which I moved, but which the committee would not agree to.

Senator O'Connor

- If they have impressed him to such an extent that he is going to make the alterations, I should be informed about them, and be able to move them to-morrow, but I have not heard about them yet.

Senator JOSIAH SYMON

- It would be a great saving of time if we could have a reprint of the Bill. But, as the thing stands at the present time, it would be very much better for us to let the Minister make the amendments right through on the understanding that the clauses may be recommitted, because we cannot possibly criticise them, if they are open to criticism. In all probability a number of them are not open to criticism, but one or two of them are, I can see. I would suggest to the Minister that he should give us until to-morrow to consider the list we have before us.

Senator O'Connor

- The Bill could not be reprinted by to-morrow, when we meet at half-past ten o'clock.

Senator DOBSON

- I hope that the course suggested by Senator Symon will not be followed. The Minister has convinced me that the course he suggests is the best and promptest one. This amendment is absolutely a verbal one, and when an honorable senator comes to an amendment which he really cannot understand because he has not a print of it, it will be time enough to discuss the question. The present amendment is exceeding simple, and does any one suggest that we are not prepared at this moment to discuss the question of original invoices without a print of the Bill ?

Amendment by (Senator O'Connor) agreed to -

That paragraph (b) be amended by the insertion of the words "or money " after the word " coin."

Amendment by (Senator O'Connor) proposed -

That paragraph (b) be amended by the omission of the words "realm or of any British possession, or any money purporting to be such " with a view to insert in lieu-therefore the words " King's dominions."

Senator CLEMONS

- I remember the discussion on this sub-clause, but I confess that I do not recollect ever having heard before the words "or any money purporting to be such." If it is recorded as my amendment I never moved the insertion of the words or heard them used before. That is the difficulty we find ourselves in in discussing amendments in this form.

Senator O'CONNOR

- No doubt that amendment was carried. Senator Sargood tells me that he has a note of it in his Bill, and I think the explanation is that the words were taken from the Victorian Act.

Senator Clemons

- I never saw them before.

Amendment agreed to.

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Senator O'CONNOR

- At the instance of Senator Sargood, the Minister inserted in this clause the following paragraph - All refined mineral oils, except gasoline or painters' spirits, which may give off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer after being subjected to the prescribed test by any officer or person duly authorized by the collector (for which purpose such samples as may be required may be drawn from the packages containing such oil).

At the time I pointed out that although I consented to the insertion of a provision dealing with mineral oils, it would be quite impossible that should stand in the mode in which it was carried, and for this reason, that an arbitrary minimum is fixed. The amendment while fixing that minimum with regard to all refined mineral oils, left out gasoline or painters' spirits which might be very much more dangerous - it permitted crude oils to be imported, and it bound to this hard-and-fast minimum the tests which might have to be prescribed for determining the safety of the oils. New oils are being continually manufactured, new properties are being discovered in oils, new tests are being invented. In an early statute - of Victoria I think - there is a test prescribed in the schedule which has become quite obsolete, and the tests are carried on under a different process. These processes are always changing as discoveries are being made, and, therefore, it would be very unwise to make a hard and fast rule for any particular kind of test, or as to any particular class of oil being considered as dangerous. The best way to deal with the question would be to prohibit these mineral oils and mineral spirits unless imported under and subject to such restrictions as may be declared by proclamation. I move -

That paragraph (?) be omitted with a view to insert in lieu thereof the following : - " (i) Mineral oil and mineral spirits unless imported under and subject to such restrictions as may be declared by proclamation.-"

My amendment would include such products as naphtha, gasoline, benzine, and other inflammable substances of that kind. It would include not only kerosene oil, but also the raw mineral oil, and all those substances likely to be dangerous if not properly labelled and tested. It would also include the power of making regulations for the testing of these oils for inflammability or dangerous qualities, and for the marking of them, or the proper branding of them, or indicating in some way what the contents of a case are. I submit that the better way is to leave all these things to be prescribed by regulation, so that regulations will be made as to the mode in which these things are to be tested, labelled, and generally imported.

Senator Sir FREDERICKSARGOOD (Victoria). - The amendment is undoubtedly an improvement upon the paragraph we passed the other night, but it does not go far enough. Those interested in this branch of trade communicated with me before they knew of this proposed alteration, to point out that the minimum placed in the Victorian Act, which we copied, is not sufficiently high. I rather think that Senator Glassey, in his speech, called attention to that fact. We know that the temperature here is often above 100 degrees. I am told that the flash point of the best kind of oils, which are imported, is 150 degrees, and those who have experience of these oils strongly urge that a minimum of 120 degrees should be fixed. It is proposed now to leave all these things to regulation. That, unfortunately, has been the position in the old country for a number of years, and, as a consequence, hundreds of lives have been lost there. The regulations are passed, I suppose, at the instance of the Home Secretary.

