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1901-07-23

House of Representatives.

Mr. Speaker

took the chair at 3.30 p.m., and read prayers.

MINISTERIAL STATEMENT

Order of Business

Minister for External Affairs

Mr BARTON

.-May. I make a short statement before business is called on, in order to inform the House that I have heard from my honorable colleague the Minister for Home Affairs that he is not yet able to leave his bed, and as I think he should not be unduly hastened back to the work of the House, I shall endeavour, if I can, not to proceed with the second reading, debate on the Interstate Commission Bill - during this week. To-day we shall take the Customs Bill inasmuch as it is desirable that it should go up to the Senate as soon as possible, and if there is any time left after the completion of that Bill we shall go on with the State Laws and Records Recognition Bill.

PETITIONS

Mr BAMFORD

- I beg to present a petition to the Postmaster-General from 278 residents of Chillagoe, praying for relief in a certain direction.

Mr SPEAKER

- The petition is addressed, not to the House, but to the Postmaster-General, so that it cannot be received.

Mr Barton

- I shall take charge of the petition for that Minister.

Sir LANGDON BONYTHON

presented a petition from the South Australian Chamber of Manufactures, representing the manufacturers and producers of that State, protesting against the proposed inclusion of snipping rates and charges within the scope of the Inter-State Commission.

Petition received and read.

QUESTIONS

PRESS TELEGRAMS : TASMANIA

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Sir EDWARD BRADDON

- asked the Prime Minister, upon notice-

Whether the Government will reconsider the question of reducing telegraph rates for press messages to Tasmania, with the view of doing bare justice to the people and press of that State by placing them, in this respect, upon a footing of equality with those of other States.

Sir PHILIP FYSH. - To reduce these charges would involve, paying, on behalf of the press, the charges for transmission by a privately-owned cable over which the Government have no control, and this the Government are not prepared to do.

JAPANESE: NORTHERN TERRITORY

Mr Higgins

In asking the following question standing in my name, I may say to the Prime Minister, that I am anxious to know if the information I have received is correct -

Whether any communications have been made of recent years between the Government of Japan and the Government of South Australia, or any public man of South Australia, with regard to introducing Japanese into the Northern territory?

Whether it is possible to obtain all such communications and to lay them on the table for the information of honorable members of this House?

Mr BARTON

- I am not aware of any such communications, but am having inquiries made respecting them, and, if any be obtained, I shall be pleased to lay copies of them on the table for the information of honorable

members.

COMMONWEALTH STATISTICAL PUBLICATION

Mr WILKS

- , for Mr. Bruce Smith, asked the Minister for -Home Affairs, upon notice -

Whether, having regard to the importance of preserving in a compiled form a complete record of the commercial, industrial, and social conditions of the people of the Commonwealth at the date of union, he will take into consideration the question of authorizing some competent person to collect the necessary data, with a view to the issue of a Commonwealth statistical publication as soon as possible after the appointment of a Commonwealth statistician ?

In view of the frequent conflict of statistical authority on many important matters, will he consider the necessity for making such an appointment at an early date, and of submitting a short Bill as soon as the state of public business will admit ?

Mr BARTON

- On behalf of my honorable colleague I have to say that the matter has not been lost sight of, and, as soon as the state of public business will allow, some action will be taken to deal with this important question.

CUSTOMS BILL

In Committee

(consideration resumed from 1 8th July,
vide

page 2800) :

Postponed clause 239 -

In every Customs prosecution the defendant shall be competent to give evidence.

In every Customs prosecution except for an indictable offence, the defendant shall be, compellable' to give evidence and if called as a witness for the, prosecution shall be liable to cross examination as a witness adverse to the prosecution.

Mr V L SOLOMON

- There was very good reason for this clause not being passed when it was lost before the committee.

The opinion was expressed, by some honorable members at any rate, that the clause was an entirely new departure from the ordinary course of legal procedure. It is all very well to give -the defendant an opportunity, as is done in some of the States under local legislation, to be sworn and give evidence in the same way as an ordinary witness, but when it is asked, as this clause provides, that the defendant shall be compelled by the prosecuting attorney - or by the Customs or their representatives - to give evidence, even against himself, and be treated as an adverse witness, and cross-examined, I ask honorable and learned members to consider the position we are getting into in regard' "to this Bill. There is a certain amount of excuse, I know, for making a Bill of this nature drastic. A Bill which seeks to protect the revenue, a Customs Bill especially, must undoubtedly be more drastic than an ordinary Bill dealing with questions in dispute between ordinary citizens. I fancy the clause goes a little too far ; indeed, I might say, it goes a great deal too far. The provision seems to go beyond any similar section in the Customs Acts or the regulations at present on the statute books of the various States. Can the Minister in charge of the Bill point to any State of the Commonwealth where a clause of this peculiarly drastic nature is in force?

Having provided for the most extreme fines and penalties it is possible to impose on an offender against the Customs law, it is sought to put the - Customs department in a position to force a man in the witness box to give evidence against himself, and to treat him as an adverse witness. That is beyond anything I know of in the way of legal enactment or jurisdiction in any of the States.

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Minister for Trade and Customs

Mr KINGSTON

- As the honorable member has pointed out, Customs laws stand on a very different footing from other laws. Where it is necessary to protect the revenue, large powers are given, especially in this connexion.

The honorable member will find that the Bill throughout is dotted over with provisions enabling the Customs authorities to require the answering of questions in connexion with Customs matters. The second part of the clause simply goes a little further.

Mr V L SOLOMON

- A little 1

Mr KINGSTON

- The second part of the clause simply puts it that the duty of answering questions shall not cease on the hearing of the information, but that the party who knows all about the matter shall not only have an opportunity of telling what is intended by the clause, but may be called on by the prosecution to tell what are the facts. Why should we not get at the facts as readily as we possibly can 1

Mr V L SOLOMON

- Why should we not put the defendant under a thumb-screw 1

Mr KINGSTON

- If a man has not done wrong, he has nothing to fear. If he tells the truth and the facts are in his favour, so much the better for him. But we take it that if we are forced to call him, seeing that his interest is altogether against the prosecution being sustained, we have a right to examine him just as we would an adverse witness ; and the Bill draws the presumption that he is an adverse witness from the simple fact that he is there for the purpose of resisting the infliction of the penalty sought to be imposed. I do not hesitate to put it to honorable members that this clause tells for truth and justice, and that under it an innocent man has nothing to fear.

Mr G B EDWARDS

- If the principle laid down by the Minister is to be adopted in Customs prosecutions, it ought to be adopted in all prosecutions. It is the principle which underlies the French law, and if it be Adopted in this Bill, it ought to be adopted in other Bills. The argument used by the Minister that an innocent man has the best chance of proving his innocence, and the guilty man is more likely to commit himself, is the very argument used in favour of the principle underlying the system of French jurisprudence, under which the defendant is examined and asked either to convict himself or prove himself innocent. "Unless we are prepared to adopt the principle throughout the criminal law, we have no right to adopt it in this Bill.

Minister for External Affairs

Mr BARTON

. - It would be as well to clear away any misapprehension there may be in regard to this clause, by a very simple statement. Where an ordinary witness is called for the prosecution in a criminal case, or for the plaintiff in a civil proceeding, if his evidence turns out to be adverse to the side on which he is called, it is an ordinary practice for the court to allow , an opportunity to cross-examine him. The only further step taken in the clause is that where a person or defendant compellable to give evidence is called for the prosecution, it shall be taken as a matter of course, if necessary, that he is adverse because of his position. He is there, if he defends the case, to avoid liability, and is therefore adverse to the prosecution. This is simply a provision to enable a person, under the circumstances, to be examined as a witness adverse to the prosecution, that being his real character.

Mr. V.

L. SOLOMON (South Australia). - This clause is a total topsy-turvydom of the old British axiom, that every man is deemed to be innocent until he is proved to be guilty.

An Honorable Member.- That does not apply all round.

Mr V L SOLOMON

- I venture to think that it would be a disgrace if such a provision appeared on the statute-book of any British colony or dependency. With the exception, I think, of South Australia, there is no State where they permit in certain cases the defendant or accused to give evidence on oath. That is permitted by special statute in South Australia ; but here, after first of all making throughout the Bill the most stringent regulations in favour of the Government and the Customs authorities, doing everything possible to protect the revenue by, to my mind, absurd fines and penal i ties in some instances - - -

Mr Kingston

- It should be protected.

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Mr V L SOLOMON

- I am not arguing that it should not. But I say that after protecting the revenue fairly and' properly, it is now proposed that if a man be accused of some offence against the Customs Act, of some endeavour to

obtain an advantage to the detriment of the revenue, that man shall be taken away from his position as defendant, in which, under ordinary British law, he would be deemed an innocent man until proven guilty by the other side, and shall be compelled to go into the witness box and be cross-examined by the prosecutor, in order to prove that- he has been: guilty, and thus make himself- liable to certain pains and penalties. It is- a departure, of a most serious nature,, and. I. ask honorable members to consider it. very carefully. If, as an honorable member behind me just now said,, we are going to adopt this French. system of: adjudicating, this system which British law hitherto has not recognised

Mr Mauger

- It is recognised at the present time.

Mr V L SOLOMON

-Perhaps the honorable member -for Melbourne Ports will take the opportunity of: telling, the committee where it is recognised.

Mr Mauger

- I can assure the honorable member that there is a precedent.

Mr V L SOLOMON

- I admit that it is right to allow a defendant to give evidence on his own behalf: if he chooses, but to force- a defendant-

Mr Kingston

- To tell the truth.

Mr V L SOLOMON

- Does the Minister seriously think that a defendant will be likely to tell the truth, when he has pleaded not guilty 1 The Minister might go a little further and adopt- some of the other continental modes-

Mr Higgins

- But crimes are here exempted.

Mr V L SOLOMON

- Indictable offences are exempted.

Mr Higgins

- That is crime.

Mr.V. L. SOLOMON. - Does the honorable and learned member defend the clause as applied to the cases of - misdemeanour ?

Mr Higgins

- Certainly.

Mr.V. L. SOLOMON.- I am extremely sorry that the honorable. and learned member makes such an admission. I hope that other honorable members do not defend . such a departure as this clause proposes. It is a departure which should be carefully considered by every one who respects the British spirit of fair play upon which most, of our laws are framed, and I hope that the committee will not agree to it.

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Mr KIRWAN

- I feel inclined to support the position taken up by the honorable member for South Australia, Mr. Solomon. The provisions of this clause seem to. me to be contrary to the accepted principles of British law. I' think that the first portion of the clause will meet all the requirements of the case and that the second part should therefore be eliminated. The first portion of the clause states that the defendant shall be competent to give evidence. That seems to me to go far enough, -because if we compel a defendant to give- evidence he may be required either to commit perjury or to. admit his own guilt. That seems to . be hardly a. fair position in which to place a man. If a defendant gives evidence in his own favour his testimony will be discounted, and he will thus be placed in a very awkward position indeed. I sincerely trust that the committee will carefully consider the clause and endeavour to minimize its ill effects.

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

That sub-clause (2) be omitted.

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

The committee divided -

Ayes 24

Noes..... 16

Majority.....8

Question so resolved in the affirmative.

Amendment negatived.

Clause agreed to.

Postponed clause 240 -

In every Customs prosecution the averment of the prosecutor or plaintiff contained in the information declaration or claim shall be deemed to be proved in the absence, of proof to the contrary but so that - When an intent to defraud the revenue is charged the averment shall not be deemed sufficient to prove the intent and -

In all proceedings for an indictable offence the guilt of the defendant must be established by evidence.

Mr. G.

B. EDWARDS (South Sydney). Here is another instance- of the extreme severity of the Bill. This clause provides that the simple averment of the prosecutor shall be deemed to be proved in the absence of proof to the contrary, and I think that goes too far, as proceedings may be instituted against a defendant who may not be able, possibly owing to some accident, to be present. I think the Minister ought not to be too stiff-necked - if I may use the term- throughout the consideration of these clauses. He has practically had his own way in nearly everything that has been proposed in the Bill, and the provision I have referred to seems to be a useless little bit of; tyranny which might reasonably be modified in some form so that innocent persons who may be unable to be present to defend themselves, may not be declared guilty on the simple averment of the prosecution.

Mr KINGSTON

- But the honorable member for South Sydney must see that" it is an almost inherent principle, recognised in the administration of justice in civilized communities, that when any one is prejudiced in his defence by his inevitable absence, he shall be entitled to an adjournment - subject to terms that can generally be arranged ; and possibly where the reason that the honorable member has mentioned exists the same principle would apply with all the greater force. The clause sets forth plainly what is to some extent a principle of all Customs Acts, particularly in connexion with a class of cases such as this, which we have hedged round with certain conditions, taking them out of the criminal category.

Mr V L SOLOMON

- Still they are cases where imprisonment may follow.

Mr KINGSTON

- Yes ; in cases of nonpayment of penalty. We are bound to have some mode of enforcing penalties ; but it is provided that no man shall have the stigma of fraud attached to him except in cases where it is absolutely proved against him ; and I think that we may fairly extend the principle that the burden of proof shall lie on the defendant to cases such as are contemplated here. The defendant knows all about it - it is his duty to comply with the Act, and no man can better tell whether he has complied with it or not. These are not cases where any private individual is trying to get the better of another.

Mr V L SOLOMON

- Can the honorable and learned gentleman give us: an instance of the class of: case he -had in his - mind, when he drafted the Bill ?

Mr KINGSTON

- A variety; of: cases. In the case of an invoice; let the defendant prove his invoice ; and if the question is as to' whether1 duty has been, paid, let him prove that he has paid, the duty - the defendant knows all about it. This clause- simply summarizes the principle which is contained in various other Acts, and which is necessary to. effectual administration of Customs' laws, and, hedged round as it is here, I venture- to think that it is not likely to be attended' with any degree of hardship.

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Mr V L SOLOMON

- I asked the Minister: if : he could give us an. instance of the kind of' case he had in view when he framed the Bill; and he has replied in an airy sort of way,- stating that he had: a variety of cases in view, such as those relating to invoices and so on. Referring for one moment, for the purpose of argument, to clause 220, we find that a person who makes an entry that is false in any particular is liable to a penalty of £100.

In the event of that £100 not being paid, the defendant would be liable to six months' imprisonment. Even though the defendant might not be aware of -the falsity of the entry the very fact of- its being false in any particular would render him liable to six months' imprisonment, and now we find that under this clause it is provided, against all the accepted rules of British law,, that the onus of proof that he is not guilty is to be on the defendant. The committee refused to alter a clause just now with regard to witnesses, but I am sure that- the spirit of British fair play, which I think imbues, every member of this committee, will not allow them to pass a clause like this. Referring to the clause which has just- been passed, a man may be compulsorily placed in the witness-box and cross-examined, to prove that the entry to which he had signed his- name was in some way false or incorrect, and may be fined £100 or. imprisoned for six months. And now it is proposed, under' this clause, that the mere averment of the prosecutor contained in the information shall be deemed to be proved,, in the absence of. proof to the contrary. Is there any law in any British speaking community that throws the onus of proof upon the defendant instead of on the prosecutor?

It is wise enough perhaps to protect our revenue and to make the law as stringent as may be necessary to effect that purpose ; but there is such a thing as going very much too far, and I venture to think that we shall be overstepping the- bounds in throwing the onus of proof on the defendant. I shall seek to alter this clause by moving an amendment which it will take some minutes to prepare.

Mr Kingston

- What does the honorable member propose - to provide that this clause shall not apply to cases in which imprisonment is involved ?

Mr V L SOLOMON

-I propose that it shall not apply to anything.

Mr McCAY

- -I would suggest to the Minister that the difficulty which some honorable members feel might be met by amending this clause so as to insure that clause 228 shall not apply in such cases ; that is to say, that the averment of the prosecutor shall not be held as proof of guilt until the contrary is proved by the defendant, in any cases in which conviction may be followed by imprisonment under clause 228. As long as only pecuniary penalties are concerned we might reasonably go so far ; but when it becomes a matter of depriving a man of his liberty unless he proves something which, perhaps, he may be unable to prove unless he has a commission to Europe, we are going too far.

Mr Kingston

- What does the honorable and learned member want to do ?

Mr McCAY

- To limit the clause to cases where there is no power of imprisonment consequent upon the conviction. Indictable offences are already excluded from the operation of clause 24-0, and I want the Minister to extend the principle so as to exclude from the operation of the clause any cases in which the Crown claims that conviction may be followed by imprisonment.

Mr Kingston

- The honorable and learned member does not mean cases of nonpayment of the fine ?

Mr McCAY

- No ; cases where imprisonment is part of the punishment for the offence. The Minister knows that men are sometimes prosecuted for certain offences for which there is either an increased penalty or imprisonment for a second offence. The Crown frequently does not proceed with the case as a second offence, but deals with it as though it were a first offence, so that the penalty of imprisonment may not be inflicted. As long as the mere statement of wrong-doing does not imply imprisonment of the defendant, I shall be satisfied.

Mr KINGSTON

- I think there is something in the honorable and learned member's point. I move - That after the word " offence," line 10, the words "or for an offence directly punishable by imprisonment " be inserted.

I am sure that will meet the case. Wherever the offence is of such a character that imprisonment is the " immediate result," let the guilt be proved.

Mr V L SOLOMON

- It is " an immediate result" if the defendant does not. pay a £5 fine.

Mr Barton

- It is intended to exclude such cases.

Mr G B EDWARDS

- I do not think the amendment goes far enough. 'Throughout the consideration of this Bill we have had brought home to us the great difficulty that exists in proving offences under the Customs Act. But there is another fact we have to face now, and that is that the Government are endeavouring to make it very difficult for a man to prove his own innocence. We are bound as representatives of the people to see that the common liberties of the public are protected. A clause of this kind is a striking menace to a man's liberty. We are asked to put him in a position which is different from that in which any offender is put under the ordinary criminal law, and to state that simple " averment " shall be proof of guilt. The honorable member for South Australia, Mr. Glynn, whose mind is very acute on matters of this kind, had already given notice of his intention to move that the clause be struck out, but he unfortunately is not now present. I shall feel justified in voting against the retention of the clause.

Mr Kingston

- Better amend it first, and then if the honorable member wishes he can take a division on the clause as amended.

Mr G B EDWARDS

- It may be possible to amend the clause, but to strike it out altogether would give the Minister an opportunity of drafting a provision that will fully meet his case without going quite so far as I think this clause does in 'taking away the liberty of the subject.

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Mr PIESSE

- I am afraid I cannot support the clause as it stands. I had some hesitation, in fact, regarding clause 239. ' We have gone far enough in giving the Crown the opportunity of getting all possible evidence in favour of its position by putting the defendant himself in the witness-box and making him prove the case against himself, if the Crown can make him so prove it. Clause 240, however, goes further than we ought to go, and I must object to it as it stands.

Mr.V. L. SOLOMON (South Australia). - I trust that the committee will not agree to insert the words that have been proposed by the Minister for Trade and Customs. I suggest that the better course to adopt is to follow the honorable member for South Sydney in his proposal to strike out the clause altogether. It is admittedly a dangerous clause, which goes much further than I think most of us desire to go. By striking it out, we shall give the Minister an opportunity, if he thinks a new clause in a modified form is necessary, to draft it and bring it up on the recommitment of the Bill.

Mr KINGSTON

- This is rather a peculiar way of doing business. I always understood that the proper plan was, first to take amendments upon a clause, and then after the clause was amended, if it did not recommend itself to the good sense of the committee, to vote against the motion " that the clause as amended stand part of the Bill." This is the first time I have heard of an objection being taken to making amendments, retaining for those who are opposed to the clause the right to vote against it after the amendments have been made.

Mr V L SOLOMON

- The amendment proposed by the honorable and learned gentleman is such an insidious one.

Mr KINGSTON

- It is such a sensible one, inasmuch as it removes all possible ground of objection from those honorable members who have been opposed to the clause. The amendment cuts away 75 per cent. of the honorable member's objections.

Mr.V. L. Solomon. - What would the amendment do 1

Mr KINGSTON

- It would prevent a man being convicted for an offence which is immediately punishable by imprisonment, except upon direct evidence. Of course, there must be some provision for the enforcement of penalties in all cases. If it is intended to deprive the Customs department of the means of providing against defrauding the revenue, . the clause will be struck out. We have done no more than provide such a clause

as is usually found in a Customs Act, except that we say, in addition, that upon the defendant, subject to certain limitations, shall be cast the duty of satisfying the court that he has not broken the law.

Mr POYNTON

- I am opposed both to the clause and to the amendment, which does not affect the objection. The clause puts the defendant in the position of being deemed guilty unless he can prove his own innocence. It is a well known principle of British law to hold every person innocent until he is proved guilty.

Mr Kingston

- Not in revenue cases.

Mr POYNTON

- There may be certain exceptions, but I think this is a very serious departure from the principle. In the previous clause we have gone beyond anything to be found in any statute-book.

Mr V L SOLOMON

- And in this clause, too.

Mr POYNTON

- We make a man convict himself, and then under this -clause an averment of the prosecutor only is to be sufficient evidence to make a man punishable by fine.

Sir EDWARD BRADDON

- The Minister has said, if I understood him correctly, that this legislation has been practically taken from other . customs laws.

Mr Kingston

- No ; I said there were various provisions as to presumptions.

Sir EDWARD BRADDON

- The Minister cannot point to any single customs law in which there is such a principle as this involved. I am just as much in favour of protecting the revenue as he or any one else is, but I say, let us protect it by just methods, and not introduce into the Commonwealth legislation principles which are a danger to the people, and entirely out of keeping with all the provisions of the law, not only of the mother country, but of the different Australian States.

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Mr MAUGER

- I take an altogether different view of this matter from that adopted by some of my honorable friends opposite. I have been asked where this principle is already acknowledged. In reply, I would point out that in two Victorian measures it is to be found. In the Victorian Factories Act - which has been found to work to the advantage of the people and the operatives themselves - and also in the Licensing Act, the onus of proof lies on the party charged. Some of my honorable friends opposite appear to hold a brief 'for people laying . themselves out to break the law?

Mr V L SOLOMON

- On a point of order, Mr. Chairman, I would ask if the honorable member is in order in asserting that honorable members on this side of the House appear to hold a brief for people who are inclined to break the law 1

The CHAIRMAN

- The honorable member is not in order. It is disorderly to impute improper motives to honorable members.

Mr. MAUGER.-I will certainly withdraw the remark, Mr. Chairman. had no desire to be disorderly. Great many people regard a breach of the customs law as something only to be smiled at, and for which the offender should be exonerated. I hold, however, that a breach of the customs law is as great a crime as is a breach of any other law.

Mr G B EDWARDS

-And it should be treated in the same way.

Mr MAUGER

- That is what I propose to do. I have given precedents to show that the principle contained in the clause is not unique.

Mr G B EDWARDS

- If a man is a thief he is not treated as it is proposed to treat offenders under this clause.

Mr MAUGER

- I have cited two instances which show, as far as Victoria is concerned, that this principle is not an experiment, but that on the contrary it has been tried, and has proved exceedingly useful. If a man is not guilty of law-breaking, this clause will have no terrors for him. It is only the man who has been guilty of a breach of the law who need fear such a provision as this. I hope that the amendment suggested by the Government will be adopted.

Mr. G.

B. EDWARDS (South Sydney). - I should not have spoken again but for the remark made by the Minister that some honorable members who oppose this proposal are actuated by a desire to offer merely factious opposition. I hope the committee will not attribute such a motive to me in anything I do in this House. My opposition is due to the earnest belief that I am defending the liberty of innocent people. The honorable member for Melbourne Ports has said that some honorable members on this side of the committee hold a brief for certain people. I assert that the brief which I hold, and which I hope I always shall hold, is a brief to defend the rights of the masses of the people. Notwithstanding the honorable member's contention, I hold that the Factories Act in Victoria is still only a piece of tentative legislation. We have yet to learn whether it will be acceptable and generally followed. As to the contention of the Minister that we are not content with an offer made to meet our views, I contend that he has not met our views at all. As an honorable member, has said, this is an insidious way of getting rid of opposition to the clause. I have no desire to press my amendment for striking out the clause. I suggested that course with the object of inducing the Minister to withdraw this provision, and to bring down another properly drafted clause which would meet the objection very reasonably urged against it. The Minister says, in effect - "If you do not believe in it, do not vote for striking it out, but draft an amendment." That is very easily said. I might draft an amendment, and be immediately laughed at for doing so. The Minister requested the honorable member for Corinella to draft one, but that honorable member said he could not undertake to do so at once, because he would not know what its effect might be on the other provisions of the Bill. That is just our position. It would be only a reasonable thing for the Minister to withdraw the clause, and to take advantage of his official position to draft one which would somewhat meet the reasonable wishes of those who are opposing this drastic provision. Unless he does so, I shall feel impelled to vote against the clause, because I think a great principle is at stake.

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Mr KINGSTON

- We are always delighted to meet the views of honorable members if we can possibly come to an agreement with them; but I do not precisely understand - it may be my fault - what the honorable member for South Sydney desires. I thought that the objection was that in the absence of direct evidence a charge which would involve imprisonment ought not to be sustained. It is with the object of meeting that objection that we have framed the amendment, and I am sure it will, have the desired effect. In regard to the point whether or not, we should in any case in which a charge is not established by direct evidence, take away the power to imprison for default of payment, I do not think we ought to go as far as that. The right honorable member for Tasmania, Sir Edward Braddon, has spoken very strongly against this provision.

Probably he is not aware that a similar provision and a provision about the defendant being competent and compellable to give evidence in a revenue case is contained in English legislation. 'Section 259 of the English Customs Act of 1876 provides -

If in any prosecution in respect of any goods seized for non-payment of duties or any other case of forfeiture, or for the recovering of any penalty or penalties under the Customs Acts, any dispute shall arise whether the duties of Customs have been paid in respect of such goods, or whether the same have been lawfully imported or lawfully unshipped, or concerning the place from whence such goods were brought - and these are three of the greatest things in which disputes do arise - then and in every such case the proof thereof shall be on the defendant.

That is the principle we are asking for here.

Mr. V.L. Solomon. - It is not equivalent to this clause.

Mr KINGSTON

- I say that that, is the principle.

Mr.V. L. Solomon.- But it is not equivalent to this clause.

Mr KINGSTON

--I did not say anything of the sort. I say this is the principle, and that it is not subject to -the limitations which we are here proposing to impose.

Mr McCaY

- These -are the commonest cases.

Mr KINGSTON

- Yes. These . are the great run of cases in which, if there was not such a 'provision, justice would often be frustrated.

SirEdward Braddon. - It does not say that the defendant shall be compelled to give evidence.

Mr KINGSTON

- I see; that is the reason why the honorable member objects.

Mr V L SOLOMON

-A very good reason too.

Mr KINGSTON

- The honorable member says "a very good reason too." It would be a very -good thing if honorable members would not interrupt a speaker when he is quoting a clause until- he has finished it. If the honorable member will listen, he will be enlightened accordingly. The clause goes on to say -

And where any such proceedings rare had in the Exchequer division of the High Court of Justice on the revenue side, the 'defendant shall be competent and compellable forgive evidence.

That is the point which has been troubling the minds Of honorable members opposite. Then- section 260 provides -

The averment that the Commissioners of Customs or inland revenue have directed or , elected that any information or proceedings under the Customs Acts shall be instituted, or that any ship or boat is foreign or that any -person detained or found on board any ship or boat liable to seizure is or is not . a -subject of His Majesty, or that any goods thrown overboard, staved or destroyed, were so thrown overboard, staved, or destroyed to prevent seizure, or that any -goods thrown overboard.staved, or destroyed during chase by any ship were so thrown overboard, staved, or destroyed, to avoid seizure, or that any person is an officer of customs or excise, or that any person was employed for the prevention of smuggling, or that the offence was committed within the limits of any port, or where the offence is committed in any port of the United . Kingdom, the naming of such port in any information or proceedings shall be deemed to be sufficient unless -the defendant in . any such case shall prove to the contrary.

"What we have done is to take the principle and extend it.

Mr Isaacs

- Does that compellability apply to criminal matters ?

Mr KINGSTON

- No ; . it is. on the revenue side. We have taken the principle ; and have extended it, instead of . going into a lot of specification. We think the principle has been sufficiently recognised to permit of this.

-extension, and to; permit our laying it down in : this way 'as . a broad, general rule 'for the "protection of the revenue,It is not a question of : a prosecution by one individual desirous of injuring some one else, but a provision simply for -the -good of the State, and in connexion with cases ' in winch people are more: likely to escape prosecution than to be prosecuted 'unnecessarily. (We think that under- the circumstances a provision of this sort may be safely exercised by a public department.

Mr ISAACS

- I should like to ascertain distinctly whether, it is possible to punish the defendant directly by imprisonment except- upon an indictment. If it is, the amendment the Minister is proposing would leave 'a defendant compellable to give evidence in a 'case against himself, where he could be punished directly by imprisonment. I do not think the honorable gentleman can mean that.

Mr Kingston

- I am dealing with clause : 240.

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Mr ISAACS

- In the. preceding clause, '239, there is an- exception made, and the defendant is not compelled to give

evidence in the case of an indictable offence. I would like to be sure whether the amendment the honorable gentleman is proposing draws a distinction between indictable offences and other offences punishable directly by imprisonment. If there are any other offences punishable directly by imprisonment, the defendant should not be compelled to give evidence against himself and to be subject to cross-examination. My attention has been directed to clause 228, under which a person may be imprisoned with hard labour, for a period of not less than six months, or more than two years, for a second offence, for which a pecuniary penalty is provided. But as I understand clause 231, as now amended, the only courts that will have jurisdiction in that matter will be the High Court of Australia, or the Supreme Court of any State, the Courts of summary procedure being limited to a pecuniary penalty in cases up to £500.

Mr V L SOLOMON

- That indirectly may involve imprisonment up to twelve months.

Mr ISAACS

- I think that as the law now stands the court of summary jurisdiction would not be able to award that penalty. I understand that the committee has affirmed sub-clause (2) of 239, which makes the defendant compellable to go into the box and be cross-examined as if he were an adverse witness in every instance, except for an indictable offence. What I want to emphasize is this : that if there is a distinction to be indicated in the sub-clause as now proposed to be amended between offences punishable with imprisonment on indictment, and punishable directly with imprisonment otherwise than by indictment, it will leave the defendant open to the operation of sub-clause (2) of clause 239.

Mr V L SOLOMON

- If the honorable member will glance at clause 220 he will see that a penalty of £100 may involve six months' imprisonment.

Mr ISAACS

- I have not touched upon that matter, because I do not think it bears upon this clause. I draw the attention of the Minister to another tiling which perhaps he does not intend in this clause. There are three provisions in it by which it is made applicable ; one is the information, another the declaration, and the third the claim. The whole of the rest of the clause depends, it seems to me, on these three words, and if you have an indictment - and although indictment includes an information by the Acts Interpretation Act, an information does not include an indictment or presentment - and you must, therefore, have an information unless you want a criminal prosecution.

Mr Kingston

- The information is contained in clause 240.

Mr ISAACS

- I know it is, but not the indictment, and the indictment is the larger word including the information. We have limited ourselves by the use of the word " information " here. It seems to me that there is some inconsistency in using the word "information " in this clause, and making an exception of "indictable offence" in the preceding clause.

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Mr Kingston

- If the honorable member will move an amendment substituting " indictment " for " information " I "will consider it.

Mr. G.

B. EDWARDS (South Sydney).The honorable and learned member for Indi has given an additional reason why the Minister should adopt the suggestion which has been made, and withdraw the clause for the purpose of drafting one which will be consistent with the other provisions of this Bill, and which will also, in the fullest measure to which he is prepared to go, meet those who are opposing this clause on account of its drastic nature. When it is urged that this deals with cases in which only fines may be imposed, it will be seen that whether there is to be imprisonment or no imprisonment in such cases, will depend on the defendant's power of paying the fine, and consequently we shall have a law which will subject one man to imprisonment under the conditions of this clause, while another man who may be better off will not have to submit to those conditions by reason of the fact that he will be able to pay the penalty. The thing is so fraught with objection that I think the Minister will be acting wisely in the interests

of the Bill, and in the saving of time, by withdrawing -the clause, and seeing how far in the meantime he can meet what I hold to be the reasonable objections of members on both sides, against its drastic nature.

Mr. V.

L. SOLOMON (South Australia). - The Minister has dealt with this question in a way which is extremely clever from his point of view, but which is liable, I think, to mislead the committee. He takes, first of all, the absence of direct evidence, and the desirableness of the Customs being able to insist upon a different course ' of procedure from that adopted in every other case where a citizen may offend against the law. He quotes from the English Act and wants to make the committee believe that the corresponding section in that Act really justifies clause 240. What is that section ?

If in any prosecution in respect of tiny goods seized for non-payment of duties, or any other cause of forfeiture, or for the recovering any penalty or penalties under the Customs Acts, any dispute shall arise whether the duties of Customs have been paid in respect of such goods,

Of course it naturally follows that if a dispute arises whether goods found in the possession of a man have paid the customs duties; it will be impossible for the prosecuting department to prove a negative, but it is possible if these goods have been properly and lawfully unshipped, and have paid duty in the ordinary course, for the defendant to prove that they have paid the necessary duties. or whether the same have been lawfully imported or lawfully unshipped,

If the duties have been properly and lawfully paid the goods have been lawfully unshipped under proper Customs entries. or concerning the place from whence such goods were brought, then and in every such case the proof thereof shall be on the defendant in such prosecution; and where any such proceedings are had on the revenue side in the Exchequer division of the High Court of Justice the defendant shall be competent and compellable to give evidence.

Will any honorable member say that that section is. on all-fours with clause 240, which reads -

In every Customs prosecution the averment of the prosecutor or plaintiff contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary.

Then come two exceptions, namely, intent to defraud the revenue - and an intent to defraud the revenue would be perhaps under-valuation or misrepresentation as to the contents . of cases - or proceedings for an indictable offence. And the third exception, which is not in the Bill, but which we have the wording of from the Minister, is where imprisonment can be directly given without any fine. I do not think, as the honorable and learned member for Indi has pointed out, there is such a case in any clause of the Bill. The clause he alluded to points to imprisonment for a second offence, presumably where the fine has not been paid.

Mr A McLEAN

- Where the offence has been repeated a second time.

Mr Isaacs

- The imprisonment may be given in lieu of or in addition to the fine.

Mr V L SOLOMON

- I thank the honorable and learned member for the correction. It is without the right of release on payment of the penalty. But clause 240, which says that in every case the averment shall be considered to be proved in the absence of proof to the contrary, would deal with all the offences under clause 220. Amongst those offences, of course, there are some which come within the four corners of the section quoted from the English Act, where it is stated by the defendant that the duties have been paid. The only man who can prove that the duties have been paid will be the defendant. It is impossible for the Customs to prove a negative in such a case. But with the exception of that case and the case of goods unlawfully unshipped, which is the same thing put in another way, there is nothing in the English Act which says that in every Customs prosecution the averment shall be deemed to be proved in the absence of proof to the contrary. There is nothing in that Act which throws the onus of proof entirely on the defendant in cases such as those coming under clause 220. It is not an indictable offence under clause 220 to obtain drawbacks which are not payable, or to pass a document purporting to be a genuine invoice when it is not, or to make any entry which is false in any particular. These are all comparatively small misdemeanours, which are punishable by a fine of £100, and, where the man is unable to pay, it means an imprisonment for six months. In all cases of that kind the onus of proof would lie on the defendant. I

feel sure the committee will not agree to such a drastic clause. We have already passed a clause which is extremely drastic, which is almost unknown, except, as I have heard from one honorable member, in connexion with the factories of Victoria.

Mr Mauger

- And the Licensing Act.

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Mr V L SOLOMON

- I believe there is a section in the Licensing Act which says the exposing of any light in the bar, or the shining of a light through the window of a bar during improper hours, shall be prima facie evidence that the licensee is guilty of selling liquor. I shall not go into the curious legislation of that State, which is different from that of any State I know of. Such legislation may or may not be necessary there, but I do not think it is necessary in the Commonwealth, even although we have the example of those two Acts. I trust that the committee will consent to strike out the clause. Of course, if the Minister should think it necessary afterwards to put in a clause altering the provisions, which are too drastic, and which every one will admit are too drastic, he will have ample opportunity of doing so. There is no immediate hurry for a day or two to pass the Bill. It will probably have to be recommitted for the purpose of rearguing several questions, and I hope the Minister will not seriously oppose the omission of this clause with a view to giving honorable members time to frame a clause which will be more in keeping with the feelings of the committee, not only in order to do justice to the revenue, but also to the man in the street ^ who may be accused of an offence against the Customs Act.

Mr KINGSTON

- The very specification of the offences in clause 220 confirms the view which I originally submitted to the committee that a clause of this sort is very desirable.

Evade payment of any duty which is payable. Who knows best about the matter 1 Surely the man who had the goods. What can he do ? He can show that he paid the duty, and that that was all that was payable.

Mr V L SOLOMON

- Supposing that he takes the goods without attempting to pay the duty. I mean not by evasion but by under-valuation 1

Mr KINGSTON

- Most innocently, of course, he takes the goods, the revenue does not get the money, and the Government is had.

Obtain any drawback which is not payable.

How simple for him to get a drawback 1 " These packets have paid import duty ; I am exporting them ; I claim drawback, and I am entitled to it."

Prepare pass or present any document purporting to be a genuine invoice which is not in fact a genuine invoice.

Who knows all about it but the man who got the invoice 1 How are the Government to get the fullest information in matters of this sort ? Who is most likely to be able to give it ? Surely it is the defendant. He is able to say - " I got this invoice from my correspondent. It is a genuine one ; there is no other," and he goes scot-free.

Mr G B EDWARDS

- On his own statement he will go scot-free.

Mr KINGSTON

- I am glad the honorable member has raised that point which I had omitted. Put in a clause of this sort, and let the prosecution be rested simply on the averment in the declaration of an offence ; then there is no doubt that in the absence of direct proof any court would be prepared to give the best consideration to any reasonable evidence which was given by the defendant explanatory of the circumstances with which he is charged.

Mr V L SOLOMON

- He would do that under his right - under the 1st sub-clause.

Mr KINGSTON

- This is simply another case of attempting to get at the truth. If the Crown be forced to rest the " claim on

that, it is slender enough. Any reasonable explanation will be accepted, and a man who has not a reasonable explanation to give ought to stand the penalty. The facts are fully within his knowledge, and if he is innocent, he can easily show his innocence.

Mr. G.

B. EDWARDS (South Sydney). - I recollect a Crown Prosecutor, whom I know very well, regretting that he was no longer able to "bag" them, as he used to "bag" them. If that Crown Prosecutor had had the assistance of the Commonwealth Minister for Trade and Customs, he would have been able to "bag" them to his heart's content. If we only adopted the principle that a man charged with murder was the best able to explain whether he had committed murder or not, and that it should be put on him to prove his innocence - if we adopted the principle that a man charged with theft was best able to explain whether he was guilty or not, then we should be consistent; but I see no reason whatever for having a law of this kind in dealing with Customs affairs, and another law dealing with other offences.

Mr Kingston

- It is always done.

Mr G B EDWARDS

- I wish to ask your ruling, Mr. Chairman. The Minister moved the adoption of the clause, and subsequently submitted an amendment whereupon I moved that the clause be struck out. Which of these two amendments take precedence? Are the committee, in voting on the Minister's amendment, in any way bound, so that they cannot vote for the omission of the whole clause 1

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The CHAIRMAN

- The question before the Chair is that certain words are proposed to be inserted after the word "offence." These words will be submitted to the committee, who will decide whether they shall be inserted or otherwise. Then the clause will be put, as amended or otherwise, to the committee, and the honorable member for South Sydney will have an opportunity to vote in the affirmative or negative.

Mr FISHER

- I shall feel compelled to support the Minister. However much one may dislike compelling people, who are charged, to give evidence in indictable offences and serious crimes-

Mr. V. L. Solomon. - That is not the clause.

Mr FISHER

- If the honorable member will allow me, the first argument of those honorable members who are now endeavouring to get the Minister to alter the clause, was that there is no such provision as this known to British law. "We have been told that it is the French system of law which is being introduced into Commonwealth practice. During the debate I have been looking up the criminal law in Queensland as set forth in the Codification Act, drawn up by the Queensland Judges under Sir Samuel Griffith. I find, again and again, that proof of innocence is left with the person accused. Under the heading of "Instruments and materials for forgery" it is provided that if - "Any person, without lawful authority or excuse, offends, or is charged with an offence, the proof of which lies on him" -

Mr Kingston

- Hear, hear.

Mr FISHER

- There is a similar provision in regard to counterfeit stamps, paper and dies for postage stamps, and a whole string of other offences in which defrauding the revenue is involved.

Mr Isaacs

- That is not analogous.

Mr FISHER

- I quite admit that these offences are not analogous to the offence contemplated in the clause. The offences referred to in the Act I have quoted are well-worn crimes, and the law, as laid down, is for the purpose of protecting society, and under the circumstances there is necessity for making the charge sufficient if no further evidence is given in the rebuttal. In this case we are dealing with serious money matters, and it would appear from the arguments that have been advanced, that only persons who are always scheming to defraud the revenue will be injured by the action of the Minister. Honest business men under the strictest law will always be able to get fair competition, but if the customs laws be loose,

great privileges are given to the most unscrupulous dealers we have in the Commonwealth. For that reason I am compelled to support the Minister, because I think he is giving further protection, and the best protection possible to honest dealers.

Amendment agreed to.

Question - That the clause, as amended, stand part of the Bill - put. The committee divided -

Ayes 27

Noes 18

Majority 9

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Mr KINGSTON

- I move-

That the following new clause be inserted, to follow clause 213 : - " No proceeding for anything done for the protection of the revenue in relation to any Tariff or Tariff alteration proposed in Parliament shall, except as mentioned in the next section, be commenced before the close of the session in which such Tariff or Tariff alteration is proposed."

Honorable members will have noticed the two verbal alterations which are contained in the prints now laid before them as compared with the clause as it appeared on the files of honorable members on an earlier date. The two new clauses in print are intended to take the place of clause 257, and to effect the same purpose without being open to the objections which, rightly or wrongly, were levelled against that clause in its original form. I am sorry to notice that it has been stated that when the Government excised clause 257 they did so without any explanation. That was not the case. What they did was to excise clause 257, intimating that they would endeavour to effect the same purpose in another way which would previously referred. The point in difficulty remove the criticisms to which I have is whether in connexion with the imposition of a new Tariff, Australia shall be protected as regards its revenue to - the extent which is generally adopted in connexion with alterations of Tariff in other countries, or whether, pending the parliamentary consideration of that Tariff, she shall be exposed to losses in connexion with her revenue from which she ought to be free. It is a matter of some importance, and I believe - coming here, as we all do, animated by a desire to do the ' best we can for the nation which we serve - that we shall determine, so far as we possibly can, to prevent a pillaging of the revenue during the period of parliamentary consideration of the Tariff such as undoubtedly would flow from a denial to the Government of the day of those powers which are usually conceded and exercised at such a period. In Great Britain, on the introduction of a Tariff, the rule is, that as a matter of form, practically immediately on its introduction, for the House of Commons to pass a resolution authorizing the taking of steps for the protection of the revenue, and, on the strength of that, the authorities proceed to collect the increased duties. That is a power which has long been exercised, and which is undoubtedly useful and necessary, unless by importations during the period that the Tariff is under consideration, we intend to allow the benefits of the Tariff to be reaped.

Mr Higgins

- The Minister means the burdens of the -Tariff.

Mr KINGSTON

- No- unless we intend the burdens of the Tariff to be avoided, to the advantage of the importers and the detriment of the revenue.

Mr Wilks

- That has already been anticipated to a great extent in the States.

Mr KINGSTON

- Oh, yes, of course. But that anticipation, so far as it has gone, would be nothing as compared with the anticipation if there were to be a declaration of what the Tariff was to be at a certain time, pending parliamentary approval. The way the Government look at the question is this, that parliamentary ratification of these constitutional practices ought to be secured beyond the power of intervention by the courts. At present, to some extent, the courts* have been found holding their hands in connexion with matters of this sort, so that actions brought against the authorities for the purpose of testing the legality of the steps taken have been judicially suspended, pending the final determination of Parliament.

Mr Higgins

- That is, by the Judges.

Mr KINGSTON

- That is' by the Judges. We are dependent as it were on the goodwill of the Judges, not of the Supreme Court of one State, but it may be of the Supreme Courts of a variety of States, and matters of this sort have been differently considered at different times by various courts. I thought, and I still think, that the practice is so well accepted that it ought to amount to a legal usage, but there is no doubt that various judicial utterances have put the point in this way, that if the courts choose to exercise their judgment against the State they can do so, and give the benefit to the enterprising importer of the right to introduce his goods at the lesser rate of duty pending the final parliamentary adoption of the Tariff.

Sir Edward Braddon

- Has that ever been done in England 1

Mr KINGSTON

- I do not know that it has ever been done in England, but when we are told, as the Judges have told us, time and again, that the action of the Government in collecting these increased duties in anticipation of parliamentary sanction, is illegal, I do not think that in connexion with such fiscal proposals as will shortly be before the Legislature we ought to allow our right and power to protect the revenue to further depend upon so slight a basis as the judicial goodwill. Only recently, in New South Wales, an application was made - I forget at this moment the name of the case-

Mr Isaacs

- In re Wallace.

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Mr KINGSTON

- I thank the honorable and learned member. An 'application was made for the purpose of testing the question, and the view then expressed by the court was to the effect, practically, that the practice was illegal, but that as they were applied to to exercise special jurisdiction for the purpose of interfering with it, they decided to hold their hand, and they did hold their hand, but if we were to read between the lines, we might come to the conclusion that if the application had been in another form they would have given a different decision. Further, as far as_ Victoria is concerned, there is a case - Stevenson's, decided in 1865 - where the practice was held to be illegal, and the note of the case, reported in the VictorianLaw - Reports,

volume 2, Wyatt, Webb, and a'Beckett, is as follows : -

Customs duties had been demanded by the agents oE the Crown, under the authority of a resolution of the House of Assembly only, and had been paid by several importers. The importers sued the Grown, under the Act No. 241, for a return of the duties as money had and received by the Crown to their use. On rule wim for nonsuit, Held, that the action would lie on the implied contract to repay that which it would be inequitable to retain.

There are various expressions by the Judges, but the point is clear, as far as their judgment is concerned, that they held the collection to be unlawful, and gave a verdict for the restoration of the amount which had been paid for the purpose of securing the delivery of the goods. Then the position is this : that keeping the law as it is at present, if we attempt to protect the revenue in the way that is generally adopted in Great Britain, we shall be liable to a judicial declaration that the practice is illegal, and to a judgment for the refund of the money. Ought we to permit that? I think not. What we proposed in the clause as originally brought forward was this : that when the resolution was passed by the House of Representatives in connexion with the Tariff or Tariff alterations, authorizing the protection of the revenue, the duties might be collected and held, pending the close of the session. Exception was then taken by various honorable members - I think notably by the honorable and learned member for Indi, and the honorable and learned member for Northern Melbourne - that if we did as proposed it would be equivalent to an imposition of a Tariff, with various results, one as regards the letting go of other duties, and the other as regards our right to include a provision of that sort in a Bill dealing with other matters. It was pointed out specially by the honorable and learned member for Northern Melbourne that possibly all the other provisions of the Customs Bill now before the House would become void in view of the annulling declaration contained in a certain section of the Constitution Act. I do not sympathize with these views ; but, at the same time, in dealing with a question of this sort, the view of the Government is that if we can effect the ' same purpose

- that of protecting the revenue by another mode that is not open to the objections mentioned, we ought to do it, and it is for that reason that we have withdrawn clause 257.

Mr Higgins

- The Minister cannot be too careful in this matter.