Senator Drake

- Would it not be the Board of Trade ?

Senator Sir FREDERICKSARGOOD. I am not quite sure. The power of the ring - a very large one - in the old country is so great that they have defeated legislation for eight or nine years, and it has become a crying scandal with the result that one can hardly take up an English newspaper devoted to these matters without seeing reports of deaths occurring. Unfortunately, since the discussion took place here we have had two deaths from an explosion.

Senator Drake

- I wonder whether that was an explosion?

Senator Sir FREDERICKSARGOOD. At all events the test shows that the flash point was 103 degrees in one case and 105 degrees in the other. On the other hand, in the discussion in the Board of Health a reference was made to some of these oils being as low as 95 degrees. It is all very well to leave these things to the Minister, but I feel that where it is a matter of life and death the State ought to see that the



flash point is a minimum of a certain degree, and as far as I have been able to ascertain, that degree should not be less than 120 degrees. I move -

That the amendment be amended by the addition of the following words ' ' provided that the flash point shall not be less than 120 degrees of Fahrenheit thermometer."

Senator O'Connor

- Will that apply to one kind of oil only?

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Senator Sir FREDERICK SARGOOD

- None of these mineral oils ought, for safety, to have a flash point of less than 120 degrees. The best kinds have a flash point of 150 degrees. It is the low oils which are used by the poorer buyers, and in fairness we ought to protect them. I suggest to the Minister that my amendment should be accepted formally to-night, and discussed on recommitment of the clauses.

Senator O'CONNOR

- I am informed that a flash point of 120 degrees would shut out the best kerosene.

Senator Sir Frederick Sargood

- No. The best kerosene has a flash point of 150 degrees.

Senator O'CONNOR

- I understand that it would shut out what is called the water white kerosene. It certainly is 20 degrees higher than the flash point which has been required. If there are so many important powers given to the Minister with regard to all these matters, why should we tie his hands by a hard-and-fast rule in this case, by using language which may turn out to be utterly inapplicable to some new oil, or some adaptation or modification of an oil which at present is introduced? I suppose Senator Sargood will admit that the Minister will have at his disposal the very best expert evidence.

Senator Sir Frederick Sargood

- As the Government have at home, including the evidence of Royal commissions, and yet they do not follow the advice of the experts.

Senator Playford

- The explosions at home take place probably in consequence of the use of inferior lamps.

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Senator O'CONNOR

- The Minister will necessarily frame his regulations after determining the best way of insuring the safety of the public by imposing proper tests and conditions. We cannot, within the limits of a clause like this, impose all the tests that are necessary in regard to the varying conditions under which these oils are imported. The difference between the honorable senator's suggestion and my proposal is that I propose to leave the matter to the Minister, who will be able to prepare a code of regulations that will deal not only with the flash point of oils, but with a large number of other matters that are equally necessary to be dealt with - the mode of importation, the question whether the substances shall be labelled in any particular way, the kind of vessels in which the oils are to be carried, and other points which are absolutely essential for public safety, and are quite as important as the temperature of the flash. The test which the honorable senator proposes will apply very well to kerosene, but will it apply to such substances as petroleum, naphtha, benzine, and benzene? Those who administer the clause may find themselves in considerable difficulties with regard to those substances. In England and other places, as has been pointed out by Senator Clemons, it has been found necessary to legislate specially with regard to these substances. It is really a matter of health legislation. It ought to be taken up by the States. In this Bill we should not do more than is absolutely necessary in regard to the importation of oils, and we cannot deal with all the other matters that are necessary. Under my proposal the Minister will be enabled by regulation to provide what tests and precautions are necessary. Why should we put in this 120 degrees test? If in the opinion of the experts it is necessary to have a test of 120 degrees, the Minister will be able to provide for it by regulation. We should be tying the hands of the Minister unnecessarily by laying down provisions of the kind proposed. If the test suggested by Senator Sargood is the point of safety, we may be quite sure that that point will be adopted. Considering that the customs will be under the control of Parliament, and under the observation of the public and the press, and that these regulations would be made public, what is there to fear? The object of the Minister will naturally be to conserve the interests of the community. The