Mr KINGSTON

- No ; we cannot be too careful, in connexion with our fiscal legislation, which is epoch-making in Australian history. If the matter is likely to be tested - I mean by outsiders - and the Bill leaves a loop-hole for litigation,, we ought to stop it. We may rest assured of litigation, and it ought to be avoided. In this matter, if we can constitutionally preserve to the Parliament of Australia the right to have recourse to the practice which obtains in England, so that, pending its consideration of fiscal alterations, the revenue may be protected, we ought to do it. The question is - can we do it ? I think it is clear we can. We could, by .Act of Parliament, have imposed the Tariff - if it was an imposition - under clause 257. There is no doubt as regards our power, subject, of course, to the consequences which we all desire to avoid - of having to place the Tariff in another Bill, or to meet certain consequences of" another character. The Government think that the best mode of dealing with the question would be this - simply to prevent, the commencement of the action pending; the conclusion of the session, during which Parliament will have an opportunity of dealing with the question as it sees fit. We do not authorize any collection. What we do is this : There are various clauses which provide for notice being given to the officers of the department. We could, if: we liked, have required that any notice of" an action of this sort should be given - sixmonths' notice, twelve months' notice, or whatever we thought reasonable.

Mr Isaacs

- Or prevent it altogether.

Mr KINGSTON

- We could undoubtedly have prevented the action altogether, with regard to any matter we had the right to legalize, but not as regards any matter we had not the right to legalize. Where we have a right to validate, there we have the right to bar the action.

Mr Higgins

- May I ask,- does the honorable and learned gentleman intend? that the officers shall collect under the new Tariff at the highest rates, new or old 1

Mr KINGSTON

- Our intention precisely is this - that we shall have the power to do as we please.

Mr Higgins

- That is very nice !

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Mr KINGSTON

- That is the only power required in a clause of this sort - that we should have the power to collect higher rates if we please ; and the power to collect the higher would include the power to collect the lower rates if the Government liked.

Mr V L SOLOMON

- WU1 that affect Inter-State free-trade t

Mr Higgins

- There is not much fear of any action if the Government collect the duties at the lower rate.

Mr V L SOLOMON

- But what if the Government collected at the lower rate in a State where there was no duty before 1

Mr KINGSTON. - That would be collecting at the higher rate.

Mr Piesse

- What would the Minister do if there was a higher State duty than the rate proposed by the Government ?

Mr KINGSTON

- We could, of course, -collect the higher rate of the two.

Mr Piesse

- In one State only 1

Mr KINGSTON

- We could.

Mr Piesse

- And a lower duty in another State 1

Mr KINGSTON

- That is the position to-day. I am not in the slightest degree attempting to indicate what our intentions are in this respect, and I do not think I ought to do so at this particular moment. What we are proposing to do is not to take away the action, but simply to provide that the action shall be suspended, pending the parliamentary consideration of the matter. If, by the close of the session, Parliament has ratified that which the authorities have -done, well and good. If it has not done so, the action may be commenced at once. There is only one objection which it seems to me can be raised to a proposal of this sort - that if you stay the action for any considerable length of time, you ought at least to make the person against whom the action is brought give security that he will abide its result. That is provided for in the two clauses which the Government have now the honour to submit. Honorable members will see that the clauses as now proposed follow on after clause 213. Clause 210 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.

And there is a further provision in clause 213, that the proceedings shall be commenced within a certain time. Then the new clause provides that -

No proceeding for anything done for the protection of the revenue in relation to any Tariff or Tariff alteration proposed in Parliament shall, except as mentioned in the next section, be commenced before the close of the session in which such Tariff or Tariff alteration is proposed.

I suppose that in the natural order of things that length of time would not amount to more than a six months' bar. For the purpose of preventing the merchant or party interested being in the slightest degree prejudiced by the delay, any verdict he may happen to recover is to be binding upon the officer. We provide that; -

The High Court of Australia or the Supreme Court of any State, on the application of any person who is desirous to commence any proceedings mentioned in the last section, may require the officer to give security to the satisfaction of the court to abide the result of the proceedings, and in default of the giving of such security may sanction the immediate commencement of the proceedings.

Of course, there are in some cases Acts which give remedies against the Crown, but I do not know whether we have any Acts which would apply to an action against the Crown as advised by the Commonwealth. Probably in due course we may have. But so far as the Crown is concerned there is no necessity for security in any case that arises, and as regards the officer the whole force of the section may be set aside at a moment by the High Court or by the Supreme Court of a State if the officer fails to give security as ordered by the court. Of course, if the officer is acting with the authority of the Crown behind him, security will be given, but if he is not he has either to find the security himself or to stand the action immediately.

Mr Higgins

- One difficulty is - how can we suspend proceedings in respect of an action for an act which the Minister cannot validate?

Mr KINGSTON

- But we can validate. It has been conceded right along that we have a right in connexion with the Tariff to pass an Act validating the collection as from the moment it was introduced into Parliament. There is no doubt about that.

Mr Isaacs

- A discriminating Tariff? Is the Minister going to collect increases only?

Mr KINGSTON

- I say that we have a right to pass an Act validating the Tariff as from the moment it was introduced.

Sir John Quick

- Making it retrospective.

Mr KINGSTON

- Yes. We have a right to do that; it is always done.

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Mr A McLEAN

- Can the Government collect and validate both the State rate and the Commonwealth rate ?

Mr KINGSTON

- Oh, no. We shall go back to the Federal Tariff from the moment of its collection.

Mr Isaacs

- That must be the increases only.

Mr KINGSTON

- What does the honorable and learned member mean 1

Mr ISAACS

- If the Commonwealth Government put a 20 per cent, duty on woollens, for instance, they cannot collect that 20 per cent, plus 25 per cent, under the Victorian Tariff.

Mr KINGSTON

- The honorable and learned member is not suggesting the two duties on the one article.

Mr Isaacs

- Then the Government are only collecting the increase.

Mr KINGSTON

- What we wish is to have the power of collecting the larger duty.

Mr Isaacs

- We should have to validate that, and that is discriminating.

Mr KINGSTON

- We wish to have the right to the temporary collection of the larger duty with a refund of the excess when the Tariff is validated.

Sir John Quick

- But the Government cannot refund if the money is paid over to the States.

Mr McCay

- It is . only paid' over in trust.

Mr KINGSTON

- Tes, it is only paid in trust. It is subject to our control.

Mr Higgins

- It is only, a bookkeeping entry.

Mr KINGSTON

- Yes ; and we have the right to adjust accounts from time to time in connexion with our collections. What we propose, as is stated here, is that the effect of the passing of these clauses shall be that whatever rights are possessed by individuals shall be simply suspended pending parliamentary consideration of the matter. They will be suspended, if we pass these clauses, by Legislative enactment in accordance with the constitutional practice which obtains elsewhere ; but suspended under terms which will remove the revenue from the risk of loss that might be possible as the result of a judicial decision - a decision which could not be given, it seems to me, in accordance with the ordinary constitutional practice, but which might be given if precautions of the character now proposed were not taken. I submit "these clauses for the consideration of honorable members, believing that they will come to the conclusion that they propose a fair and reasonable way of dealing with a somewhat troublesome position.

Mr. ISAACS

(Indi). - It seems to me that the Minister is trying to take a course which is admirable' in point of expediency, but which is beset with all sorts of legal difficulties. I quite agree with the right honorable gentleman that we should leave no loop-hole for litigation if we can avoid it. I want to say, however, that our first duty is to preserve the Constitution, and I think this Parliament should be extremely careful that it does not attempt here, consciously, at all events, what is an infraction of its provisions. If we look at this matter, and see what it really comes to, I think we shall be almost inevitably led to the conclusion that we are attempting to do an illegal act. There is one way of ' getting Inter-State free-trade - there is one way of making the collection of Commonwealth duties legal - -and that is by actually imposing a Tariff. That is the way which the Constitution provides and contemplates.

Mr Thomas

- A uniform Tariff.

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Mr ISAACS

- Of course it must be a uniform Tariff. That is the only Tariff we have the power to impose. But the Constitution never did contemplate any collection of two sets of Tariffs - the Federal Tariff and the State Tariffs - at the same time. It contemplated that the State Tariffs should continue in all their difficulties, in all their complications, until the Federal Parliament decided for all Australia what the one invariable uniform Tariff should be, and that from that moment the State Tariffs should be superseded. The Government, trying to do what they think is best, and what presents many features of attraction, brought down clause 257, in which they provided that the collection of the Commonwealth Tariff, so far as increases were concerned upon goods already dutiable, and as far as it related to the collection of duties on goods that were at present free in any particular State, should be rendered legal. That I endeavoured to point out was contrary to the provisions of the Constitution, which forbids discriminating duties between the States. Now the Government are proposing to take a course which will lead to two difficulties. The first is the practical difficulty - the trade and commercial difficulty - in that it is not intended to impose any Tariff whatever. The Minister has said very plainly to-day that this is not to be the imposition of taxation at all. Consequently the State Tariffs remain. Putting it in other words the Minister says - "Admittedly the collection of the Commonwealth Tariff is illegal, because no Act of Parliament authorizes it," and honorable members will see that this new clause does not propose to make legal the collection of the Commonwealth Tariff. It assumes that this collection is illegal, but says that a subject in Australia shall not have a right to have redress for an illegal act. In other words, it says that the Executive of the Commonwealth may do what is admittedly an illegal act, and, to use my right honorable and learned friend's words, "that this ought to be secured beyond the power of intervention on the part of the courts to give that redress."

Mr Kingston

- Subject to conditions.

Mr ISAACS

- I know of no such doctrine in our law. I know of no doctrine which says that for an act admittedly illegal, and admittedly illegal beyond the power of Parliament to ratify - because not being a uniform collection of duties it is beyond our power to ratify it - that the courts are to be prevented from giving redress. The Constitution has erected a Parliament to act within its sphere, and to act with supremacy within its sphere, but that sphere is delimited. The limitation of that sphere, so far as regards the imposition of these duties, is uniformity. The Constitution has also erected a Supreme Court.

Mr Higgins

- Not yet.

Mr ISAACS

- It has placed the judicial power of the Commonwealth in a High Court.

Mr Higgins

- We have not got the High Court yet.

Mr ISAACS

- This clause contemplates the existence of a High Court. The existence of a High Court is referred to. If we are to assume that there are no courts having jurisdiction over this matter, then we do not want this clause. It is only because we have assumed the existence of a court which can give redress that this clause is wanted.

Mr Higgins

- Is there no power at present to proceed against an officer of Customs for an illegal act?

Mr ISAACS

- What I am trying to point out is that this assumes that the Act is illegal because, as the Minister admitted, and he could not help admitting it, the Government want power to collect increases only. They are to collect lower duties, or in fact anything they please, and yet we have to imagine that when a subject comes to it, and says - "I want redress," the High Court is to say - "We are prevented from giving you redress for a session - it may be twelve months, or it may be any time." I say it is not within the competency of this Parliament to take from the High Court the power given to it by the Constitution of saying what is a legal or an illegal Act of this Parliament.

Mr Kingston

- We may require notice before being brought into Court.

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Mr ISAACS

- No. This Parliament has the right to pass legislation which creates rights, which imposes obligations, upon subjects, and this Parliament can, in creating these legislative rights and obligations, attach to them any conditions - ' tions it likes. It may pass any Bill, a Customs Bill for instance, in which it will say that officers are to have certain rights, and merchants are to have certain obligations, and it may in that Customs Bill do what is sought to be done in this clause, and say that with regard to any right given by that legislation, or with regard to any obligation created by that legislation, notice shall be given. . It may say that no action shall be brought, and it may do anything it likes in the matter of rights and duties created by itself; but it cannot say that in regard to rights and duties given by the Constitution. The Constitution is the paramount and supreme law. Just let us see what could be done, if this can be done. Parliament may pass a Tariff law making discriminations between every State, and providing that nobody shall bring an action in respect of them for one session or for twenty years. I want to see the distance* to which this is to be carried. "Very far back in the history of the United States this question was practically tested. In 1803 the Congress passed a law in which they gave power to the Supreme Court to issue a mandamus. There had been an appointment of a Mr. Marbury by the President of the United States as a justice of the peace' for the district of Columbia. The seal was affixed to his commission, and everything was ready ; but a new President came in, and the commission was not delivered. Mr. Marbury then sued Mr. Madison, the Secretary of State of the United States, and applied to the Supreme Court for a mandamus under an Act of Congress to compel him to hand it over. I am not going to take honorable members through all the intricacies of the case ; but the court decided that the Constitution did not permit this mandamus to be given in the case of original jurisdiction. A mandamus could be given in the appellate jurisdiction, but not in the original jurisdiction. In the course of observations on the case the Supreme Court said : -

This original and supreme will organizes the Government, and assigns to different departments their respective powers. It may either stop here, or establish 'certain limits not to be transcended by those departments.

The Government of the United States is of the latter description. The powers of the Legislature are defined and limited ; and that those limits may not be mistaken or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if the limit may at any time be passed by those intended to be restrained"! The distinction between limited and unlimited powers is abolished if those limits do not confine the person on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation. It is a proposition too plain to be contested that the Constitution controls any legislative Act repugnant to it, or that the Legislature may alter the Constitution by an ordinary Act. Between these alternatives there is no middle ground. The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative Acts, and, like other Acts, is alterable when the Legislature shall please to alter it. If the former part of the alternative be true, then a legislative Act contrary to the Constitution is not law ; if the latter part be true, then written Constitutions are absurd attempts on the part of the people to limit a power in its own nature illimitable.

I apply that in this way. The Constitution says what the powers of this Parliament shall be in respect of these duties. They must be uniform ; and it says we are not to take money from people except by warrant of law. This clause says, that although we have no legal warrant to take money from people - although there is no law which imposes it - we will prohibit the court from giving redress. "Where is the right to do that? Show me the power in the Constitution to provide that. Then we say further that we want the power to do as we please, and to take any amount that the House of Representatives chooses to give us - it may be discriminating or it may not - and although it is illegal, and illegal in the still higher sense, that Parliament itself cannot ratify it - the courts shall be paralyzed and subjects shall not be able to get the redress they request. Where is the power to do that ? Honorable members will recollect that not many years ago the United States Congress passed an income-tax Act, and on an action being taken to the Supreme Court it was decided that it was against the Constitution. Suppose there had been a clause in that Act which said that nobody could bring an action under it against anybody for one session or for 20

years, would the court have listened to that?

Mr Thomas

- Will the court listen to this ?

Mr ISAACS

- I think not; and I am saying that it is our duty not to pass such a clause. Let me show honorable members what the result would be. I am anxious not to trench upon points that have been publicly announced by my honorable friends, as they run very closely to one another. I put a question to the right honorable Minister to-night which shows what the position is. Suppose the Commonwealth Tariff authorized 20 per cent, on woollens, that 20 per cent, would be collected in New South Wales but not in Victoria. In Victoria there would not be a penny collected under the Commonwealth Tariff, because 25 per cent, is the amount of the duty here. Then is not that discriminating so far as the Commonwealth Tariff is concerned? Suppose that afterwards the Tariff is fixed at 20 per cent. Is the additional 5 per cent, to be returned ? Impossible.

Mr Kingston

- How impossible ?

Mr ISAACS

- Because the State has the right to its Tariff until the law is repealed, because the policy of the Act is that the State Tariff shall continue until the imposition of the uniform Tariff."

Mr Mahon

- In any case the consumer could not get his money back from the middleman.

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Mr ISAACS

- I am dealing only with the legal question. The right honorable gentleman says that he is going to make the law retrospective, and I want to point out that the difficulty is a very serious one. We may impose our Tariff a year hence, and we may declare, if we like, that it is to be retrospective, but what is to be the actual date of the imposition of the duties? The Commonwealth Act says that the State Tariffs shall cease to exist on the imposition of uniform duties. When is the imposition to take place? Is it to take place when Parliament passes the Bill and His Excellency gives the Royal assent, or on some back date which is mentioned as a retrospective date? Of course, it may come into operation at a date later than the passing of the Act; but it cannot be an anterior date.

Mr Higgins

- At what time does the Minister say is the imposition ?

Mr ISAACS

- Does my honorable and learned friend put the question to me ?

Mr Higgins

- No, to the Minister.

Mr Barton

- It is a difficult question for even the honorable and learned member to answer.

Mr ISAACS

- It is not a clear matter to any one.

Mr Kingston

- Does the honorable and learned member mean to hold that Parliament cannot impose the duty with a retrospective effect ?

Mr. ISAACS.- I think it can for a certain purpose, but when the Constitution Act says that a certain effect shall take place on the imposition of the duty, can this Parliament say some date, which is not the date of imposition, is to be the date of imposition ? That is the difficulty which the Minister has to look at.

Mr Kingston

- Then Inter-State freetrade could not come about until the actual passing of the Act 1

Mr ISAACS

- What we should do is to face this question boldly. Whatever may be the result it seems to me that we ought to take care to leave the matter beyond any possibility of doubt. Whatever may be other grounds of expediency, for heaven's sake, do not leave merchants in a position of doubt. Do what we do so that no cavil may be made at it. It seems to me that only one clear cut and undoubted course is open to us, and

that is to impose the duties for the session.

Mr Higgins

- Will the Opposition consent to that ?

Mr McCay

- Is it practically possible % As a matter of fact can we get it done 1

Mr ISAACS

- The proper course for us, at all events, is to endeavour to do the right thing, and put the responsibility on the shoulders of those who object to it. I should put the responsibility for any confusion or any doubt on to the shoulders of those who object. But I do not believe there are any persons in the House who would attempt to do that.

Mr Higgins

- The honorable and learned member means that we should try to pass the provisional Tariff in one night through both Houses and put the responsibility on those who say " no."

Mr ISAACS

- We should pass a short separate Bill, saying that the schedule brought down by the Minister and the collection authorized by the House should be the Tariff for the session. That puts the maximum limitation. It may not be, and probably will not be, the minimum limitation. It cannot possibly exceed the duration of the session, and it will compel this House and the other, each to do its duty to the country, and to see that we do not rise before the matter is settled. I think we should get a simple clear declaration from the right honorable gentleman. If the Government pledge themselves to see the matter through, if they say that they will not rise from this session until that Tariff is settled, I believe the whole position will be eased.

Mr Kingston

- Who dreams of rising before the Tariff is settled ?

Mr ISAACS

- I did not dream that the Government would think of evading that responsibility.

Mr Barton

- Hear, hear.

Mr ISAACS

- I am sure that the Prime Minister, the Minister of Trade and Customs, and every other member of the Government have their heart and soul in the settlement of this question. I am sure that they all agree most thoroughly, and I cheered to the echo the observation by the Prime Minister the other night when he made this clear announcement. If they make that definite statement, no one can say afterwards that there was any doubt about the matter. They will then place a responsibility on the shoulders of those who may think of objecting and obstructing which will be too heavy for them to bear.

Mr Kingston

- How long does the honorable and learned member think it will take to get a provisional Tariff put through 1

Mr ISAACS

- I do not know.

Mr Barton

- It will take a good while.

Mr ISAACS

- It is completely in the power of the House to do as it pleases.

Mr Kingston

- I should like to get it put through.

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Mr ISAACS

- I think that the right honorable and learned gentleman should try . It seems to me, with all sympathy for the difficulties which I see, we are getting, at all events, into troubled waters with these clauses.

Mr Barton

- How can we bring forward a Bill of that kind with any security against its taking three months to pass, and then spending about three months over the Tariff itself 1

Mr ISAACS

- I do not see any difficulty about that.

Mr Barton

- There are friends of mine opposite who see difficulties about it.

Mr ISAACS

- I should attempt it at all events, and if the right honorable and learned gentleman finds that that clear simple course is not carried out, and that any considerations impel honorable members opposite - I do not give them credit for doing what would not be to the advantage of the country - I believe that the whole Commonwealth would form its opinion about it in a very definite way. This is not a matter about which any one can pronounce definitely. I have clear ideas in my own mind about it, and- I do not want to see uncertainty introduced, I place my views before the Minister with every hope that he will see his way to take the distinct course I have suggested.

Sir JOHN QUICK

- I thoroughly sympathize with the object aimed at by the Minister in submitting the new clause, and the principle involved therein. I think it would be highly desirable to pass a law giving parliamentary ratification to the recognized constitutional practice, if it can possibly be done. The view in favour of this method of procedure has been put very fairly and clearly by the Minister. At the same time the objections to which it is open have' been -very fully put by the honorable and learned member for Indi. I am most anxious to support any proposal which is really capable of being sustained legally and constitutionally, and I would give any proposal from the Government to meet this expediency the benefit of any doubt which I entertained. It must be admitted that there are arguments both for and against the proposal, and I have arrived at the conclusion, although somewhat in doubt, that I shall support it. I am disposed to think, notwithstanding the arguments which may be adduced against it, that it is capable of being, sustained, and if any proposal is submitted which is reasonably capable of being sustained constitutionally, we ought not to be too hypercritical in dealing with it. I admit the force of the point advanced by the last speaker, and I think there are even other points which may be raised almost equally open to argument with the one he submitted. I shall present a point which has occurred to me for the consideration of the Minister. He says no proceeding shall be brought, of course, obviously meaning against a collector, for collecting increased duties or new duties not specifically authorized by law. But supposing that an importer goes to a ship and claims Ins goods from the captain. Supposing that he tenders to the collector the duties authorized by law.

Mr McCay

- The State law.

Sir JOHN QUICK

- Yes; the State law. Suppose a man tenders the duty authorized by the State law, and that the collector demands the increased duty proposed by the resolution. Suppose, in such a case, the importer gets possession of the goods either on the wharf or on the steamer, and goes away with them without paying the increased duty, and that the collector follows him and, in endeavouring to take the goods, he assaults the importer, and a scuffle takes place on the wharf. What provision does the clause make for a case of that kind 1 The importer is in possession of the goods, and there is no provision for prosecuting him for removing goods without having paid the proposed increase of duty.

Mr Higgins

- The Minister's officers will look after that part of the business.

Sir JOHN QUICK

- The importer could not be sued for the increased duties if he had got possession of the goods. It may be there is some latent or dormant power in the Bill dealing with such a case, but it occurs to me that the clause does not meet a case such as I have suggested, where an importer gets the goods without paying the increased duty.

Mr A McLEAN

- Suppose the State laws provided higher duties than those proposed, and they were collected, the same thing might arise.

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Sir JOHN QUICK

- Quite so. But there is not the possibility or probability of the matter being fought out under State laws to

the same extent that it will be fought out in the present emergency. However, I say that notwithstanding the difficulties which have occurred in my own mind, in addition to those raised by the honorable and learned member for Indi - notwithstanding that it is a matter of much doubt - I am willing to yield to the proposal of the Minister. I desire, and I am straining myself to regard this measure rather as a procedure measure founded on the right to require notice of action - : -

Mr Kingston

- That is it.

Sir JOHN QUICK

- Say we provided for a month's notice.

Mr Kingston

- That is it.

Sir JOHN QUICK

- If the Minister can pass a law providing that no action can be brought against an officer without one month's or three months' notice of action so as to give an officer an opportunity of settling in the meantime-

Mr Kingston

- That is the very thing proposed.

Sir JOHN QUICK

- If that be the case I will say nothing, regarding this as a procedure clause, and not as a clause denying constitutional or legal rights.

Mr Kingston

- Hear, hear.

Mr JOSEPH COOK

- The very purpose of this clause is to take away a man's right to bring an action.

Sir JOHN QUICK

- The clause does not take away a man's right to bring an action, but merely says he must allow a certain time to elapse to give the officer an opportunity of finding out the position and, if necessary, settling the matter. This is a form of legislation known as procedure law, and it is frequently recognised in Acts of Parliament. I am willing to accept that proposal.

Mr Kingston

- It is an amplification of the very thing provided in the Bill in a special case.

Sir JOHN QUICK

- If it is an amplification of procedure already defined in the Bill, I am willing to accept it on that ground. But, after all, there is another and a more important question involved than the mere proposal to give parliamentary ratification to constitutional practice. It appears to me that even if we pass this proposed clause, it will not be dealing with the most important question we have to consider, namely, the question of the beginning of Inter-State free-trade. While the procedure clause may be allowed to pass, I invite the attention of the Minister to this other consideration. This clause does not in any way expedite or settle the question of the beginning of Inter - State free - trade. It may give legal- protection - it may suspend the right of action against the Customs officer - but it does not go the length to which many of us are most anxious to go, in seeing some provision made which will indicate and will fix legally the precise moment of time when Inter-State free-trade is to begin. The other night we had the desire expressed by the leader of the Opposition that something should be done to facilitate the beginning of Inter-State free-trade, and the Prime Minister concurred in the desirability of such being done.

Mr Kingston

- Hear, hear. .

Sir JOHN QUICK

- The Prime Minister promised that every effort would be made to expedite Inter-State free-trade. That, however, is not being done by this procedure clause.

Mr Kingston

- We are not likely to be sued for letting goods in free.

Sir JOHN QUICK

- But this procedure clause only refers to increased duties and new duties. Of course, this is the

connexion in which actions may be expected. The clause may, to some extent, deal with increased and new duties, but it does not deal with reduced duties or the abolition of duties.

Mr Kingston

- People would not sue in those cases.

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Sir JOHN QUICK

- Pardon me; in reference to the duties which it is proposed to reduce or to abolish, they must go on still.

The collection of the old duties under State laws must go on, because the State laws are still in force, and, according to section S9 of the Constitution Act, until the imposition of uniform duties, the revenue from customs and excise collected every month must be credited to the States. The States are debited with the monthly expenditure, and then the balances are paid over month by month, and finally paid over.

When once the balances are paid, is it likely the States are going to give up the money? The Minister cannot guarantee that the States will disgorge any of the balances paid to them, and there must be monthly balances paid under the mandate of the Constitution. The Minister says that no actions will be brought for not collecting; but does the Minister propose to abstain from doing his statutory duty? Does he propose to omit to do what the law requires, namely, to collect these duties? If he does, it will be incurring a heavy responsibility to the States, as it appears to me. The States rely on these duties. So long as the law remains as it is at present, the States will expect and demand the collection of these excise and customs duties, and the crediting of the balances to the

States according to the ordinary bookkeeping system. That is as regards the ordinary duties at ports. But, with reference to the duties on the frontier - those Inter-State duties which we desire to see abolished - what provision is to be made? Is it proposed that they shall not be collected at all, and that the Custom-houses are to be closed during the interim period? Of course not; no Minister would for a moment take that responsibility. What I am arguing is that, while I desire to facilitate the clause and to assist in passing it, notwithstanding my doubts, I hope and trust the Minister will go further. I hope the Minister will consider some plan by which the uniform customs duties will be brought into operation from the very night when the Tariff proposals are brought down. That can be done only in the way suggested in this House, and suggested in the press three months ago. This is not a novel proposal - the proposal referred to by the honorable and learned member for Indi - but it has been suggested by members of the House for months past - that the Minister should make provision, not necessarily in the Customs Bill, but it may be in a separate Bill, to meet the point properly raised by the honorable and learned member for Northern Melbourne, namely, that as such a provision involves taxation, it ought to be put in a separate Bill. The clause originally introduced by the Minister contains the germ of a legislative proposal which could be properly developed and moulded for the purpose of meeting the requirements of this case; that is, to give effect to the resolution for the protection of the revenue brought down by the Federal Treasurer on the occasion of the submission of the Federal Tariff - a resolution not merely authorizing the collection of increased duties, but also authorizing the collection of the whole of the duties.

Mr G B EDWARDS

- With Inter-State free-trade implied.

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Sir JOHN QUICK

- For the purpose of legally and constitutionally imposing a uniform Tariff, this Bill should legalize the whole of the resolution - not a half or part of it in regard to increased duties, but the whole of it - so that from that moment the mercantile community and the people of Australia may have the benefit not only of increased duties, but of reductions or abolitions - reductions or abolitions at the ports and abolitions across the borders. By so doing we should effect the whole purpose involved in this well-devised clause. But we should go further and secure what we all want - namely, not merely the protection of the revenue or the parliamentary sanction to the resolutions of the House, but the establishment of Inter-State free-trade. I say, with great respect to the Ministry, that they will never get Inter-State free-trade unless they adopt this proposal. They will be harassed with difficulties, their legislation will be challenged from its very inception, they will probably be attacked with litigation, and all kinds of conflicts of legal opinion will occur; whereas if they adopt this proposal everything will be smooth sailing. Reference has been made to the difficulty of adopting such a course. I say that the Ministry ought to make an effort to secure an interim

Tariff, which would be in operation during the session, and by which they would secure all the necessary protection to the revenue, and all the advantages of Inter-State free- trade - all the increased duties coupled with the reductions. The people want the reductions to be legally made. Reductions will necessarily follow. But here increased and new duties are proposed, and nothing whatever is said about the bringing into operation of the reductions and abolitions coupled with inter-State free-trade. The Ministry ought to make an effort in this direction. This is the second attempt which they have made to secure what we all desire to see placed upon the statute-book. They have friends and supporters in this House who are desirous of giving their proposals the benefit of any doubt which has been suggested, and who are prepared to fight the battle throughout as far as they possibly can. But the Ministry ought to make an effort in the direction I have suggested, and legalize the whole of the resolutions if they possibly can. It has been said that such a course might occupy three months. How could that be so ? All that is necessary is to bring in a Bill containing one clause, setting out that the Tariff proposals submitted by the Treasurer shall be given "effect to, and that the revenue shall be protected either until the end of the session, or until the new Tariff proposals have become law. I do trust that the Ministry will grasp this nettle. It may be a difficult task, but if they face -it fairly, properly, "and manfully in the manner suggested, they will secure ample support in this House, and I do not see why they should not have support in another.

Sir George Turner

- Does the honorable and learned member propose to incorporate the Tariff in this Bill 1

Sir JOHN QUICK

- Certainly not ; I propose that the Bill should be brought in long before the Tariff - that we should anticipate the Tariff, and say that whatever the Government proposals are, they shall immediately* have the force of law.

Sir George Turner

- Would that be an imposition of uniform duties 1

Sir JOHN QUICK

- Most certainly. It would be completely new, and it would supersede the old State laws, 'and become the temporary law of the Commonwealth.

Mr Thomas

- That would only be granting to the Commonwealth Parliament the power which every State Parliament already enjoys.

Sir JOHN QUICK

- Exactly ; it would be legalizing in another form what is now done as a matter of constitutional, practice. There would be no serious innovation, but the course suggested would meet all the difficulties. It has been said, by-the-way, that if immediate effect were given to the Tariff proposals the views of those who support the principles of freetrade would, to some extent, be prejudiced. If there were any danger of that I could understand that it would be a strong argument why we should not press the matter. It is said that if these duties were brought into immediate operation it might be an encouragement to manufacturers to launch out into protected industries, and that these would get to some extent established, and acquire a sort of vested interest. The reply to that is obvious. No man of business would think of launching out into any protected enterprise knowing full well that the law was merely of a tentative character. On the face of it he would have no claim to consideration in the final adjustment of such a Tariff. Therefore, that argument will hardly stand the test of examination and analysis.

Mr Higgins

- Which time does the honorable and. learned member say is the time of imposing duties - the passing of the provisional Bill or the bringing down of the Budget statement ?

Sir JOHN QUICK

- I think that the Bill which would be passed would anticipate the date on which the proposals were to be submitted. It would say that upon the arrival of that date, and upon the adoption of the resolution in the House of Representatives, that resolution would, by the force of an anterior statute, have legal effect. The imposition would take place on the date of that resolution.

Mr Higgins

- Then the date of imposition would be the bringing down of the Budget?

Sir JOHN QUICK

- The bringing down of the Budget and the passing of a resolution authorizing the necessary steps to be taken for the protection of the revenue.

Mr Kingston

- The honorable and learned member would provide for that in the anticipatory Bill.

Sir JOHN QUICK

- Tes. By the law which we passed in anticipation of the date on which the Tariff is to be submitted. We should say that upon that future date, and upon a certain act being done, namely, the passing of a resolution in the House of Representatives, the imposition of duties should take place.

Mr JOSEPH COOK

- Would not that Act destroy the power of the States over their present Tariffs t

Sir JOHN QUICK

- Such ari Act would set out that upon the arrival of a certain day, and upon the submission of a certain resolution to this House, all the State Tariffs would go, and the provisional uniform Tariff would come into operation. That would mark the event contemplated by the Constitution, and known as the imposition of a uniform Tariff.

Mr V L SOLOMON

- It would undoubtedly tie the hands of honorable members of this side of the House, if we disagreed with, the Tariff introduced, because all the State Tariffs would have disappeared.

Sir JOHN QUICK

- Not at all ; honorable members opposite would have absolute freedom of debate, and . their arguments against the proposals would have just the same weight.

Mr V L SOLOMON

- It would absolutely prevent another branch of the Legislature from throwing out the whole of the proposals, would it not 1

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Sir JOHN QUICK

- I do not think so. I do not think we should start the federal machine under the impression that it will not work. We must suppose that the Federal. Parliament will do its duty. I think the Legislature will be quits capable of solving the fiscal problem during the first session, and that it will not take so long as some people seem to apprehend. If we make our minds up to solve this problem we shall do it, and I hope that this matter of procedure will be disposed of apart from any question of free-trade or protection. We all desire at the present stage to assist the Ministry in arriving at some method of procedure by which this great and important question may be settled, and, therefore, I sincerely trust that the Ministry, however much they may dislike the proposal, will face the matter in the manner that their supporters expect and require.

Mr McCAY

- I think we are all agreed as to what we should like to have, but the real question we have to decide is as to what we can get in this matter. I do not suppose that there is a member of this House, whether he be free-trade or protectionist in his views, but wants to see the abolition of the Custom-houses on the borders, and the establishment of absolute Inter-State free-trade. Moreover, I do not think there are any of us but who regard the proposal as made to-day, and as made the other day, by the honorable member for Indi - a proposal I ventured to suggest that the Government might try, that is, that we should pass an anticipatory Act making the Government proposals the Tariff, either during the session or pending alterations - as the most desirable in the interests of the commercial community. I say that because until we get the uniform Tariff we all know from commercial experience, the great paralysis which will exist, and which, indeed, exists at the present time throughout many of the States. But it is no use for us to pursue a course that is impossible of achievement, however desirable that course would be if we could follow it.- There is no way, as one honorable member has suggested, of getting a mandamus out against the dissentients to the proposals of the Government. If, however, the Government say they will take up that position and endeavour to go on with it, I shall support them heartily, because the more I consider this matter the more I feel that no other course will be satisfactory. But if we cannot take that course we must "adopt some other means that will relieve us as far as possible from legal difficulties. As I

understand the honorable and learned member for Indi, his proposition is that we should enact that the Government proposals when they are submitted shall be an imposition of uniform duties. But I would ask the honorable member whether he means that that measure should have effect for the session only or until amended.

Mr Isaacs

- I would make that the maximum limit.

Mr McCAY

- The honorable and learned member says that the enactment should be for the session only, and I would like to direct attention - to the position in which honorable members who approve of the Government Tariff would stand, as compared with those who are opposed to it. I am not discussing the question whether the Tariff is to be free-trade- or protectionist. As the honorable and learned member for Indi has said, the bringing down of this Tariff will practically be an imposition of uniform duties, and therefore will involve the abolition of all the State Tariffs, of whatever kind, and unless before the end of the session both Houses have agreed to a uniform Tariff - if the Houses rise without coming to an agreement - we shall have no Tariff at all.

Mr Isaacs

- The Parliament would never rise without adopting a Tariff.

Mr McCAY

- We must rise at the end of three years from the 9th May, if we do not rise sooner. The session cannot last beyond May, 1903. The- honorable and' learned member for Indi says that the Houses would never rise without agreeing to a Tariff. Now, supposing the Tariff brought down by the Government were a » protectionist Tariff, and that in this House the majority of members strongly approved of it. This is all pure supposition, but it is a possible case; Supposing, further, that in the Senate the majority strongly disapproved' of the Tariff, and that Chamber sent us down a long series of suggestions that we should reduce our duties, saying - " We feel very strongly that this Tariff is too high, and it must therefore be brought down."

An Honorable Member. - Hear, hear.

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Mr McCAY

- An. honorable member on the opposite side of the House says " Hear,, hear," and I take that as a very reasonable indication of certain possible events, and it ' is on that account that I have a fear of the sessional arrangement only. We are told that if the proposals passed in this House do not meet with the approval of some honorable members here, the other Chamber will back up the minority in this House. We were told that in so many words. However, I am not discussing this question as a free-trade or protectionist matter, but I am merely assuming that a protectionist Tariff is approved of by this House, and disapproved' of by the other Chamber - it may be the other way about. If, however, the other House feels strongly, and any difference of opinion does arise between the two Houses, we may expect that both Chambers, in the. exercise of their rights, will adhere strongly to their respective views. I know of no question that arouses a stronger feeling than does the fiscal question, and I know of none in which members consider themselves more justified in holding to their views and using whatever weapons they can to enforce them. If the Senate should disapprove of the Government proposals, and offer a lot of suggestions for alterations, they may tell us that if we do not agree to the alterations they will not pass the Bill - and it might be a perfectly legitimate position for them to take up. In such a case, where should we be at the end of the session? It is not inconceivable that we might be forced by the circumstances to .agree to alterations that we otherwise would not consent to. Circumstances might compel us to agree to a Tariff that we did not like.

Mr Higgins

- That is the fault of the Constitution.

Mr McCAY

- I am pointing out objections to the proposal of the honorable member for Indi.

Mr Isaacs

- I personally have no objection to what the honorable member says, but I say what he describes would never happen, because the Senate would see that if their objections were persisted in the provisional

Tariff would last for ever.

Mr McCAY

- I was going to put that aspect of the case. If we pass an anticipatory Act covering the session only, those who approve of the Government proposals will be practically at the mercy of those who disapprove of them.

An Honorable Member. - We could surely compromise.

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Mr McCAY

- If we are going to compromise let us compromise whilst both Houses are standing on the one platform. I never like to have to compromise when the other man is placed six inches above me, and has the advantage of hitting down at me, and if I were to have a hand in the erection of the platform upon which the parties are to stand, I should be very foolish to put the other party on a higher stage. So that the proposal for an Act that would have effect for the session only, seems to me to assume that, if the other House differs from us, we are to put them in such a position of superiority that we should be compelled by force of circumstances to agree in a large measure to what they want - to agree to what we otherwise would not be compelled to accept. At the end of three years the Houses would dissolve, and we should have no Tariff at all. The honorable member for Indi says that the other House would never put us in such a position as that, but we should have the Senate taking exactly the same view regarding ourselves, and the two parties would each put the blame on the other. If we wanted to bring the session to an end under such circumstances, there would be such pressure inevitably exercised by the force of circumstances on those who had been supporting the ministerial proposals that those who disapproved of the proposals would be in a position of advantage that they could not be blamed for availing themselves of. If, on the other hand, it was proposed that the Tariff should continue in operation until Parliament altered it, the opponents of the Government proposals would be at a disadvantage ; whilst if the Tariff were to remain in existence only for the session the supporters of the Government would be at an equal disadvantage. Just as we cannot be expected to agree to the sessional term, so the opponents of the Government proposals in regard to the Tariff cannot be expected to agree to the longer term. We may as well face the facts. There is no good in talking of what would be the best course if we find that course blocked by the impossibility of securing its acceptance by either one House or the other. We have to take up some expedient which is not as good as the course we should like to take. The honorable and learned member for Indi has raised a number of objections to this clause as it stands. I quite admit, as I admitted the other day, as to clause 257 - although I thought that was constitutional - that there are arguments that can be used against the proposal. But like the honorable and learned member for Bendigo, I am not prepared to be exceedingly dubious in the matter, but to believe that this is a legal and possible course. For myself, I believe it is a legal course, although there is a great deal that can be said against it. When the honorable and learned member for Indi admitted that the imposition of uniform duties might take effect under the Government proposals upon the actual passing of the Act, even although the Act were made retrospective, and admitted that the Act could be made retrospective, he seemed to me to sacrifice the greater portion of his position.

Mr Isaacs

- I did not admit that that would antedate the imposition of duties.

Mr McCAY

- But the honorable and learned member admitted that if a law were passed in December, antedating duties from September, the imposition of those duties would be a legal thing.

Mr Isaacs

- I said for certain purposes that might be so ; but for the purposes of my argument I distinctly controverted it.

Mr McCAY

- Does the honorable and learned member think this would be possible for us - to pass a law in December, declaring that goods imported since the 1st of September, should pay the same duties as were imposed in December, even although they did not pay them before they were imported? I do not see anything in the Constitution to prevent it. If that is so, the collection of duties in anticipation of the sanction of Parliament under such a clause as this is merely a speedy way of carrying it into effect.

Mr Isaacs

- In any event, it could only apply to uniform duties.

Mr McCAY

- The honorable and learned member says that uniform duties of Customs must be imposed, and that taxation must not discriminate between States. What does that phrase mean? Does it mean taxation which does not produce discriminating results, or taxation which in its terms does not discriminate? It seems to me to mean taxation which in terms does not discriminate. "The imposition of uniform duties" means uniform so far as the proposals of the Commonwealth Government are concerned; but if by the operation of some other State laws different results were produced, it seems to me that in that case there would not be an abuse or disobedience of the Constitution.

Mr Isaacs

- Does the honorable and learned member mean that if a resolution of this House involved the collection of a duty of 20 per cent, on woollens all over Australia, that rate might be collected in addition to the duty on woollens imposed by the State of Victoria?

Mr McCAY

- No. But if the Government collected a 25 per cent, duty in Victoria, where the State duty is 25 per cent., that would not be a discrimination by this Parliament.

Mr Poynton

- Does the honorable and learned member mean to say that that would be "uniform"?

Mr McCAY

- So far as this Parliament is concerned that would be an imposition of "uniform duties"; and if the State took more than the amount of the Commonwealth duty, that would not be a want of uniformity so far as the Parliament of the Commonwealth is concerned.

Mr Poynton

- Our Tariff is supposed to supersede the State Tariffs.

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Mr McCAY

- It does not do so in that case. It is merely the most convenient form of taking bonds from the importers - cash is the best form of bonds in such a case - that they will pay the duty from a given date when it is subsequently imposed, the Act making it retrospective - from that given date. This is not perhaps commercially the most desirable course to pursue. The course proposed by the honorable and learned member for India is, commercially by far the most desirable. But if we make the duty collectable for the whole period until altered, or if we make it for only a few months - whichever way you put it - you place the supporters of the Government proposals, or the opponents, of them, in a position that you cannot expect them to agree to occupy. I say frankly that I would not agree to the sessional proposal, because I should think that by that I was placed in a position of disadvantage; and I would not agree to the permanent proposal if the proposals of the Government met with my disapproval, because I should consider that that course would equally place me in a position of disadvantage. When either of those courses means that some one is put in a position of disadvantage, which we cannot expect them to submit to, we must perforce - through our lack of power to do otherwise - accept a position which is not so satisfactory to persons.' in the commercial world as the proposal of the honorable and learned member for India would be. It seems to me that there is nothing to prevent the course proposed being adopted. There are objections to it, just as there were to clause 257. Indeed I like clause 257 better - than I like this proposal. It seems to me that by that line of action we can get over a great deal of the difficulty that has been raised. It has been assumed that clause 257 is equivalent to the imposition of duties. There is no doubt that the clause now before the committee does not involve the imposition of duties, whatever they may be; and if it is not the imposition of duties that is involved it does not matter whether the results, of it are uniform or not, so far as section 92 of the Constitution is concerned, because that section says that uniform duties must be imposed. If it is not an imposition of uniform duties, that section would not apply, and the only section that would apply is section 51, sub-section (2) -

- Taxation; but so as not to discriminate between States and parts of States.

But if the discrimination is the result of State law and not of Commonwealth law, that is not affected by the sub-section.

Mr Isaacs

- Will the Commonwealth Government collect the duties under the Commonwealth Tariff and also the State duties 1

Mr McCAY

- No; the Commonwealth Government will collect the higher duties ; but I quite- agree that, having collected the higher duties, if. the State duty is higher than the Commonwealth duty the Commonwealth Government will " have to pay the money over month by month, and there can be no talk of returning the difference between the State duty and the other duty.. I agree that the course proposed might be injurious in some cases. But that brings us back to the argument that we cannot get everything we 'want- that as we cannot get a position without some disadvantage, we must accept the best we can get, because we cannot get a better. If the Government will face the position as suggested I shall support them. Personally, I should like to be a false prophet in that matter, but I feel sure we cannot get what we desire.

Mr Piesse

- We ought to try.

Mr McCAY

- -That raises the question whether we should fight when we know we cannot win.

Mr Higgins

- -Could a Bill be got through as easily as this clause 1

Mr McCAY

- I feel as strongly as do other honorable members in regard, to the desirability of- that course, and although I am afraid we will not get it, there is just an off-chance that is worth trying. No doubt it would be better than any other proposal.

Mr Kingston

- To authorize the collection of duties until the close of the Parliament'1?

Mr McCAY

- To authorize their collection until -the imposition of- another Tariff. Not the sessional proposition. That would mean death to the Government proposals if the other House were to take up a position of disapproval in regard to them.

Mr Higgins

- The-, honorable and learned member thinks the other House would be as autocratic as to the Tariff as it has been in regard to the standing orders.

Mr McCAY

- If the Tariff' were made permanent until altered, -this House as well as the other Chamber would soon deal with the Government which did not'bona fide allow the Tariff to get through as soon as it should do.

Mr Isaacs

- Does the honorable and learned member think the Government should propose a longer period, 1

Mr McCAY

- 'There may or way not be a chance. of it being, accepted if it is proposed . by the Government. If, instead of being put , forward by the Government, a private member made the proposal, it would not become law. If the Minister proposed the sessional. -arrangement, and I succeeded in passing an. amendment, that amendment would have a small chance. The other House would, say it was not even a Government proposal.

Mr Higgins

- There is no particular danger of the Tariff notbeingpassed.in some form within the next six months.

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Mr McCAY

- I believe that. The. direct danger, however, is that a Tariff will be passed in a for which is not satisfactory to those who approve of the Government proposals. Those who agree with the Government scheme under the sessional theory might be put, as I have said over and over again, in such a position that they might have to accept proposals upon which otherwise they might, at any rate, compromise. We want to be in a fair position to settle these matters, neither party having the advantage, and not to deliberately give away the whole of the advantage, as the Government would do by the sessional proposal, assuming that the other House differed from it. If all parties agree, it does not matter what the proposals may be, we

shall get the same result. If the Government gives away its equality of ground by any proposal, it--
Mr Higgins

- They have already-adopted the sessional principle. The protection to officers under the- proposed, new clause 21,3a is .only to be until the close of the session.

Mr McCAY

- The difference is this. Under one proposal, 'if a dead-lock arose, and the Houses could not agree,. the-State Tariffs- would remain . The other proposal gives us-a federal Tariff- or none at all. Let us be sure of one Tariff', until we get another. If i this- the provisional Tariff ceased, owing to the session closing without the Tariff, proposals being, settled, the State Tariffs would still: be living, and we should have them "to fall back upon. Such a position would be perfectly fair to both parties, because that is the situation to-day. We have the State Tariffs now, and, we should have the State Tariffs then.

Mr Higgins

- Public opinion would never allow is to sit three years, before dealing with the Tariff.

Mr McCAY

- The point is who is to give way in regard to the Tariff - the man on the high, or the man on the low platform ? That is. the question.

Mr WILKS

- The difficulties surrounding this- question. ore very apparent when we listen to the arguments of honorable and learned- members of the committee. The honorable and learned member who has just sat down has pointed out some of them. He was in conflict with the honorable and learned .member for Indi, as well has with the honorable and learned member for Bendigo, and the Minister in charge of the Bill. So far as protecting the revenue is concerned, I am with the Minister. I agree with the right honorable -and learned gentleman as to the danger of the revenue being defrauded. It has been pillaged already by the action taken by traders in anticipating" the imposition of a federal Tariff.

Mr-. Kingston. - That will always happen.

Mr WILKS

- Yes. We are all equally, anxious on this side of the committee to protect the revenue ; but the machinery which is now presented to us -places us in a very difficult position.' The honorable and learned member for Corinella said that the fiscal, issue must not be raised. Unquestionably, however, it has come to the front, and I do not want to be at a disadvantage, or fiscally handicapped, in regard to this matter. The proposed alteration of clause 257 would allow the Minister to bring in a discriminating Tariff.

Mr Kingston

- Oh, no.