honorable senator admits that the amendment I propose is very much better than his original clause, which did not come up to modern requirements. I ask the committee to pass the clause as I propose it. Senator CLEMONS(Tasmania).- This is a proposition of very great importance to poor people, and I must confess that, after hearing both Senator Sargood and the Vice-President of the Executive Council, I find myself in a difficulty. I firmly believe with Senator Sargood that unless a flash point of 120 degrees is established, we shall be allowing the purchasers of mineral oils to run a very great risk. But Senator O'Connor has pointed out a greater difficulty. This is a State matter, and should be dealt with by means of special legislation, and not in a machinery Bill. But the Vice-President of the Executive Council will see that that being the case, it is questionable whether we ought to have in a machinery Bill any clause at all dealing with the question, because there is a danger of the Commonwealth legislation coming into collision with State legislation on the subject. If we do legislate with regard to mineral oils the Commonwealth legislation will override the State legislation. Senator Sargood has pointed out, and I know it to be absolutely the fact, that it was under a section practically word for word the same as this paragraph that the great scandal arose in England some years ago in regard to the flash point of oil. Senator Sir FREDERICK Sargood

- It is so now.

Senator CLEMONS

- That being so we are running the risk of having the same danger here if our legislation in regard to mineral oils is limited to this machinery Bill passed by the Commonwealth Parliament. Therefore, I feel inclined to think that the safer course would be to leave the matter entirely out of the Bill.

Senator Sir FREDERICKSARGOOD ( Victoria). - This is a subject upon which I feel rather strongly. The Minister says that because I wish to fix the minimum, I therefore seek to lay down the mode in which these oils are to be tested. I do nothing of the kind.

Senator O'Connor

- The honorable senator lays down a hard-and-fast minimum.

Senator Sir FREDERICK SARGOOD

- I do that because in the opinion of those who understand this question no oil under 120 degrees flash-point is safe in a climate like ours. We know what has happened in the last few days, and what has happened in the old country. This inferior stuff can only be prevented from coming in under a Customs Act, and consequently it can only be done by means of the Commonwealth Act. It is a matter of such serious moment, involving the question of life and death, that we ought even to strain a point in order to provide that the flash-point of mineral oils shall be not less than 120 degrees.

Senator CLEMONS(Tasmania).- If we fix this 120 degrees minimum we can say, with almost absolute safety, that we can guarantee that no injurious oils will come in : but speaking with some amount of knowledge on the subject, I am aware that there are some oils that can with safety be used at a lower flash-point than 120 degrees. We do not want to lay down a hard and fast rule, which will act injuriously towards the importers of oils, whilst at the same time we wish to protect the public.

Senator GLASSEY

- I suggest that it would be prudent, with the view of affording the committee expert information on the subject, for the matter to be postponed for inquiry to be made. The matter is one of supreme importance to the public, It is not at all unlikely that the explosion which took place in Melbourne a few days ago arose from the use of inferior or cheap oil. Some persons say that these explosions arise from using unsafe lamps, but I believe the bulk of them are caused by inferior oil. Another element which is to be considered is that we have provided that all tea shall be examined by experts before it goes into consumption. It is equally necessary in the interests of the safety of human life that all oils shall be examined by experts before they are allowed to be imported.

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Senator O'CONNOR

- There would not be much use in bringing the opinion of experts before the committee, because my view is that this question ought to be provided for by regulation, and the Minister for Trade and Customs will undoubtedly have the very best expert advice before he frames the regulations. We cannot in dealing with legislation make the scientific inquiries which are necessary to lay down a hard and fast rule with regard to the flash-point of oils. We may be doing a great injustice to importers of oils if we lay down such a rule.

Under Senator Sir Frederick Sargood's amendment, we might shut out such oils as gasoline or painters' spirit. According to my amendment all such substances could be easily imported. If we impose a 120 degrees flash-point, we shall be laying down the rule that not only mineral oils, but any mineral spirit, unless subject to a flashpoint of 120 degrees, shall not be imported. There are numbers of mineral spirits which are imported not for the purpose of being used for burning. For instance, there is gasoline, which is largely used for the making of gas in places where it is impossible to get coal gas. Oil engines are also coming into general use, and substances are being invented to be used in them. At the present time both gasoline and naphtha are used very largely for such purposes. It may be one thing to prescribe a flash-point in regard to lamp oil, but it might be injurious to trade to have to apply the same flash-point to substances which are not to be used in lamps, but for the purposes of machinery, for which purposes they must be used in a highly volatile condition, and with regard to which the same necessity does not exist for applying severe tests as in regard to oil that is required for lamps. The whole question can be satisfactorily dealt with by means of regulations. With regard to the risk of interfering with State legislation, I may say that, as a matter of constitutional law, the Commonwealth Parliament would have power to deal with all goods imported through the Customs, and to make any regulations it thinks fit in regard to them.

Amendment (Senator Sir Frederick Sargood's), by leave, withdrawn.

Amendment (Senator O'Connor's) agreed to.

Clause, as amended, agreed to.

Progress reported.

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22:10:00

Senate adjourned at 10.10 p.m.