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Mr WILKS

- It is proposed that the Commonwealth Government shall collect the higher duties. Such a proposal .would mean that the- Tariff brought on by the Government would comprise many duties that are higher- than those already in force in New South Wales. The Government would: collect those higher duties, and New South Wales would not have the corresponding advantage of Interstate free-trade. That is the difficulty so far as New. South Wales is concerned. -I am not speaking for the traders but for the people of New. South Wales, who would not receive the advantages which -were offered to them when they accepted the Federal Constitution. I am told by- the honorable and learned member for Indi that it would be unconstitutional to provide for the imposition of other than uniform duties. The honorable and learned member appealed very strongly to the committee not to do anything that would be unconstitutional, a,nd he asserted that if we allowed this proposal to pass- we should be authorizing an unconstitutional as well as an illegal Act. If we are to place ourselves in an unconstitutional position in order to assist the Government, then 1 for one shall not be prepared to vote for this proposal. Another suggestion made by the honorable and learned member -for Indi is that w~e should give an anticipatory measure sessional effect. If we on this side of the committee accepted that proposal we should be taking a leap in the dark. We should not know what the Tariff proposals were to be. The State duties would be dropped for the session, and the State of New South Wales would be unable to revert to those duties. Pressure would be brought to bear. It would be said that we must have revenue not only for the purposes of the Commonwealth, but for the purposes of the various States, and we would be dragooned and forced to

vote for the Government proposals. The honorable and learned member for Corinella has said, that the other House might take an ultra free-trade stand in regard -to duties in which it did not believe. The converse however might take place. The Ministry, as is well known, are strongly protectionist. They might bring in a Tariff for the session, with the result that I should have to vote for a Tariff in which I did not believe. The Minister in charge of the Customs department might say to us - " If you do not take this proposal of mine, then New South Wales will be deprived of its revenue. It will not be able to revert to its own State taxation." We would- thus be tying our hands and placing ourselves within the power of such strong members of the Ministry as the Attorney-General and the Minister for Trade and Customs. As far as I am concerned I am not prepared to accept the suggestion made by the Government for collecting the higher duties, because that will not give New South Wales the advantage of InterState free-trade. I am not taking this stand out of consideration for the traders. I am fighting for the taxpayers, and neither the Government proposal nor the suggestion made by the honorable and learned member for Indi, meets with my approval. The latter scheme would simply be a leap in the dark.

Mr Isaacs

- What is the honorable member's proposal ?

Mr WILKS

- I have none. I am discussing the proposals as a member of the Opposition. I am not prepared to accept either of the suggestions that have been made.

Mr Isaacs

- The honorable member is not sitting in opposition to Australia.

Mr WILKS

- In voting with the honorable and learned member for Indi we do get Inter-State free-trade, and that difficulty will be solved. When the honorable and learned member put the question to the Minister as to whether the date of the imposition of the duty would be the date when 'it would be collectable, the Minister refused to answer. The Minister would clear the atmosphere of the Chamber very much if he would state his" idea as to what would be the period of imposition.

Mr Kingston

- I said the imposition would be the date in the Act, and it could relate back.

Mr WILKS

- But if the right honorable gentleman would state that as soon as the duties are collectable they are imposed then the spirit of Inter-State free-trade would also be established.. It does not require any legal training at all to know that the honorable and learned member for Indi very forcibly showed that immediately the duties are imposed we shall have free-trade under section 92, and if duties are imposed which are not of a uniform character, they will be illegal as not being within the Constitution. The honorable and learned member for Indi showed clearly that they would be illegal and unconstitutional, and if we are to adopt one suggestion, I would prefer to adopt the sessional proposal.

Mr POYNTON

- One has some diffidence in entering upon this debate with such a legal array in front of him'. If we may be convinced of anything, it is that we should not put all our faith and trust in lawyers. In connexion with the memorable Convention, one of the chief qualifications said to be required in a candidate as a representative to that Convention was that he should have a thorough knowledge of the law. . The representatives at the Convention were Constitution builders, and we have evidence to-day of how well they built. It seems to me a pity that instead of having an adjournment for 60 days, as they did in that Convention, they did not have an adjournment until now ; in the meantime the members might have looked through their work and "found out some of its defects.

Mr Higgins

- Did the honorable member vote for the Constitution ?

Mr POYNTON

- No, I did not. I will " explain later on, when we are on the InterState Commission Bill, why I did not vote for the Constitution. What I want to understand from the Minister - because laymen cannot understand it - is whether this proposal means that a uniform Tariff is to be collected ?

Mr Kingston

- It means the power to collect higher duties.

Mr POYNTON

- If it be a power to collect higher duties, I must take it, from that answer, that it does not mean a uniform Tariff.

Mr Kingston

- I did not say that.

Mr Barton

- My honorable friend will not be warranted in assuming, at this point, either that there is an -intention to collect higher duties, or to begin to' collect a uniform Tariff at once. It is a matter for determination.

Mr POYNTON

- I do not want to assume that it is the intention, but I think I am right in assuming that it is possible to do so. In the next place, as a corollary to this being adopted) shall we have Inter-State free-trade as the result of the adoption of a resolution when the Tariff is brought down 1

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Mr Barton

- I explained the other [day that there are certain difficulties, and that if we could possibly overcome them we would, and give Inter-State free-trade at the same time.

Mr POYNTON

- Then I get back to clause 257, and it appears now that the only difference between the clause we are now asked to pass and clause 257 is that whereas under clause 257 we gave power to impose a tax, we in this clause give power to certain people to collect taxes, and indemnify them because they have collected illegally. It is only reversing the position, and it makes possible the collection of a tax which is illegal, and which under clause 257 was imposed by the operation of that clause. I would like to know what there is to prevent us from following the customary practice in the States, under which a new Tariff is collected on the date when the Treasurer brings down his proposals in the Budget speech ?

Mr A McLEAN

- This clause does not prevent our doing that.

Mr Kingston

- The difficulty is that we may be ordered to refund by the Supreme Court.

Mr POYNTON

- I have been listening very attentively, but what I have heard does not clear the point I raised, and it appears to me that there will still be a probable want of uniformity. I have not yet got an answer as to what there is to prevent the date for the imposition of the Tariff being the date of the introduction of the Budget speech in which the proposals are made. What is there to prevent our collecting the Federal Tariff on that particular date, or to prevent our having Inter-State free-trade at the same time ?

Mr Barton

- I think the difficulty is that it involves an assumption that the Federal Tariff as proposed will be carried into law. There may be a loss of revenue in the interim period arising from that assumption, the result being this : That in ordinary cases the higher duty is collected, under the practice in force in the various States, when the resolutions are brought down. The higher duty is collected as a protection for the revenue, and as a means, and perhaps a rather high-handed means, of taking security for the revenue. That position could not occur here, if we impose a uniform Tariff, 'in respect of discrepancies between the uniform Tariff and the higher duties at present existing. If we are to bring down our uniform Tariff it will vary in duties from existing Tariffs in many cases. Suppose that on some particular article the duties are higher, and on others lower, than have previously existed, we should lose in the case of the lower, and should not be able to recoup ourselves in the case of the higher. In the meantime, if the Tariff does not pass, all that security is lost to the revenue.

Mr POYNTON

- Well, it seems that we are in a nice old fix. I want . to say that so far as I am concerned I am not going in for any captious opposition. I am here to protect the revenue as well as is any honorable member on the other side, and it is with me only a question of the proper way of doing it. I still think we might take the risk of doing as is done in the States, and impose the Tariff by the ordinary process and collect it from the date on which it is announced. The question as to whether it shall be a high Tariff or a low Tariff is for this and the other Chamber eventually to decide.

Mr Higgins

- Would the honorable member have free-trade between the States from that moment?-

Mr Barton

- How could we follow the State practice of collecting on a previous Tariff, which has been the only one we have known, when here we have - as a possible basis of collection - six previous Tariffs 1

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Mr POYNTON

- There may be some difficulties in that respect, but all the lawyers in the House and outside the House, and in the other Chamber, ought to be able to devise a simple scheme of seeing that the Tariff which is introduced as the Federal Tariff is collected. It is immaterial to me whether it is a high Tariff or a low Tariff for the purpose of argument here. I want to get Inter-State free-trade on the imposition of the Tariff. What I am afraid of is, that under this proposal we shall not have a uniform Tariff, but that we may be collecting a high Tariff in one State because the State Tariff is the higher Tariff, and the Federal Tariff in another State, because that is the higher Tariff, and in the meantime be collecting all the Inter-State Customs duties. I think the anxiety of the Commonwealth is for the introduction of Inter-State freetrade. We want to get the thing done as quickly as possible. There are persons from whom we shall collect the higher Tariff who will never get a refund if it can be made. The business man in many instances may get a refund, but the man who buys his articles from a tradesman or an importer will not get any money refunded. I am in a bit of a fix, for I do not know how to vote on this question. »h-. Barton. - Tote to protect the revenue.

Mr POYNTON

- If I thought it could possibly be done under the old State system, I would take the bull by the horns. I do not see why the importer is likely to enter into a lawsuit with the Commonwealth.

Mr Kingston

- They have done it in dozens of cases.

Mr POYNTON

- It has been done in the case of States, but it did not result in loss.

Mr Kingston

- They recovered the money.

Mr Barton

- In ten cases, I think.

Mr POYNTON

-. I shall not make up my mind yet; I shall wait for further discussion.

Mr. G.

B. EDWARDS (South Sydney). I think the committee is deeply indebted to the honorable and learned member for Indi, for taking up the position he has done in defence of "the Constitution. I hope he will be the forerunner of a long line- of statesmen and patriots, who will defend the Constitution, no matter what comes about. The Government have been somewhat disingenuous on the whole-subject ;'they have never boldly taken the committee into their confidence, and admitted the difficulty, and stated plainly in what way they would deal with it. Even if we pass these amended clauses, I hold that it is perfectly possible for the Government to adopt the opinion which has,been laid down, that the imposition of uniform duties, necessarily involving Inter-State free-trade, admits that. InterState trade is free from that moment. There is nothing which I can see in the two clauses to defeat that object. And if the Government would have some temerity, and would firmly grasp the nettle, they could boldly undertake to make InterState trade free from the moment they bring down their Tariff, and get a resolution passed empowering them to collect it. I know the Prime Minister has asked would the House - the other party, I think he meant - agree to such a proposal '? In a matter of so much moment as this, when all sides - the press-'and the thinkers as well as the politicians of the 'Commonwealth - have admitted that a very great difficulty exists, and that we shall have either to -strain the Constitution or to .take some extraordinary course, we should rely On the patriotism of the members of both

Houses to -assist in.' carrying "this thing into effect -in some way, :so as to get a start. The clauses, as framed, would .admirably meet any subsequent Tariff proposals -or amendments-; but for a staid;, owing to this difficulty about .Inter-State 'free-trade, we have either to stretch 'the Constitution' - which, I hope, is a course that will never be taken in the history of the Commonwealth - a-. course which I hope will never

be taken in the history of the Commonwealth - or to boldly rely on the patriotism of federal representatives to help the Government to make a start. No matter what opinions may be adopted by the party with which I am loyally connected, I shall take the course of supporting Ministers to the best of my ability in getting a start in this very 'troublesome matter. While it is said that we can rely on Ministers to do what is best for the whole of the States, I think we can also rely on His Majesty's Opposition to assist in that course provided "that Ministers are fairly reasonable in taking advantage of the assistance which may properly be expected' from them. I do not think it is- necessary, as honorable members have said, to have a special Bill for the purpose. But if we have in this Bill a provision similar to the original provision in clause 25-7, we can assume that as soon as the Government table their Tariff, they will collect the duties, and' at the same time give up all Inter-State duties, and begin the reign of Inter-State free trade. and keep us in session until we either pass the Tariff' proposals or others which will take their place.. I think they can further -rely on the patriotism of the two branches of the Parliament, that is a serious difference should crop up, as naturally we might expect it would, some form of compromise might then be looked for which would help us at any rate to get an interim Tariff -passed into absolute law, leaving. Ministers, either in the next-session or in-a later session,,if "they desire, to propose further amendments-. Unless Ministers will have the courage of some opinion and 'boldly tell the committee what they intend to-do, and rely on our patriotism to carry out their plan, or help them to carry it out, we shall not get a step forward in this very difficult and troublesome matter

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Minister for External Affairs

Mr BARTON

. - I must assure my honorable friend who has just spoken that the Government are not erring from want of courage, but they are n'0-do'ub't -picking their way very cautiously in order that they may stay within the Constitution on the one hand and protect the revenue on the other. That is the problem before them, and before every member of the committee, which would be just as difficult if our opponents we're in office. As regards my honorable friend's assurance that he will give us patriotic support in arriving at a solution Of the difficulty, I accept that with just as much good faith as I am sure he offers it. But then the honorable member for South Sydney has commended the honorable and learned member for Indi with reference to his defence of the Constitution. That defence of' the Constitution was largely based on the case, of Marbury and Madison, which took place in the United States in 1803, but which is no doubt good law, although it is old. The difficulty the honorable member for South Sydney will find himself in is this- itched, if he considers the view of the honorable and learned member for Indi is right, then all his patriotic assistance will be of no avail to the Government if we take some of th? courses he longs for. That is one of our difficulties. We might easily take some of the courses so prolifically suggested, and find ourselves quite within the clutches of this case, which will no doubt be applicable law within the Commonwealth, while we might easily take-home other course which the- honorable member would oppose on the justice of it, but which would -relieve-us from the necessity of any further consulting the case of Marbury v. Madison. There is the position, and it :is one, in which I suppose, nobody can be envied. It is only right we should tak-e every care, without losing our courage, to- see that the course we take is one which the Constitution will support, and one, therefore, which the High Court will support when appointed and also- one to protect the revenue, which we cannot afford to trifle with. It must be recollected that the Commonwealth and the Government are to a very large extent the trustees- for 'the; States financially. We are the trustees as to one class of expenditure, namely, the maintenance of the transferred departments, to the- extent of all the revenue less the amount spent in -the States, within the limits of the sub-section which makes us trustees. As to the rest of the Commonwealth expenditure, we are responsible to the whole of the-States. We can collect from the whole- of the States on the basis of population, 'but. not withstanding these collections - I will n'ot say collections, but rather that we debit the States on the basis df 'their population' - and not withstanding that debit, we are bound to see that -we return-sufficient revenue to the States in order that they may be -kept as nearly as practicable in their former positions. To do that .we must -see that we do not take a course under which we shall unduly sacrifice any of the revenue of the Commonwealth, because the moment we do that, we shall fail in our obligations to the States. It is therefore necessary in a Bill- of this .kind, whatever the ultimate decision is, to take sufficient power to .protect the revenue in the event of either decision being, come to. That is the

origin of a clause of this kind. It has no other desire - -no other object at bottom. There is no doubt that this course is taken in full face- of the knowledge that similar action, so far as it can be similar, on. the past of the States' Governments in collecting revenue immediately their financial proposals are announced, and that on ti higher scale, . has been decided to be illegal. That has been decided in the courts here to be illegal, so far that refunds were made in nine cases, because improper collections had been made. That is the position of the Commonwealth as the trustee of the public revenue. If the principle of collecting in all cases the higher duty were adopted as a temporary measure, it is not intended or proposed for a moment that any excess collected should go into the coffers of" the Commonwealth. The object is simply, as far- as possible, to enable ordinary security to be taken, which -lias been taken in the past, and which, no doubt, has been unconstitutional in the past: but it is taken in this case under circumstances of unusual and peculiar difficulty applying to six former Tariffs.

Mr Higgins

- The Minister for External Affairs does not feel free to say whether it is intended to collect on the higher scale.

Mr BARTON

- I feel 'free to say that if we can see our way, and -it is our wish to try and see our way, it will be the desire of the Government to forthwith, in bringing down its proposals, collect the new and uniform Tariff, and to .cease to collect lie Inter-State duties at the same moment.

Mr G B EDWARDS

- Why not say so 1

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Mr BARTON

- I have expressed- my- own feelings to the House on this matter, and to that extent certainly nobody can doubt that we have taken the House into our confidence. We are only impressed by difficulties which must impress every legal mind in considering such a subject ; but I think the honorable member for South Sydney will say now that, as far as possible, we are taking the House into our confidence in this matter.

Mr G B EDWARDS

- The Government are doing so now.

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Mr BARTON

- We are not stumbling at any matter on account of policy. We are only holding our hand, because we wish to keep within the Constitution, and at the same time not let the revenue be unduly injured. It must be recollected that the responsibility on a Ministry in instituting Tariff, proposals is always that, although they might, perhaps, without much arrogance,- make the assumption politically, they cannot constitutionally make the assumption that the Tariff will be earned. While not able to make that assumption, it appears difficult to . take a course which, in many instances, may mean smaller revenue,1 Of course, every Tariff is to be judged by its operation, and we all of us have our own forecast. An honorable member opposite may think -a certain duty will lead to a higher revenue instead of a lower one, while an honorable member on this side of the House may think otherwise. This thing can stand no test but the test of time, -and it is for the purpose of seeing that defeated expectations, if they ever occur, do not injure the finances of the country, that this safeguard must be taken. Going through the clause itself, I do not, I -must admit, feel so great a difficulty about it as does the honorable and learned member for indi. There is no doubt that the honorable member has put a very keen and concise argument before this Chamber. But I do not see that the form in which this clause is proposed, having a certain relation to other clauses in the Bill, is one that will prevent us from adopting the view put .forth by the honorable and learned member for Bendigo, and which I was about to put forward if he had not done so. If honorable members will look at clauses 210 and 212, they will find certain proposals which the House has dealt with. Clause 210 provides -

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 by the plaintiff, his attorney or agent, in which notice shall be clearly stated the cause and nature of the proceeding. ...

That is the gist of the clause. Clause 212 provides -

It shall be lawful for any officer to whom notice of proceeding shall have been given at any time within one month after such notice to tender amends to the plaintiff, his attorney or agent, and in case such amends be not-accepted to plead Such tender. . . .

In the case of any collections, it may prove by the ultimate action of Parliament in regard to the Tariff to have been excess collection. It may be that all the duties proposed in the Tariff will not be carried exactly in the shape proposed, and then there would have to be refunds. A limitation is placed on actions or suits against officers with respect to the general objects of the Bill, and opportunity is given to tender amends. Whether actions or suits are brought against officers or against the Crown is immaterial so far as the proposed new clause is concerned. In either case it is intended that protection shall be given for two reasons. The first reason is that what is called the over collection of the duty is really only the taking of a security which does not go into the permanent revenue, but is recoverable in the event of the Tariff' not being finally passed. In the next place there ought not to be taken away from the authorities the opportunity of making this class of amends instead of waiting until the case gets into court, It has been urged, however, against the clause that because it imposes a limitation on the right of procedure, that being a right conferred by the Constitution, the limitation is therefore unconstitutional. The remedy is not affected. If amends are not made - and every person against whom a demand is made should have an opportunity of making amends - the remedy of the person to whom amends are not tendered is to bring an action. The principle of postponing such an action has already been established by this committee in clause 210 with the limitations put upon it by clause 212. The object here is in the case of excess Tariff collections to postpone action not for a month but for the session. If there is the greater opportunity allowed to make amends by a refund, pending the legalization of the collection, there is no harm in that. If the result is that the collection is legalized, then the

Constitution by that legalization has been complied with, and there ought never to have been any right of action at all. I submit, therefore, that whichever way we look at it, this clause is in all its aspects just, and, that in the second place, there is no offence against the Constitution. If there be any doubt on the part of honorable members as to its justice, that is one thing. But I cannot conceive that there could be any doubt as to that. As to its effect under the Constitution, that has been well considered by Ministers. I admit the importance and good faith of the objections that are offered, and I admit that they are offered by high authorities. We have done the best we can to consider this matter ; we have arrived at a certain conclusion, and I think we are bound to maintain our opinions with respect to the constitutionality of the course proposed. Therefore, we must support this clause. I wish, before I forget, to make it quite clear that a particular course of action with reference to the Tariff is not to be assumed from any shape in which this clause is proposed. That is to say, the course which the honorable and learned member favours - and which I should strongly favour if I could feel that it was a safe one to the country - will still be considered, and if found to be safe it will be adopted. Otherwise I cannot promise.

Mr Isaacs

- In regard to the provisions of clause 212, I would point out that they rather relate to actions against an officer for a breach of his power under the Act, and of course Parliament may put any limitation it likes upon that. I was drawing a distinction between offences against the provisions of this Bill and 'those of the Constitution.

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Mr BARTON

- I can quite see that clauses 210 and 212 are as the honorable and learned member describes them. In the first instance he suggests an illegality, which he says is a breach of the Constitution. I cannot see that in a matter of procedure - and this is a matter of procedure I take it - there is any distinction in principle. As to the case of Marbury v. Madison I would point out that that case arose out of the following circumstances : - Mr. Marbury, amongst other gentlemen, had been designated a Justice of the Peace. He was to be appointed, but his commission was retained in the hands of the Secretary of State - James Madison. Mr. Marbury took proceedings in the Supreme Court of the United States to obtain an order to compel the Secretary of State to issue the commission. Upon his case a number of others hung. Under the Constitution the whole of the judicial power of the United States was "vested in one Supreme Court, and such superior court as Congress from time to time shall ordain or establish." In the distribution of this power it is declared that " the . Supreme Court shall have original jurisdiction in all cases affecting

ambassadors and other public Ministers and consuls, and those in which the State shall be a party. In all other cases the Supreme Court shall have appellate jurisdiction." After that, Congress passed an Act which, of course, either had to be within the Constitution, and, therefore, valid, or without the Constitution, and, therefore, invalid. That Act gave the courts authority "to issue a mandamus in a case warranted by the principles and usages of law in courts appointed or persons holding office under the authority of the United States." The jurisdiction to issue a mandamus was invoked in this case as if it were an original jurisdiction. The difficulty in the case was that the Supreme Court finding that, except in cases to which the State was a party, it could have nothing but appellate jurisdiction, not original jurisdiction, held that it had no power to issue a mandamus because no Act could authorize the breach of the Constitution which would be comprised in giving the Supreme Court original jurisdiction in one of those cases in which the Constitution virtually said it had not such jurisdiction. That was the case of *Marbury v. Madison*, and that is the case which the honorable and learned member for Indi applies here. But I fail to see that such a case applies to a matter like this in which the question is one of procedure, not one which prevents any action being brought, or -which denies the effect of the Constitution, but one which imposes on the suitor simply those liabilities to certain forms of procedure which might be imposed by any legal procedure Act in the world. I admit that there is much to be faced in the argument; but at the same time it does not seem to be a conclusive one, because I believe that this clause can, and would be read by the High Court of Australia as one imposing merely a limitation with regard to procedure, and in that respect I think it would be held to be good. Upon that, of course, I do not speak with the enthusiasm of a partisan. We do not need to be partisans in a matter of this sort. We must endeavour to advise the House as well as we can. I do not see that the objections which have been urged 'as to the power of this Parliament - which is plenary within the whole ambit of the Constitution - granted to us - destroy the power of Parliament to impose this limitation in the public good, for the purpose of protecting the revenue and as a matter of mere justice to those who are trustees of that revenue. Justice to the trustees means justice to the people.

Mr. HIGGINS (Northern Melbourne). I have waited until I could find out what could be said upon the other side of the House in regard to the alternative proposals before the committee, because I feel that if an attempt be made to take any party advantage of the difficulty created by the Constitution*, it will be a lamentable thing for the country. I have had the advantage of hearing not only the speeches of three members of the Opposition, but also that of the Prime Minister, and if the latter be taken to be final, I apprehend that it is the intention of the Government to push through these clauses at all hazards. It is a matter for regret that we have not the presence during this very momentous discussion of the leader of the Opposition, who, by his ability and skill, could not only enlighten the committee, but could also assure us of the attitude which he would recommend his friends to take in this difficulty. I have, however, been exceedingly gratified to find from the utterances of two at least of the Opposition speakers that they do not desire to take any advantage of a difficulty which, if they were on this side of the House, they would have to face themselves. The sentiments of the honorable member for South Sydney and of the honorable member for South Australia, Mr. Poynton, will I think be appreciated not only by honorable members on this side, but by Australia as a whole. I gather that there is no desire whatever to take advantage of this problem for party purposes, or even for the purpose of pushing one's views on the fiscal question. The utterance of the Prime Minister has made me consider what will be the worst result we shall have to apprehend, assuming that it is the intention of the Government to push through these clauses, and that their view is wrong. If there is anything certain in this world, it is that there will be a tremendous strain on the part of importers and merchants to obtain trade advantages and connexion with the new duties, and I think it is almost as certain that this question - will be tested in the law courts. The proposal made by the Minister for Trade and Customs has strong grounds of expediency to support it. He has argued that it would be more expedient to follow his method; but the honorable member for Indi has argued that whether it would be expedient or not it would not be legal, and there is where the difficulty arises. I have always felt that it is one of the drawbacks of our Parliament that our debates will turn so much upon the question of legality and illegality in place of expediency and in expediency.

Mr Mahon

- We have too many lawyers.

Mr HIGGINS

- The position is that too much is- being put upon the lawyers, and that is what I object to. I say that it would be to the best interests of the country that we should as far as possible do what is expedient and not what is legal for the country. It is the unfortunate result - and perhaps, having, a weakness in that direction, I may be allowed to say it- of a want of elasticity in the Constitution. If our Constitution were more flexible, as I urged it should be, we should lean less upon the question of legality or illegality - less upon the courts - and more upon the people.

Mr Winter Cooke

- How would the - honorable member have met this difficulty ?

Mr A McLEAN

- By putting language in the Constitution which could be interpreted.

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Mr HIGGINS

- Exactly ; if it. were possible to put in such language ; but we have made our bed, and on it we must lie, and I shall do my best to get over the difficulty as well as circumstances will allow. The proposal Of the Minister for Trade and Customs is to legalize the system which has been adopted in England and" in Victoria and in other . places, and to say that no action shall be brought against the authorities until the end of the session, except under certain conditions: That seems very plausible, but the Minister has not 'told us whether, after he brings down his- Budget resolution, he will collect duties on the basis of . the new Federal Tariff, or upon the basis of the highest duty, whether it is under the old Tariff or under the new Tariff. I. admit 1 there is a good deal of reason for his not disclosing his intention. In the meantime, however, before the uniform -Tariff is imposed, before the end 'of the session, duties will have to be collected. Now, what I understand to be the intention of the Minister for Trade and Customs is, that having by the end of the session fixed' what shall be the duties and the uniform duties, he will refund the excess duties - if any excess: duties have been collected-to those who have paid them. I may pass by the incidental fact that that money will not get back into the pockets of the consumers. Every one admits that a tax upon kerosene or tea will increase the prices of those articles to the consumer. They do not make that admission with regard to protective duties, but still there is no doubt whatever that the prices of various articles will be enhanced by the imposition of revenue duties, and that the refunds of duty on such articles will not go back to the consumers. The idea of the Minister for Trade and Customs, as I understand it, is to make his Federal Tariff retrospective to the date of the bringing in of the Budget.

Mr Kingston

- Yes.

Mr.HIG GINS.- Very well. That seemed to me to be a very ingenious way of meeting the case - and I congratulate the Minister for Trade and Customs on an ingenuity which exceeds the ingenuity of most men - but in the first place I do not think we can make a uniform Tariff retrospective. That isa. conclusion I have come to after a good deal of thinking out of. this Constitution. It is very much a legal question, and I ask honorable members to look at a few sections of the Constitution Act, which deal with it. In the first place, the Constitution provides, in section 86, that when the Commonwealth is established, all the duties of customs and excise are to pass over to the federal power ; so that, as has happened, the Commonwealth has been collecting all the taxes which the States have hitherto collected, including the Inter-State taxes. Then the Constitution says, in section 88, that -
Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

I agree with the honorable and learned member for Indi, that there is no 'power to impose anything but uniform duties in this Parliament ; and I read the section I have quoted with section 51, which- is to the effect that all taxation by -the Federal Parliament is to make no differentiation between the States. There is to be no discrimination whatever. Then section 89 says -

Until the imposition of uniform duties of customs there is to-be a certain -bookkeeprag.'between the States. It will be recollected that under section 90, as soon as the uniform duties of customs are imposed, the power of the Federal Parliament to impose duties becomes exclusive. The Constitution says, in section 90, that -

On the imposition of uniform duties of customs all laws of the several "States imposing duties of customs

or excise . . . shall cease to have effect.

In short, the laws of the States with regard to ditties are to exist light up until the uniform Tariff is imposed, and the imposition does not come until the end of the session in which the uniform duties- are imposed, or until the time in which the law has been passed.

Mr V L SOLOMON

- Is that the honorable and learned member's definition of "imposition " - until the law is passed 1

Mr HIGGINS

- Yes ; I say that the Federal Parliament has not imposed any Tariff until the Commonwealth Tariff law has been passed.

Mr.V. L. Solomon. - Does the collection of duties in the meantime alter that ?

Mr.HIGGINS.- The collection in the meantime is illegal.

Mr JOSEPH COOK

- Would this proposed interim law be an " imposition " in the honorable and learned member's judgment?

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Mr HIGGINS

- I shall come to that point presently. The suggestion which has been made of a law which has passed the House imposing duties coming into operation as soon as the Budget statement is made is a different thing altogether. There you have a law to come into effect, and in that case there is an "imposition".; but I am saying now that if honorable members look at section 9 2 "they will see that "on the imposition of uniform duties of customs," there is to be free-trade absolute between the States. During the first five years after the imposition of uniform duties there is to be a certain bookkeeping between the different States, but after those five "years it is for the Parliament to provide. If honorable members look at sections 107 and 108 they will see that it is there provided that -

Every power of the Parliament of a colony which has become or becomes a State shall unless it is by this Constitution exclusively vested- and this power of imposing duties is not exclusively vested - continue as at the establishment of the Commonwealth.

So the State Parliaments have the power to alter their duties right up to the time when the law is passed by this Parliament establishing uniform duties. It does not follow that Victoria or South Australia, or any State, will still keep its existing duties up to the time when the law is passed by the Commonwealth Parliament.

Mr V L SOLOMON

- Does not that view clash with section 86?

Mr HIGGINS

- No, section 86 simply deals with the collection and control. It means that whatever duties the States have imposed or do impose, the Federal Parliament shall collect.

Mr HUME COOK

- It means management, not imposition.

Mr HIGGINS

- It is mere management. If honorable members look at section 108, they will see that it is there laid down that -

Every law in force in a colony . . . relating to any matter within the powers of the Parliament of the Commonwealth shall, subject to this Constitution, continue in force in the State ; and until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and repeal in respect of any such law as the Parliament of the colony had until the colony became a State.

That is most express and most distinct that up to the time that there is a law of the Federal Parliament - a law, mark you, not a mere regulation of customs or anything of that sort - imposing duties - -the States are to say what shall be the duties, although the Federal Government has to collect them. Then under section 109, if a law of the Federal Parliament conflicts- in this matter with a law of the States, our law prevails.

Mr Piesse

- When it has been properly made.

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Mr HIGGINS

- Quite so. What I say) in short, is this: - Up to the precise moment when the Governor-General's signature makes the law, with regard to the Tariff operative, the State law must prevail, altered or unaltered; for the States can alter if they think fit. Therefore, not only have we no power to impose any but uniform duties, but I say, also, that we cannot make our first uniform duties retrospective. We must make them future, as the Constitution means that until they are actually imposed, the States duties shall prevail. Now, of course, if that be the correct view, it would,

I am afraid, knock the proposal before the committee kite-high. I should like to see the Minister's proposal successful, and it is only because I wish to see it successful that I have gone into the subject with such care, to see if we could not by any means under the Constitution, avoid the serious disaster which would occur in case this course should be found in the courts of law to be impossible. But, says my honorable and learned friend, the member for Bendigo - and the right honorable the Prime Minister corroborates him - "Here we are simply dealing with a matter of procedure; we are simply saying under what conditions there may be an action against an officer of the Customs or against His Majesty." A corporation with power to make by-laws cannot limit the actions brought against itself and its officers. A corporation like the London County Council has certain powers given to it by the Imperial Parliament. The County Council could not introduce regulations or by-laws making a provision that its officers and its servants are not to be sued for a certain time if they are doing an illegal act. And I say that the relation of our Federal Parliament to this written Constitution is very similar to the relation of a municipal corporation to the supreme Legislature. We who are to be controlled by the High Court cannot say that there shall be no action brought against us. That is a matter for the Constitution. To bring it to the test, suppose a specific case. Suppose the case of a cargo of kerosene brought to Melbourne. There is no duty on kerosene at present. Supposing that the Minister begins to collect under this clause 3d. per gallon on that kerosene, I say that if the importer paid the duty and brought an action against the King, or against the Customs officer, to recover the money so paid, this clause would not be a defence to the action. That is the very test. The importer would say - "I paid you 3d. per gallon on this kerosene, and you had no power to exact that 3d. from me." "But," the Minister would reply, "here is this provision in an Act of the Federal Parliament that no action is to be brought." The importer would reply -

"What have I to do with that? I stand upon the Constitution, which is higher than an Act of Parliament. That is the point. The Constitution provides that until uniform customs duties are imposed, and are made law by Act of Parliament, the State duties are to prevail, and under the laws of the State I am entitled to import that kerosene free." I think that there is a great deal of force in what was put by the honorable and learned member for Indi. It is not a matter of procedure which we can control. It is for some one else to control it, and the Constitution is the controlling power. I say that no person who is under an obligation as a debtor, or in any other capacity, can dictate the conditions under which he is to be sued.

Mr A McLEAN

- Could the local courts consider that question 1

Mr. HIGGINS.- I thank the honorable member for the interjection. I have gone into that matter, and I think that the local courts could. I was hoping that we could get out of the difficulty by saying that there was no harm done. I have alluded to the local courts, and I may say that I do not think the High Court will be constituted until the end of the session, even if it is then constituted. I have my own views as to the expediency of postponing its creation for at least a year or two. Looking at the probabilities the customs duties will be made law before the High Court is constituted, but then comes the question, and a very pertinent question it is, which the honorable member for Gippsland asked, could the local court look into this thing 1 I think it could.

Mr Isaacs

- It must under the Constitution.

Mr HIGGINS

- Without vesting any power in the local courts, the local courts are as much bound by this law of His Majesty and the House of Lords and the House of Commons as we are, and they are bound to give effect to it.

Mr A McLEAN

- Then there is no necessity to vest them with federal jurisdiction?

Mr HIGGINS

- There is in other matters, but certainly not in matters which come to them by the Constitution. That is the point. The importer, in the case I have mentioned, would simply bring an action against . the Government or against their officer for what is called " money had and received." He would apply for a refund of the 3d. per gallon. It would be urged by him that, under the Constitution, which binds this court and all of us here in Australia, he was entitled to import the kerosene without payment of any duty, and he would therefore say - " Give me back that 3d. per gallon." "But," the Minister would reply, "look at this provision passed by the Federal Parliament." " Oh, yes," the importer would answer; "but the Constitution is to protect me against the Federal Parliament, and the Federal Parliament has no power unless it is expressly given." It must be subordinated to the Constitution, and if the Constitution says kerosene shall be free, it must remain free until uniform duties are imposed. Therefore, so far as I am concerned, I feel convinced, against my will too, that this is not an effective regulation. Assuming now that the Ministry go on with it - and they appear likely to go on with it, feeling confident of the result - what will be the consequences? I should like to know in this aspect whether they mean to collect upon the basis of the higher duty, whichever it is - either State or Federal - or to collect simply on the Federal Tariff? I think they are right in their discretion in not letting us know what they intend to do. Assuming, however, that they collect the highest duty, they will go on collecting the Inter-State duties if they go upon that basis. There is to be no free-trade between the States until the uniform Tariff has been actually imposed by law. They will go on collecting, and each month they will be rendering accounts to the different States of the money coming to them. Bookkeeping will continue for several years. If they go on collecting the highest duties and if they are wrong in their view of the effect of this clause, the result will be that they will have to refund all the duties which were not State duties, that were collected up to time of the uniform Tariff being made law.

Mr Crouch

- The point would have to be decided by a series of actions.

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Mr HIGGINS

- No, I suppose there would be one test action, by which the whole matter would be settled. It would be a very serious thing. The Commonwealth Government would have to refund a lot of duty which they thought they had got in their hands to keep. For instance, in the case of the kerosene to which I referred, they would have to refund all the duty on kerosene which had been imported up to the time of the Tariff law being passed: There would this be a, serious disturbance of the finances of the States, if: there were, as I apprehend there must be, a. number of duties upon articles which are at present untaxed. Not only would there be a disturbance of the finances of the States, but a disturbance of business and of merchants' arrangements. Honorable members on. the other side think that we are very unreasonable people over here, so far as those who live by importing, as distinguished from those who live by manufacturing, are concerned, but I can only assure them that we have no desire to-do anything which would embarrass or hamper merchants and business men more than is absolutely necessary for the purpose of doing justice and benefit to the State. I should regret if business were disturbed and thrown out of gear, and if men were put- out of their honest calculations as to the state of the market, by a mistake made in this matter. Now I come to the alternative suggestion. There is ; a proposal that there should be a short Bill brought down, simply enacting that as soon as the Minister lays upon the table of the House his Tariff' proposals - not stating what those Tariff proposals are, but simply, asking the House to take them on trust - they should become law. I admit that if there was any. attempt to gain an advantage upon the fiscal issue by such a device, I would not. support it. I do not think it would be . fair. No matter what my view is in regard to the fiscal issue, I do not think it would be right to take such an advantage. I have been casting about to see whether either side could get a substantial advantage by the proposal to have a Bill passed through, taking the Tariff on credit until the end of the session, but I cannot see that there is any substantial advantage to be gained by either side. It certainly would be a discredit, to a certain extent perhaps, for the Government to fail to succeed to get over this difficulty.

Mr A McLEAN

- Would it not mean either the making of a Tariff, or the losing, of a Tariff?

Mr HIGGINS

- I understand that the honorable member refers, to the view which my honorable and learned friend, the member for Corinella, has put forward. Theoretically, I think, that view, is right. It is just possible that we

might sit over three years bargaining between the two Houses, and that there would not then be a Tariff passed: Practically, however, there is no likelihood of such a thing. The country would never stand it. The country at present is on tenterhooks with regard to the Tariff. It is going through a cruel ordeal of suspense in relation to the matter.

Mr. G. B. Edwards. - There is a two years' limit under the Constitution.

Mr HIGGINS

- There is; In the meantime there is no doubt, and we must face it, that the other place can put pressure on us, and also we can put pressure on the other place, with regard to coming to a compromise on the Tariff;

Mr McCay

- The point I endeavoured to make clear was that the proposal would place the Government Tariff at a disadvantage, because public opinion would force us to agree, and we would come to an agreement, disadvantageous perhaps, so far as the Government is concerned.

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Mr HIGGINS

- I admit that there are great advantages in the position, of the other place - with regard to many discussions. I take no responsibility for them because from time to time, I think I was perhaps a great nuisance to the advocates of the Commonwealth Bill, in pointing out that the relations and the character of the two Houses were such as to render these conflicts, and the pressure of the other place, very dangerous upon such questions as that of the Tariff. I admit they can bring tremendous pressure to bear upon us, but at the same time we can bring tremendous pressure to bear on them, provided we justify ourselves in the public opinion, and show that we are not unreasonable. They, on their side, must also show that they are not unreasonable. We must remember that on every act we take we have something behind us higher than ourselves, which is reflected in the newspapers, and can be expressed in meetings - I know that we all feel conscious of it in every speech we make in this House, and in every step we take - that is public opinion. I have, therefore, no fear that these two Houses coming together with the full hopes of Australia upon them, will sit at logger-heads, at a dead-lock, for three whole years, or anything like it, before they come to some conclusion. But the difficulty of the other place being able to bring pressure to bear upon us will apply by virtue of the Constitution no matter what we do. The difficulty has to be faced and we must try to make the best of the circumstances - I was going to say of a bad job, but I would not be so unkind. If I understand Ministers aright they have met the House very fairly and courageously; they have not in the resist way shirked their responsibility of bringing down a definite proposal to the House. I think the House is indebted to them for the effort they have made to solve this very knotty problem. The only question is as to which is the best and safest way. My feeling is that there is a particularly crucial moment pointed out in the Constitution up to which certain things are to occur, and after which certain things are to occur. The crucial moment is the imposing of the uniform Tariff, and we should keep it so clear and distinct that there can be no mistake about it. That crucial moment is to decide the bookkeeping between the States. Five years from that time certain things are to occur, and up to that time certain other things are to occur. It is our duty to keep that as distinct as possible, and I do not see any way so effectual to achieve even that end, if the Opposition will allow it, as to pass a law such as has been suggested, that as soon as the Tariff is laid upon the table, it shall be in force as a uniform Tariff, with free-trade between the States from that moment until the end of the session.

Mr Isaacs

- The honorable and learned member will see that under section 92 of the Constitution, for two years after the imposition of the uniform duties, goods imported before their imposition will be liable to any excess of duty when passing into another State. That would be altogether prevented by making the Act retrospective.

Mr HIGGINS

- Yes. That has not occurred to me. I see that under the second paragraph of section 92 of the Constitution it is provided -

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any colony, which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable

to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods- on their importation. ,

Mr Isaacs

- Suppose the Tariff were passed two years before the date on which it was made retrospective, there would then be no two years' period possible under that section at all.

Mr HIGGINS

- I take it there is a feeling in the committee that we are not going to take any party advantage of this. It is not that the Ministry in the least are suppliants to the committee. They have put their views before us. The honorable member for Dalley will, no doubt, recollect the sentiments and the aspirations of the-, great man whose name is given his district, and I think he would be the last person to take an advantage of this sort which is not a difficulty created by the Government, but a difficulty created by the Constitution under which we are determined to work as well as we can. The honorable member for Dalley said to-night that he had himself no suggestion to offer, but he would oppose both of the proposals brought down by the Government. May I say with all respect to the honorable member, that that is not the attitude in which we ought to face this particular problem. Ever, if the Government is not entitled to the help of the Opposition, the country is entitled to it ; and if there is a proposal which appears, reasonable to solve the difficulty we may fairly ask the Opposition to help us out of it. If we could resolve that a Bill should be passed making the Tariff as laid upon the table law until the end of the session - if we could agree to a self-denying ordinance that we would not discuss it, but would let it pass through both Houses in one evening , allowing the standing orders to be suspended for the purpose, it would be a tremendous gain to this country, and it would be no loss to either side in this Tariff debate which is impending.

Mr Isaacs

- Treat it like a resolution, of the House to protect the revenue.

Mr HIGGINS

- Exactly, treat it in the same spirit ; but of course the Constitution compels us to go further than a resolution of one House; we must get the concurrence of both Houses, as to an Act of Parliament. Then I think we should solve the difficulty. As I have watched him working this Bill through, I do not think the Minister is the man to absolutely and obstinately adhere to a position which he has taken up distinctly, if he sees a better position. At the same time I should like from some responsible leader of the Opposition a statement that he will use the utmost of his influence with his followers to get the resolution carried.

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Mr JOSEPH COOK

- Does not the honorable and learned member think it would be a fair thing to adjourn this matter until the leader of the Opposition can be here?

Mr Kingston

- Surely some of his lieutenants can speak for him.

Mr HIGGINS

- I would not like to say anything about the proposal to adjourn the matter. This Bill has been discussed for some weeks. This is only a clause in the Bill, and it was well known that it would be on this week. We would like very much to have the assistance of the leader of Opposition. His acuteness would help us, and I feel sure it would assist the Ministry and the country very much if we could only be assured that he would use his influence to prevent any parliamentary advantage being taken of the matter. If that were understood, we could go through this without much difficulty. I may state that if the Government is determined to try this experiment, rather than have any party advantage taken of it, I will vote with them. But at the same time I can see clearly that there is a national solution which, can only be reached by a national union.

Mr V L SOLOMON

- I regret that the leader of the Opposition is not here, because I feel sure that he would be able to assist the committee. At the same time I think that the thanks of the committee are due to the honorable and learned members for Indi and Northern Melbourne for the very clear exposition of the position we are in, not from any fault of the Government, not from any fault of our own, but from a slip in the drafting of the Constitution which was not foreseen. The honorable and learned member for Northern Melbourne suggests that we should follow out the plan indicated by the honorable and learned member for Indi - that

is, that we should pass a short enabling Bill providing that the moment the Tariff is introduced by the Minister it shall be collectable. This- position would be all very well if this was the only House that had to deal with it, but strange to say in our Constitution we have provided that not only the Senate shall have the right to veto any proposal regarding taxation, but that it shall also have the right to suggest amendments, which is a very large power indeed, and a power not possessed by many of the Upper Chambers in the States. If the two Houses were to pass such a Bill it might place the 'free-traders on this side of the House and the free-traders in the Senate at a considerable disadvantage. Having once passed that Bill under which the Tariff is to be imposed, blindfold, without any knowledge of what it is to be, we can fight the matter out in this House, and there is probably a considerable majority on the other side who will be in favour of the Government's proposals. The position will then be this : the Tariffs which have been levied in the States and which can be altered up till the time of the imposition of uniform duties will have been absolutely swept away. The moment the Tariff of the Government is laid on the table the duties are imposed. There is no getting away from that position, and the Government then will be able to say to the members of the Senate - " You have swept away the State Tariffs, you have assisted us to bring down this Tariff, and even though we may differ with your suggestions, even though we may put our foot down firmly and say, 'No, we shall not have your suggestions as to alterations in this Tariff,' we throw the onus on you of casting this Bill on one side, and leaving the States in a position of the utmost financial difficulty, because they are unable to make any Tariff of their own." I am sure that the honorable and learned member for Northern Melbourne does not want any particular section, either in this House or in the Senate, to be placed in such an absolutely disadvantageous position.

Mr Higgins

- The honorable member takes the opposite view to the honorable member for Corinella, who thinks the disadvantage would be on our side.

Mr V L SOLOMON

- I generally do.

Mr Higgins

- The honorable member thinks the disadvantage would be on his side.

Mr V L SOLOMON

- I would like to have the honorable and learned member's candid opinion as to whether the position I have just put is not absolutely the true one.

Mr Higgins

- No. I think it has to be qualified.

Mr V L SOLOMON

- Would not the ' Government under those circumstances, to use a common term, have the members of this side of this House and the members of the Senate under the whip?

Mr Higgins

- I do not think so.

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Mr V L SOLOMON

- Would not the Government be able then to say that we have fought out various items in that Tariff in this House, failing, because perhaps we had not sufficient numbers on this side to make alterations we are pledged to? And when from another House to which the Constitution has deliberately given power not to amend, but to suggest amendments, suggestions come here, well we know the firmness- at least, his friends call it firmness - of the Minister for Trade and Customs ; we know the firmness of the Government with a good protectionist majority behind them.

Mr Higgins

- But the other place can make new suggestions.

Mr V L SOLOMON

- The Government will be in a position to treat with next door to contempt those suggestions.

Mr Higgins

- The Senate may suggest at any stage.

Mr V L SOLOMON

- I am rather in advance of what I was going to say. I do not imagine for one second that even if the Government could get a majority here to pass such a Bill as that suggested by the honorable and learned member for Indi, the Senate would so far sacrifice its position and its rights under the Constitution as to pass it. But supposing that it did, the whole position is one which is in favour of the Government and their protectionist supporters having the whip hand of the free traders or revenue tariffists in both Houses. They would be able to say to the Senate - " You have placed us in a position in which all the States have lost their right to obtain any revenue from Customs. Now you throw this Bill out - you veto it, if you dare! - and throw the whole of the States and their finances into the most difficult position which could be imagined." I am sure that honorable members will see that to pass such a measure would be to give the Government absolutely a whip hand, and I for one shall strenuously oppose it.

Mr Higgins

- There is one flaw in the argument, because it would be possible for the Senate again to make suggestions, and we could send up the Bill again.

Mr V L SOLOMON

- Precisely, and they could keep on doing that for a considerable period; and the Government, with the firmness of which we have had an excellent example from the Minister in charge of this Bill, could continue to send back the suggestions. I am sure that the members of the Opposition are one and all anxious not to make this difficulty which the Government are in, and which we are all in, a party matter. If a solution of a reasonable sort can be found - a solution which will not prejudice the position of those who think with us either here or in the Senate - we are equally anxious to assist the Government.

Mr Isaacs

- Can the honorable member make a suggestion ?

Mr V L SOLOMON

- I regret to say that I cannot. I regret very much to say that it appears to me, as it appears to many honorable members, that owing to the peculiar wording of the Constitution, for which I with others was responsible, we have got into a kind of cul de sac, and I for one cannot see a way out of it.

Mr Higgins

- Make the best of it.

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Mr V L SOLOMON

- We are willing enough to make the best of it, but not to make the best of it in such a way as to give an undue power to the Government and their supporters in this House and in the Senate-

Mr. PIESSE (Tasmania). - I think we-, are practically in regard to this question where we were some days ago when it was . discussed and a suggestion made, which has . been made during this debate, that the only safe way out of the difficulty was to endeavour to pass a Bill which would validate the Tariff when it was laid on the table,, and that the Bill should have currency for the session only. The honorable member for Corinella has made the best admission in favour of such a course, while he has also raised some considerable objections to it He has told us that it is the best proposal, and that it is the only proposal made which will satisfy the people of Australia. If that be the case it seems to me that, despite all the difficulties, it is the proposal we ought to try. If we do not try it, and we find ourselves in great difficulty by-and-by, we shall have to reproach ourselves for not having taken the course which was pronounced to be the best, and the only course which would satisfy the people of Australia. I do not see how the Ministry, the Government, and Parliament will be free from very serious difficulties in the way they are proposing to proceed. We all sympathize with the Government. They will, from the tone of the debate, see that no one desires to do anything else than assist them in the difficult circumstances in which we find ourselves placed. But I do not know what would be the effect of passing the Tariff in the way the Minister proposes. He proposes, I understand, that the Tariff Bill shall be, as Tariff Bills usually are, ante-dated to the date at which the resolution was brought in,; and that all duties which at the time of passing the Tariff are altered shall be subjected to be accounted for to . those who paid them - that there shall be a refund, if there has been paid more than is ultimately demanded in the Tariff Bill.

Mr Kingston

- The usual course.

Mr PIESSE

- The usual course ; but I want to know, what is to be the course in regard to duties which are sure to fall out of the Tariff directly Inter-State free-trade comes into force? We might, perhaps) look with some degree of equanimity on a proposal which had reference only to new duties, for, although there might, be the- great objection that money would be taken from the people of the country which would be returned to the importers, and not to the real taxpayers, that would be, perhaps, comparatively only a small sum. But, if this Tariff be dated back, will the collection of the Inter-State duties be valid for the time, or will these also be subjected to be accounted for in the light of- the Tariff which, is ultimately passed ? If that be : so, we shall have- a very much larger sum in jeopardy, and we- will have to be very careful indeed. The honorable and learned member for Northern Melbourne has clearly pointed out to us that if there is to be a continuance of the State Tariffs until the uniform duties are imposed, many serious questions will arise- in that connexion. Take for instance the Tariff- for spirits, which varies from 12s. to 15s. or 16s.

Mr Kingston

- Yes, it is 16s. in Western Australia.

Mr PIESSE

- Then the excise varies from 8s. to 10s. or 12s. The Tariff on spirits might not be 14s. nor 12s., but it might be 14s.; and if it were 14s. would the Minister collect in Western Australia 16s. on spirits, and would he collect 14s. wherever the duty was less than 14s.? If he did that he would, in effect, collect a differential Tariff. The law might not state it to be a differential Tariff, but in effect it would be so. The excise duty would possibly be less than the customs- duty. Would spirits which had paid the excise in Victoria, where brandy is manufactured, be free to go into a State without further duty, or what would be the position ? These are difficulties,, and there are many others I could state if I chose to refer to them, which face us in the way in which the Government desire to go. But all these difficulties could be got over if the Government were to accept the proposal already made to validate the Tariff. If this proposal be accepted, we get the further advantage of the settlement, for a time at any rate, of the question, and every one concerned, both taxpayers and traders, will know where they are, and that there will be no alteration until there is a final settlement of the Tariff. We shall also have what we desire; namely, a definite date on which Inter-State free-trade will commence. It seems to me that although there are grave defects whichever way we look, we shall not have done our duty unless we try to get this solution accepted, and put the responsibility on those who see it to be their duty to oppose it.

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Mr JOSEPH COOK

- I propose to say one or two words on this point; and I recognise the difficulty just as other honorable- members- do. I may say at once that I do- not agree with the proposal of the Minister as last submitted. It does not seem' to me that that proposal, will- have any effect, even if it be passed. That is to say, -the Constitution, as has been clearly pointed out by so many honorable and learned members to-night,, will override any Bill we may pass in this particular direction. As I view this proposal of the Minister, it simply means that we ask men who- may be affected by the Tariff to forego any legal rights they may have, while the Minister during the session tries- to put it out of their power to take any action whatever. The- Minister has- told us that what he proposes is to bring in a clause validating all that has been done for the period of the session, so taking away any right of action, whatever it may be. I take it that the right of action contemplated by the Minister is the right of action as to the validity or otherwise of the collection of the duties. There can hardly be any other serious aspect of the Tariff question that could come within the purview of the law. All other considerations are minor, and the question is : is a man bound to pay the duties or is he not.? That, is more likely than* any mother- to be the -question submitted to the law courts'. The Minister wants to take away from the citizens of the Commonwealth the right to- appeal to the law courts.. In other words,, he seeks to take away a constitutional right undoubtedly possessed by every trader in the Commonwealth- under the Constitution.

As has been pointed out by various honorable members, we cannot do any such thing. That seems to me so clearly a common sense reading of this matter that I do not see how the Minister can take any other view. However, the Government consider that they can override the Constitution, which is what is contemplated by this new clause, and it is for us to say whether we shall follow them in the course they propose, and if not what other course we shall adopt. I admit that the question is one full of difficulty, and it seems to be full of difficulty because of something which, the Conventions have left undone. I think

there is no doubt that if this difficulty had been put clearly before the different Conventions they would have got over it. However, they have not done so. They have created the difficulty and left it for us to deal with. What is the course that we ought to take under the circumstances ? Various appeals have been made to the patriotism of the Opposition. As the Opposition are appealed to to treat the Government fairly in this matter, and as they are asked not to take any party advantage of it, would it not be fair to give the Opposition as a body time to consider it and to arrive at a ' definite conclusion concerning it 1 The leader of the Opposition is absent to-night. He was unavoidably detained. We expect him here to-morrow. It does seem, therefore, that it would be a fair thing under the circumstances to adjourn this debate until to-morrow, so that the leader of the Opposition, and possibly some other legal gentlemen, may be present to assist in solving what is undoubtedly a very serious question.

Mr Kingston

- What is the honorable member's idea about it ?

Mr JOSEPH COOK

- I will tell the right honorable gentleman. I dare say that my opinion about a legal matter is not of much value.

Mr Kingston

- I mean as to the Opposition's attitude ?

Mr JOSEPH COOK

- I am going to state my attitude. Before doing so I should like to refer to what the Ministry would gain by the proposal which has been suggested by the Government, and by honorable members on the other side of the House who have criticised their actions. Undoubtedly it seems to me the Ministry would gain from the fiscal point of view. The imposition of this law would certainly result in the destruction of our Inter-State Tariffs. Inter-State freetrade would come immediately into operation, and with the State Tariffs destroyed in what position should we be ? Honorable members who suggest that we ought not to take into contemplation the possibility of any difficulty arising in connexion with this Tariff, are asking us to bury our heads in the sand. That is undoubtedly a contingency to be reckoned with, particularly in view of the fiscal opinion of another place. It is of no use shutting our eyes to the fact that there may be some difficulty in getting this matter settled by both Houses. Undoubtedly the Ministry therefore would have a point of advantage in their favour if we absolutely destroyed our State Tariffs before we came to finally consider the Commonwealth Tariff. Under all the circumstances, therefore; what is the best course to take is, I admit, a matter of some difficulty. I cannot help feeling that since this proposal of the Ministry would be worth nothing in the law courts - as has been testified to by every legal member of the House - who has spoken outside of the Ministry - the proper thing to do is to stick to the old-time custom and to introduce the Tariff on a resolution of Parliament.

Mr Mahon

- That would be illegal, too.

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Mr JOSEPH COOK

- That remains to be seen. It has not been seen to be illegal in connexion with the State Tariffs. The matter has been taken to the law courts in connexion with the establishment of the Tariffs of the various States, and so far no difficulty has been interposed which has prevented the Government from carrying out its course of action in that regard. I believe that if we follow the old practice which has governed the action of the State Governments for generations past, and under which all our Tariffs have been imposed up to date, we shall be following a course which is more likely to receive the approbation of the Supreme Court than is a proposal of the kind contemplated in this clause. If there were a doubt in the matter the Judges would inquire, what has been the custom in regard to these things, and what was the intention of Parliament. If they found that the intention of Parliament was to impose a Tariff and to abolish the Inter-State duties at the same moment, it seems to me they would rule that the imposition of duties by resolution was legal, since there is no other course specifically mentioned in the Constitution. That is my view of the case, and I think that the Government ought to take upon themselves the responsibility of their own action in this matter, and impose the Tariff the moment the resolution has been submitted to this House. The question of passing a Bill through Parliament, such as has been suggested, as a way out of the difficulty, does not seem to be the proper thing to do. If any flaw occurred in connexion with the Tariff,

and the case were taken to the Supreme Court, and the Supreme Court came to consider the fact that the Government had legalized by an Act of Parliament a Tariff which they had no intention of adopting as a permanent Tariff, I think that the case for the Ministry might be seriously prejudiced. If we legalized a Tariff which we believed solemnly was not going to be the permanent Tariff, that would prejudice any case which this ' Parliament might have in the law courts of the country. Th safest course would be to follow the lines of experience, and in the absence of any specific point in the Constitution controlling this matter, adopt the old well-worn custom of imposing these duties by resolution of 'the two Houses.

Mr Isaacs

- Not a resolution of the two Houses.

Mr JOSEPH COOK

- By the resolution of Parliament.

Mr V L SOLOMON

- By resolution of one House only

Mr JOSEPH COOK

- Yes; by resolution of one House only. That seems to be a far better course to adopt than that of going through the farce of enacting by Bill a Tariff which we do not mean to be permanent, because that would be the position in which we should be placed if we adopted the suggestion of the honorable and learned member for Indi. We should be passing a law saying, "This is the Tariff of the Commonwealth Parliament," when we knew at the same time that it was not intended to be the Tariff of the Commonwealth Parliament, but to have effect only until we could frame a Tariff, conformable to the opinion of the majority of the two Houses of Parliament. I therefore think that the more straightforward course, as well as the safest course, will be to impose the duties by resolution of the House.

Mr. WINTER

COOKE (Wannon).It seems ' to me that the proposal of the Government is much more likely to bring about a uniform Tariff than the suggestion put forward by the honorable and learned member for Indi. What I. mean is, that if the committee adopts the proposal of the honorable and learned member for Indi, there will undoubtedly be a great discussion upon it in another place, and in all probability very many weeks will elapse before a conclusion is arrived at. If we accept the proposal of the Government, we shall be no worse off, at all events, than if we adopt the course suggested by the honorable member for Parramatta. Following the legal view taken by the honorable and learned member for Indi, the honorable member for Parramatta says that the proposal of the Government is contrary to the Constitution; but even if that be so, we shall be in no worse position than if we adopted the immemorial practice of Great Britain and of the" various States in collecting the duties.

Mr JOSEPH COOK

- Only that the Ministerial responsibility would be preserved.

Mr WINTER COOKE

- The proposal of the Government is simply that we should give legal sanction to the collection of the duties, and that the Government officers should be protected from having any action brought against them by those who import goods. Ontheotherhand,if the proposal of the honorable and learned member for Indi is adopted, we shall probably bring about the situation indicated by the honorable member for South Australia, Mr. Solomon, and honorable members who believe in free-trade will be placed in a very difficult position, because we shall have swept away the Tariffs in the various States, and we shall be in fear of losing the Tariff altogether.

Mr Isaacs

- You prefer the advantage of a party to the integrity of the Constitution.

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Mr WINTER COOKE

- I am not looking to the advantage of the party at all - it is not a question of what is good for the party so much as what is good for the State. We believe that free-trade is the best thing for the State, whilst members on the other side think similarly regarding protection. I am not here as a party man, but as a supporter of a certain principle, and if I were afraid that that principle would be lost by the adoption of any particular course of action, I would not advocate that course. As a matter of fact I am supporting the Government, because I think that by adopting their proposal we are more likely to secure in an

expeditious way the adoption of a uniform Tariff. I see many difficulties in the matter, and a question occurs to my mind in regard to the Stock Tax. If I understood the Minister for Trade and Customs correctly, the Government are going to collect the higher duties, and I assume also that they will collect duties on goods that have been hitherto free, whilst leaving other duties alone. If that is so, I suppose we shall find duties levied on New South Wales sheep and cattle coming over the border, and what I want to know is whether that duty will be refunded when the Tariff is subsequently passed.

An Honorable Member. - How could it be, after it is legalized ?

Mr WINTER COOKE

- It would not be legalized under the Government proposal. It is not proposed to legalize it. The proposal is to prevent actions being brought. I want to know what is going to be the effect of the introduction of the new duties, so far as the Stock Tax is concerned.

Mr Kingston

- The State Tariff imposing the Stock Tax will be left in full operation.

Mr WINTER COOKE

- Yes; the Stock Tax will be still in full operation, and it seems a happy way of getting a great deal more taxation out of the public-

Mr Kingston

- We do not want that. Our proposal is only by way of security, so far as the final adoption of the Tariff is concerned.

Mr WINTER COOKE

- Then the duty will be refunded 1

Mr Kingston

- How could we refund the duty ?

Mr WINTER COOKE

- My chief objection to the proposal of the honorable and learned member for Indi is that it will probably cause delay. I feel also that if we pass the Tariff and make it law for one session, it will most likely remain in force for many years to come ; and if it should prove to be a Tariff that I personally could not approve of, I certainly would not like to feel that I had been a party to bringing it into operation.

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Sir EDWARD BRADDON

- There are so many differences of opinion - not party differences, but differences which exist amongst members on this side of the House and amongst those on the other side - that I think we might very well consider, having in view the great importance of the question, the desirability of carrying out the suggestion already made that we should postpone this matter, at any rate until to-morrow. We shall then have the assistance of the right honorable the leader of the Opposition, who will, I have no doubt, be able to very materially assist us in arriving at a conclusion that will be satisfactory to all. I believe that up to the present the mind of the right honorable member has been shaped in regard to this question very much as mine has - that is to say, that he believes with me that the best "method is to proceed along the old time-worn tracks, and adopt the new Tariff by a resolution of this House - to adopt it as it always has been, not only in the British House of Commons, but, I believe, in every State of the Commonwealth. According to the usual practice, a resolution is brought down in the evening after the Custom-house has closed, is accepted by the House pretty well as a matter of course and as a matter of actual necessity, and the duties are collected from the next day, the responsibility regarding the duties resting, as- is right and proper, with the Minister bringing the resolution down. That, I think, is a view which will find acceptance until it is shown that there are some insuperable difficulties which may bid us pause and think of some other course. Surely, in an important question of this sort, a delay of some 24 hours cannot very gravely affect the situation. The course that the Minister proposes seems to be one which effects nothing, except to deprive people, whether traders or . otherwise, of the right of redress. Well, I think that is not only an impracticable, but a very undesirable way of reaching what we desire. To deny the right of justice to people who are injured by the imposition of duties of customs seems to me to be a barbarous way of legislating. The honorable and learned member for Indi has proposed a solution of the difficulty which he thinks will be in keeping with the Constitution, and will effect the purpose. We should surely have time to think out that proposal, and 24 hours is not too much to ask in order that consideration may be given to it,

where so much depends upon it, not merely of a party character - because that we may lay aside entirely at present - but so much that concerns the welfare of the whole people of the Commonwealth.

Mr KINGSTON

- I do not think there is any doubt as to the attitude of the Government in connexion with the matter of the uniform Tariff and Inter-State freetrade. The Prime Minister has made that sufficiently plain. Our desire is, at the earliest possible moment, both to secure the adoption of a uniform Tariff and Inter -State free-trade. Whatever difficulties there may be about the matter we are prepared to grapple with them, and hope to do so successfully with the assistance of the committee. As regards the clause itself, honorable members will, I am sure, recognise, when they look at it, that we want a provision of this sort. It is not a clause simply applying to the Tariff which we shall shortly have under consideration. It will remain for all time, or until its repeal. It is a provision such as is made in connexion with any proposal for a Tariff, or a Tariff alteration. It need not necessarily be the Tariff which we have in contemplation, to which the clause will apply. Honorable members will, I am sure, recognise that whatever points they raise as regards the uniform Tariff that is shortly to come into operation, as to whether this clause can apply to it, the clause is unobjectionable as" applying to Tariffs and Tariff alterations, to which it will be perfectly competent to apply it. The question of whether or not it applies to the particular Tariff to which we refer is matter for argument. We think that it does and can be made to apply to that Tariff. I venture to draw a distinction between two things - one; the imposition of the Tariff, and the other the date from which the collection of the duties may be sanctioned by Parliament. In regard to the defects in the Constitution, I hardly think that honorable members will too lightly incline to the opinion - though I admit that the matter has been very weightily argued on the other side - that in framing this Constitution we have taken from the Federal Parliament the right it ought to possess, and which every Parliament possesses, of, pending the final adoption of the Tariff - by the Legislature, protecting the revenue against the modes by which the Treasury chest may be defrauded. To those modes I have already called attention. Are we prepared to assent to the proposition - that the Federal Legislature has no power to sanction the collection of one penny, and no power to provide for the protection of the revenue, in connexion with the uniform Tariff mentioned until the Governor-General's signature is affixed to the Act which imposes the taxation ? I say, nothing of the sort. I venture to think that when the Constitution gave power to this Parliament in regard to taxation, such as the imposition of duties of customs, and when that Constitution armed the hands of the Federal Government by conferring upon them, all incidental powers in that connexion, it -would be strange indeed if there was denied to them the power which is absolutely necessary to prevent a great proportion of the proceeds of that taxation from going into private pockets rather than into the State chest.

Sir Edward Braddon

- By what machinery does the right honorable and learned gentleman propose to collect the customs duties ? On a resolution ?

Mr KINGSTON

- It is not needed there. I do not know if the practice is different in the different States, but I do know that in the clause as prepared we have avoided several pitfalls and causes of difficulty ; amongst others the troubled question of whether there should be a resolution, and, if so, whether, it should be passed in one House or two. The practice in one State I know has been independently of any resolution on the introduction of the Tariff to collect the increased duties from the moment, and to ratify the ' collection by subsequent legislative act.

Sir Edward Braddon

- As an act of State?

Mr KINGSTON

- Well, we do it, and, properly do it. To hold that the Federal Government is without the power of doing it seems to me to imply a reflection on the care and good sense which were displayed in the preparation of our Constitution that is not warranted by a full consideration of the facts. Sir, it is not as if we had not considered the matter 'from a variety of points of view. The proposition which -is now put forward by some honorable members regards the introduction of a Bill which, it is said, would be readily accepted by everybody.

Mr Piesse

- We do not say that.

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Mr KINGSTON

- Which would either be readily accepted by every one, or might, after a hard fight, be passed for the session. The idea is by no means new. I forget who was the author and originator of the proposal.

Mr Piesse

- It was put forward three months ago nearly.

Mr KINGSTON

- I saw it referred to ; but what is the prospect of getting such a Bill carried through ?

Mr Isaacs

- None, if the Government do not try.

Mr KINGSTON

- Well, there are few things which the Government are afraid to try if they believe they are justified in trying them and have a fair prospect of success, and if it is not simply a matter of wasting time and delaying the object most of us have in view. It may be that .in addition to a provision of this sort, we might at some time or other, if we thought it desirable, proceed in the direction suggested. But appeals have been made from here and there to there and elsewhere.

Sir Edward Braddon

- Would the right honorable and learned gentleman kindly translate that phrase?

Mr. KINGSTON. - It is nearly all mono syllables, and needs no translation. These appeals have met with what response ? What is the response of the honorable member for South Australia, Mr. V. L. Solomon? Practically he says, "Don't you wish you may get it ! " The honorable member for Parramatta, I think, referred to the proposal as a farce.

Mr JOSEPH COOK

- No.

Mr KINGSTON

- What encouragement do we receive ? How strongly has our previously expressed view as to the inefficacy of the method suggested been affirmed by expressions such as have been rather painful to listen to from the other side, of the Chamber.

Mr Isaacs

- The honorable and learned gentleman does not gauge the proposals of the Government by the cordiality of their reception by honorable members opposite, surely ?

Mr KINGSTON

- No, we do not ; and we are storing up the observations and suggestions which have emanated from friends for the fullest and most mature consideration. But at present this proposal is what I want. It carries us on some way in the path of legalizing the old constitutional practice - the constitutional practice of which honorable members on the Opposition side speak with so much respect. They say to us - " Follow it, -follow it!" "It is lawful," they say - while at the same time they protest against this clause. What does this clause do ? It simply declares that whilst we are following this constitutional practice, and the House of Representatives is considering as to whether or not it shall legalize our act, the courts shall not interfere. If there is one thing more than another which we ought -not to forget it is, with every respect for all courts, that this is the j High Court of Parliament.

Sir John Quick

- But it is not above the High Court of Australia.

Mr KINGSTON

- I am not asking that it should be. I think, however, that pending the consideration and final decision of a matter of this description by the High Court of Parliament, adherence to the usual constitutional practice which prevents the interference of courts for a short time until a final decision has been come to, may well be followed without going outside the four corners of this Act as we propose in the Bill. All we ask is that and nothing more. In view of the largeness of the issues which will shortly be involved in connexion with the Tariff, we ask in the interests of the Australian taxpayers that what is a judicial practice shall receive legislative sanction, and that we shall not be exposed to the risks to which we should be open in the absence of a provision such as this. I trust that the committee will agree to this clause.

Mr. ISAACS

(Indi).- I have put my observations before the Ministry as a friend, and I have not heard anything up to the present to alter my opinion. I recognise, however, that the Ministry, having heard all that is to be said, are not only willing but anxious to take the responsibility of this particular course. I think it may lead to a lot of confusion; but to reject it after the strong pronouncement of the Minister might lead to other confusion of a worse sort. I am willing to vote with the Ministry on this matter, throwing the whole responsibility upon them.

Mr Fisher

- Is there danger ?

Mr ISAACS

- I think it will lead to a great deal of danger, but I doubt even now whether it will ever become law. I think the Ministry might have adopted the clearer and wiser course-

Mr Kingston

- We do not forget the honorable and learned member's suggestions. We are grateful for them.

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Mr ISAACS

- There is no occasion for that; but I am sorry that the Ministry have not seen their way clear to adopt the other course. At the same time, the Ministry, notwithstanding the advice given to them, are not only willing but anxious to take this particular course, and therefore I am prepared to support them.

Question - That the clause be agreed to - put. The committee divided -

Ayes..... 30

Noes.....11

Majority..... 19

Question so resolved in the affirmative.

Amendment (by Mr. Kingston) proposed -

That the following new clause be inserted, to follow the last new clause : - " The High Court, of Australia or the Supreme Court of any State, on the application of any person who desires to commence any proceeding mentioned in the last section against an officer, may require the officer to give security to the satisfaction of the Court to abide the result of the proceedings, and in default of the giving of such security may sanction the immediate commencement of the proceedings."

Mr V L SOLOMON

- I fancy that this clause will require to be altered in view of the alteration that has been made in the previous one. There is no allusion in the clause just passed to " an officer."

Mr Kingston

- Yes, there is.

Sir EDWARD BRADDON

- The word " officer " having been left out of the new clause just passed, is not the use of the word in this clause a little bit hazy ?

Mr KINGSTON

- No; I think the clause as it stands is quite right. It speaks of "an officer." Actions may be against the State, or they may be against an officer. This proposed new clause provides that where a person desires to commence an action against an officer, the court may require that officer to give security, and, if he does not do so, the court may sanction the immediate commencement of proceedings. Where the action is against a State, no security is necessary.

Mr ISAACS

- I would point out to the Minister that, although the limitation to "officers" has been omitted from new clause 213a, that clause has been inserted in a division of the Bill headed " Powers of officers," and, as by the Acts Interpretation Act such a heading is part of the Bill, it would seem that those words would govern the whole of the clauses in the division, so that, unless some alteration is made, there is a danger of the clause still being limited to actions against officers.

Mr Kingston

- I shall look into the matter again.

Amendment agreed to.

Mr KINGSTON

- I move-

That the following new clause be inserted after clause 159 : - "If the Parliament of the State of Western Australia, in exercise of the power conferred by the Constitution, imposes duties of Customs on goods passing into that State, and not originally imported from beyond the limits of the Commonwealth, then, whilst such duties are so imposed, drawback may be allowed on any such goods as if exported."

This clause relates to drawbacks, which are allowed only on goods exported to foreign countries ; but, if Western Australia exercises the power, retained by her under the Constitution, of taxing goods imported from the other States, it would seem 'that as regards the exportation of those goods from those States she should be regarded as a foreign country. If Queensland sugar, or other sugar which had paid duty were sent to New Zealand, it could be exported to Western Australia under drawback ; but, unless this clause is inserted, if such sugar came into Victoria or some other State it could not be exported to Western Australia under drawback, because there would be no exportation in the sense of an exportation out of the Commonwealth. The clause has been drafted to meet that difficulty.

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Mr McCAY

- I confess that I do not understand the proposed clause. "Drawback may be allowed." . By whom - by the Commonwealth ?

Mr Kingston

- Yes.

Mr McCAY

- When the goods go into Western Australia, or when they come out of Western Australia?

Mr Kingston

- On export.

Mr Isaacs

- The clause does not say so.

Mr Kingston

- Yes, it does, It must be read as following upon clause 159.

Mr McCAY

- Clause 159 says-

Drawbacks of import duty may be allowed on exportation in respect of such goods to such amount and in such manner as may be prescribed.

That is to say that, under certain circumstances, where dutiable goods have been imported from beyond the Commonwealth, drawbacks may be allowed if they are afterwards exported to parts beyond the seas.

Mr Isaacs

- If the goods are consumed in Western Australia will drawback be allowed ?

Mr Kingston

- To the exporter.

Mr McCAY

- So far as I understand the clause, if it means what the Minister says, it comes to this : that the Western Australian Government may charge duties on goods imported into that State from other parts of the Commonwealth - a special privilege given to her under the Constitution, in order that her revenue may be kept up - and the person who sends them there, will get a drawback.

Mr Kingston

- He gets the Victorian drawback on exports.

Mr McCAY

- Exactly ; he gets the Victorian drawback on exports. In other words, the Commonwealth is going to reimburse the man who sends goods to Western Australia, -and allow Western Australia to impose special duties for her own benefit.

Mr Kingston

- No; it goes out of Commonwealth consumption practically.

Mr McCAY

- I do not think the drawback ought to be allowed under those circumstances ; if 'the goods are produced within the Commonwealth there is another duty paid upon them.

Sir Malcolm McEacharn

- If they are not imported how can we get duty on them ?

Mr McCAY

- The Minister says it may be the material out of which the goods are manufactured that is imported, and those manufactured goods may have an extra duty put upon them by Western Australia. The more I look at the clause the more I wonder what the result will really be.

Mr KINGSTON

- I. would like to have another try. Take this case : Sugar has come into Victoria from Queensland. If it is exported to New Zealand the exporter gets the drawback on it, because it goes into a country where there is a Tariff against it.

Mr McCay

- If it has paid what kind, of duty - import or excise, or both?

Mr KINGSTON

- The drawback is on import duty.

Mr McCay

- Queensland sugar will not pay an import duty: that is the very difficulty

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Mr KINGSTON

- Here is the case as plain as plain can be, and it may occur the very first day after the imposition of the Tariff. There is a Queensland sugar in Victoria duty paid, and we get drawback on that if we send it to New Zealand, because New Zealand, for the purposes of the Act, is a place beyond the seas and taxes it. That is the distinction between the Commonwealth and places beyond it. If Western Australia exercises the power given under the Constitution of putting a duty on that sugar, unless we have a provision of this sort what happens ? The Queensland sugar which has paid duty in Victoria would have to pay further duty in Western Australia, and would go there, so far as the Victorian importer is concerned, under double duty. The test is where it is exported to - whether it is a place where further duties are required. If it can only come into consumption in any part of Australia, after it leaves Victoria, by paying further customs duties, surely one payment of duties will be considered enough, and we do not want to insist upon the retention of the duty paid in the State in which it is not consumed, as well as the duty which will be payable in the State in which it may be consumed. If we do a thing of that sort the result will be that we will be drawing a great distinction to the detriment of the merchant circumscribed in the way I have suggested, and we will be giving an advantage to other people to put sugar into Western Australia more cheaply and on much more favorable terms, by the payment of one duty and not the payment of both. I take it that the object of the drawback is that when goods go out of the fiscal circle to which they have been admitted by payment of the import duty, that import duty shall be refunded when they are going somewhere else, where another import duty is to be collected.-

Mr. V.

L. SOLOMON (South Australia). - I am still a little fogged. The Minister has chosen to deal with the case of Queensland sugar. I cannot understand how Queensland sugar could be here under a Victorian Tariff after the imposition of the Federal Tariff, and could possibly pay any duty unless it was an excise duty. We do not know what the policy of the Government is in regard to that.

Mr Kingston

- Cannot the honorable member contemplate Queensland sugar being duty paid in some other State ?

Mr V L SOLOMON

- It may be, but I think it is hardly probable.

Mr Kingston

- It is very probable even as regards South Australia, because they load-up very much in distributing centres.

Mr V L SOLOMON

- In regard to other goods, the produce or manufacture of various States of the Commonwealth, introduced into Western Australia, is it not intended that this drawback shall be allowed on their re-exportation from Western Australia, and not on their exportation from other States to Western Australia ? Does it not strike the right honorable Minister that this clause may be read in another way altogether,

and that it means that where Western Australia, exercising her power under the Constitution, has imposed a tax against the products of the other States - horse feed, butter, cheese, and various other products - there shall be a drawback allowed in the case of the re-exportation of the goods from Western Australia ?

Sir Malcolm McEacharn

- No ; it says not originally imported from beyond the limits of the Commonwealth.

Mr V L SOLOMON

- I am pointing out that this clause may be intended to give an importer in Western Australia, who has paid duty -upon Inter-State goods, the produce or -manufacture of the Other States, an opportunity -upon the re exportation of those goods to obtain a drawback.

Mr McCay

- We treat Western Australia as a foreign country for this purpose.

Mr V L SOLOMON

- Precisely so ; and it is treated so in the Constitution, under -which power is given to Western Australia for a period of five years to continue to levy duties as against the products imported 'from- the other States. It seems necessary, then, that in the case of over importation of butter, cheese, bacon, or any other produce from the other States, -where the importer who has paid customs duties upon those importations, desires to , reexport the goods to other States, he should have the right on that re-exportation to a payment of drawback, even though the goods were the produce of other States.

Mr Harper

- It cannot mean that.

Mr V L SOLOMON

- That appears to me to be a much more reasonable solution of the clause than the solution which the Minister has given.

Mr Higgins

- If sugar comes from Queensland and is in the Victorian bond when the uniform Tariff is imposed, will that sugar have to pay an import duty?

Mr V L SOLOMON

- Irrespective of whether the Commonwealth levies an excise duty on Queensland sugar or not, the Western Australian Government will have the absolute power to levy an import duty on that sugar as well.

Mr Kingston

- We do nob give the Western Australian Government any further power than they get in the Constitution. If they exercise that power, then as regards Inter-State goods they are in the position of a foreign country.

Mr V L SOLOMON

- I am pointing out that they have that very power. Supposing the Commonwealth Government in their Tariff imposed an excise duty of £3 per ton on sugar produced in New South Wales or in Queensland, under the Constitution it is perfectly competent for Western Australia to put an import duty of £5 or£10 per ton, or whatever she likes, on that sugar, or on any other manufacture or produce.

Mr Kingston

- The power of -Western Australia is limited by the Act.

Mr V L SOLOMON

- As I have pointed out there -are a great many other Inter-State products which will be taxed, and -which are taxed now by Western Australia. 'I suppose the clause was drafted by the Minister's advisers.

Mr Kingston

- -I am responsible for it.

Mr V L SOLOMON

- I am doubtful whether it will mean what the Minister fancies it will, or whether the intention is in that way.

Mr Kingston

- I know what the intention is, and I think it is carried into effect.

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Mr PIESSE

- As I understand 'the object of this clause is to continue, as to Western Australia, what is the rule now. Jam,- when it is exported to Western Australia from Victoria or Tasmania, will be allowed drawback on the

value of the sugar which is contained therein. When the article reaches that State it is there subject to a particular duty, and the only doubtful point in the clause might be made a little clearer by the insertion of the words " in the State in which the goods are sent and" before the word "whilst." With that alteration the clause will provide that there shall be drawback allowed in the State from which the goods are sent, so long as duties are imposed on such goods in Western Australia under the powers reserved to it in the Constitution.

Mr.HARPER, (Mernda). - I can scarcely understand how the clause will effect the object which the Minister has in view. When he stated the case he referred, as an example, to Queensland sugar. When the Federal Tariff has come into force, Queensland sugar will be duty free, unless there be an excise duty imposed ; but section 95 of the Constitution provides that Western Australia is to have the privilege of imposing certain duties of customs, apart from the Federal Tariff, upon, goods passing into that State, and not originally imported from beyond the limits of the Commonwealth.

Mr V L SOLOMON

- That is on InterState products and manufactures.

Mr HARPER

- On the products of the States Western Australia will have the privilege of imposing a duty, and the Minister proposes, I apprehend, that such articles on being sent into that State should be subject to drawback, but inasmuch as the Customs department will have received no duty on the goods unless it be an excise. duty - and according to the clause, drawbacks are limited to import duties - there is no drawback apparently provided for in the case of an excise duty. I can scarcely see how the clause applies, and what is the use of it, because goods, the production of any of the States, will necessarily not pay any duty to the Government at all.

Sir George Turner

- On the material they will have paid the duty, and surely a refund of that ought to be made.

Mr HARPER

- I am reminded that it may be a manufactured article, and that the raw material may have been imported and paid a duty ; but it seems to me that section 95 of the Constitution does not permit Western Australia to put a special tax on such goods, because its power is limited to goods which have not been originally imported from beyond the limits Of the

Commonwealth. Material imported from abroad, and on which duty has been paid, although manufactured and sent to Western Australia, would not, I apprehend, come under this definition in the Commonwealth Act. It seems to me that the clause is unnecessary, unless it may be useful in some unexplained way, or unless it is intended to apply to goods on which excise duty has been paid.

Supposing that a parcel of Victorian made brandy or whisky on which excise duty had been paid were exported to Western Australia, and that under that . section of the Constitution it had placed a special duty on that article, then I apprehend it would be desirable that the Federal Government should give drawback so long as that State imposed the special duty. But according to clause 159 of this Bill drawbacks are limited entirely to import duties on goods imported from beyond the Commonwealth.

Mr V L SOLOMON

- Other than spirits, wine, beer, and tobacco, which are excepted.

Mr HARPER

- Yes. I think the clause requires further consideration. It seems to me that it does not apply at all.

Mr Kingston

- How does the honorable member get away from the case I put ?

Mr HARPER

- That case was that sugar from Queensland would be subject to a drawback when it went to Western Australia; but that sugar, unless the Minister intends to impose an excise duty, will not have paid an import duty.

Mr Kingston

- We have lots of it here now.

Sir Edward Braddon

- It may have been imported before the duties were put in force.

Mr HARPER

- If the Minister means it to apply only for a week or two it is a different thing.

Mr Kingston

- I only mean it to apply when import duty has been paid.

Mr HARPER

- I am in a position to say that imports of sugar are brought into all the States separately. There will be sugar sent from Queensland to Western Australia ; but there will be no duty paid on it.

Mr Kingston

- There is a lot of sugar sent to South Australia, and it goes to Western Australia from that State as well as from other States.

Mr HARPER

- It will not pay the duty.

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Mr Kingston

- Sometimes it will.

Sir EDWARD

BRADDON (Tasmania). - The honorable and learned members for Corinella and Indi have a facetious way occasionally of sounding the "view-halloo," and starting a hunt of some Ministerial proposal, and when the hunt is in full cry dropping those who follow and running with the pursued. That has struck me as humorous and amusing in its way. I am not going to join in the hunt. I look on the proposal in the new clause as a very just and proper one. Surely, under the special circumstances conceded to Western Australia - that of being allowed to continue to impose import duties - it is right and proper that goods subject to duty on importation to any other part of the Commonwealth should be subject to drawback when sent to Western Australia. Happily, it is not for all time that Western Australia will have to be regarded as a foreign State, but it has to be so regarded at present, and goods sent there should be subject to the same conditions as to drawback and otherwise as goods sent to New Zealand or any other part of the world.

Mr E SOLOMON

- Western Australia will not be placed in a position different from that it is in at the present time. When goods come in in bulk, and they are afterwards sent away in bulk, the duty is allowed as drawback. With regard to spirits, I do not think, when once spirits are cleared and exported, that any duty can be allowed, because there will be great difficulty in recognising the same class of spirits that has been imported. In reference to sugar, there is at present no duty whatever in Western Australia, so that there could be no drawback. If, however, at some future time a tax was levied in the way of duty on sugar, then, no doubt, when it was exported drawback would be allowed. I think this is a very fair clause. It is a provision that is in existence at the present time in Western Australia, and, representing that State, I do not think it would cause any hardship.

Mr G B EDWARDS

- I think the clause fairly meets the question I brought forward, but I would suggest that the Minister should insert the words " imposes or has imposed." The present Tariff in Western Australia might have the effect of preventing the manufactures of other States going in.

Mr Kingston

- But "imposes" would mean at the time the thing is done.

Mr G B EDWARDS

- But the duties might be already in existence.

Mr McCay

- Those duties are done away with by the uniform Tariff.

Mr G B EDWARDS

- Not in Western Australia.

Mr McCay

- Yes ; unless Western Australia re imposes them.

Mr. V.

L. SOLOMON (South Australia). - I would suggest to the Minister that if the object be as he has stated, the clause would read much more clearly if a slight alteration were made, by inserting after the word

"goods," in the last line, the words " which have paid duty upon exportation from any other State." This would make it perfectly clear that drawback would be allowed on exportation to any other State where duty had been paid. I am at a loss to understand that such a contingency could arise, except in the case of sugar which might have paid an excise duty.

Sir Malcolm McEacharn

- Or goods arriving prior to the imposition of the Tariff.

Mr V L SOLOMON

- Not goods arriving from beyond the sea, because these are specially excluded.

Sir Malcolm McEacharn

- But goods from Queensland.

Mr V L SOLOMON

- I do not know what other goods, except sugar from Queensland, would be dutiable in any of the other States. Of course, this could not refer to spirits, even spirits manufactured in the State on which excise might be paid, because clause 159 specially excludes spirits, beer, wines, tobacco, &c, from the operation of the drawback provision. I only desire to assist the Minister in making the clause, if possible, a little clearer.

Mr KINGSTON

- I have been asked if this clause has any reference to ships' stores, and I have to say that it has not. The honorable member for South Australia, Mr. V. L. Solomon, and some others desire to make two things perfectly clear. They desire to make it clear that a refund is only given of the duty paid, and it is only given in the event of those goods, in respect of which it is claimed, passing into Western Australia and being compelled to pay duty there.

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Mr Piesse

- The drawback ought to be equal to the duty which is claimed by Western Australia.

Mr KINGSTON

- I do not think that is the general' rule. The rule, I take it, in matters of commerce is, that if duty be paid for admission to the fiscal area, and the goods are taken out of the fiscal area, what has been paid is given back. Western Australia is not the same fiscal area if a barrier is placed against the goods and a duty is levied on importation.

Mr G B EDWARDS

- It is a foreign country.

Mr KINGSTON

- It is a foreign country to all intents and purposes.

Mr HARPER

- So far ascertain goods are concerned.

Mr KINGSTON

- The question is as to what goods. The way we have defined it is this. ' Goods which have paid import duty and which on passing into Western Australia pay another duty. The test is - is there a tax in Western Australia on the admission of these goods? This will not apply to a large class of cases by any manner of means. Of course so soon as Inter-State freetrade comes into force the special provisions extended to Western Australia as regards the taxing of colonial goods will not apply. But the goods for which we intend to provide are goods which prior to the imposition of uniform duties of customs were got into one State from another subject to the payment of duty. Of course this clause has to be read in connexion with the previous clause. That previous clause sets out that drawback on import duty may be allowed on exportation. What is provided here is that if the Parliament of Western Australia exercises its powers to impose duties of customs upon goods passing into that State and not originally imported from beyond the limits of the Commonwealth, then, while such duties are so imposed, drawback may be allowed on any such goods as if imported. There will not be a large class of cases, but there will be sufficient to justify a clause in this connexion which will prevent our own people from being handicapped in the competition for Western Australian trade as against outsiders. I did not quite catch the amendment, which the honorable and learned member for Tasmania, Mr. Piesse, suggested, but perhaps I have caught the spirit of it. The test is exportation. The fact of goods passing into Western Australia under the circumstances here

described would not be exportation unless we expressly provided for it. I move -
That after the word "allowed," line 8, the words "in the State in which import duty has been paid, and" be inserted.

Amendment agreed to.

Mr. G.

B. EDWARDS (South Sydney). I am afraid that the Minister has not quite grasped what the manufacturers desire. It is plain from what has been stated that the Minister understands that drawback can only be obtained on such goods as Western Australia puts a duty upon. That is not the point. Supposing that in the manufacture of goods going to Western Australia, we use sugar upon which duty is levied - even if there be no duty in the Western State upon any manufactures of which sugar forms a part, such as jams, preserved fruits, biscuits, confectionery, &c - England, America, Germany, and foreign countries generally will be able to send goods there free of duty, whilst paying no duty at all on the materials used.

Mr McCay

- They would pay the Commonwealth duty ?

Mr G B EDWARDS

- But that might not amount to as much as is paid on the articles used in its manufacture. Seeing that there are hundreds and hundreds of manufacturers who are dependent upon some sort of protection such as this to keep up their trade with Western Australia, we might consider the point as to how far they can be met. If we pay duty on sugar here - and that duty might be as much as £7 or £8 per ton - and if we put that sugar into jam and export it as we are doing now to Western Australia--

Mr Kingston

- The honorable member would get the drawback in all the States. I think it is 50 per cent, on sugar.

Mr G B EDWARDS

- I want to get the drawback just the same in regard to Western Australia as I should get it if I were exporting to South Africa. The clause does not provide for that. It might if the word "such" in the last line of the provision were omitted.

Mr Harper

- The honorable member wants to get a bonus !

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Mr G B EDWARDS

- It is not a bonus, because I hold that as long as the provision operates under which Western Australia puts a duty upon goods that come out of the other States of the union we must treat that State, in fairness to our manufacturers, as a foreign State.

Mr Kingston

- Does the honorable member wish to have drawback even though he has free admission into Western Australia ?

Mr G B EDWARDS

- Yes ; because foreign countries will not pay any duty. The English manufacturers will use free sugar.

Mr Kingston

- Does the honorable member want to get drawback on export to Western Australia, although his goods are not taxed there ?

Mr G B EDWARDS

- Yes ; so long as we pay the duty here. Give us free sugar for what we manufacture for- export to Western Australia, as well as- for what we manufacture for export to South- Africa. I think that until Western Australia falls under the fiscal conditions that apply to the other States, exports to that State should be treated . upon the same footing as if they were sent to- a foreign country.

Mr Kingston

- Western Australia only differs from the other States in that one respect - that she can- tax colonial goods coming from the other States ; and, if she does not tax such goods, why is she different ?

Mr G B EDWARDS

- Because she is a foreign country, and the proof of what I say is afforded by the concrete example that I have given- - that England would be in the position to send jams into Western Australia, made out of duty free sugar, whereas we would, not. If we were to export jams to South Africa, we would get a refund of

the duty on the sugar used, but if we were to export to Western Australia, we would get no drawback at all. Under the common fiscal system, after the five years' term has elapsed, we shall have nothing to complain of, because we shall have Inter-State free-trade. As a free-trader, I am then willing to compete with- England, but if you are going to tax- our sugar you must allow us to go practically, free of- duty in regard to the sugar that is used in the manufacture of goods that are exported.

Mr Harper

- When you speak, of duty, do you mean either excise or import duty ?

Mr G B EDWARDS

- Yes I mean both in reference to this- matter.

Mr. HARPER

(Mernda).- There seems to be some misunderstanding in regard to this matter. The honorable member for South Sydney has referred to the case of jams and preserves, and has argued that the sugar, used in the manufacture of these goods will be dutiable, but I would point out that when we have- Inter-State freetrade under a uniform Tariff there will be no duty on Queensland sugar, unless it be an excise duty, and I would ask whether, in. that event, the honorable member would wish to- get a refund of the excise duty

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Mr G B EDWARDS

- Yes.

Mr HARPER

- There cannot be any import duty on sugar, produced in Queensland, and used in another- State.

Mr G B EDWARDS

- There may be an import duty on some of the sugar we use, because we shall not discontinue the importation of sugar straight away.

Mr HARPER

- There cannot be any duty on Queensland sugar.

Mr G B EDWARDS

- No, but there may be on Mauritius- sugar.

Sir Edward Braddon

- An excise duty may be imposed on Queensland sugar.

Mr HARPER

- - As I read this clause, the Western Australian Government have the- right to impose exceptional duties only upon articles produced within Australia.

Mr Kingston

- That is so.

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Mr HARPER

- Then the clause proceeds to enact that whilst such duties are imposed drawback may be allowed upon any such goods as- if exported, . but I would point out that drawback, cannot be- granted in respect to an article upon which duty has never, been paid. Surely that is clear. The point that the honorable member for South Sydney is trying to get at is this-: That on the federal Tariff imposing an excise duty on sugar the manufacturers should get the- advantage of it, but I submit, that this clause would not answer the purpose at all, and I come> to the same point as the honorable- member does at last, but by a very different process of reasoning. This matter requires consideration. I understand that some honorable- members on the Ministerial benches have thought that the clause would meet the case of goods manufactured in the various States from imported raw material upon which duty has been paid. But, inasmuch as the Constitution* does not permit' Western Australia to put a duty on such raw- material-, this clause would not apply at all; and it . seems to me, further, that the object the Minister has in view, although a good . one; will not be attained by this clause. The principle could, only apply in cases where we - impose excise duties on goods - manufactured in either of the States, and that is a subject which would have to be dealt with in , an, Excise Bill.

Mr.V. L. SOLOMON (South Australia). - There seems to be a good deal of reason in the contention of the honorable member for South Sydney. In some of the States, notably in South Australia, a refund is made

of the duty which has been paid on sugar used in the manufacture of goods which are exported. A drawback is allowed upon exported jams and preserved fruits containing certain quantities of sugar which had paid duty to the State, and I would ask why some similar provision should not be introduced into this Bill in regard to the exportation of goods containing sugar subject either to import or excise duty? I am referring to goods exported to another State which is out of the circle of the Tariff provisions for the time being.

Mr Kingston

- No ; only out of. the circle to a certain limited extent - to the extent mentioned in the clause, and to that extent we make special provision.

Mr V L SOLOMON

- But supposing that Western Australia does not impose a duty on colonial made jams, is that any reason why those interested in the article should be prevented from getting a drawback equivalent to the amount of duty paid on the sugar used in the manufacture 1

Mr.Piesse. - Yes; because they would not get a drawback if the goods were sent to Tasmania.

Mr V L SOLOMON

- Why not ? It seems to me that the argument of the honorable member for. South Sydney would apply to Tasmania as well.'

Mr Kingston

- Oh, no. That would be opposed to free-trade.

Mr.V. L. SOLOMON.- This is a question of the exportation of goods to a State where Inter-State free-trade does not exist any more than it exists between us and South Africa.

Mr Kingston

- We make provision to the extent to which Interstate free-trade does not exist between Western Australia and the other States.

Mr V L SOLOMON

- We want to make this Bill as perfect as possible, and when a position has been placed before the committee, such as- that indicated by the honorable member for South Sydney, I am sure that honorable members will see that it is a matter worthy of consideration. It may be a very large matter.

Mr.G. B. Edwards. - It is a very large matter.

Mr.V. L. SOLOMON.- Even though

Western Australia does not put a duty on colonial-made jams and fruits, is that any reason why the man who manufactures them-, and uses a certain amount of sugar which has paid duty, should not get a refund? If the Bill as . at present drafted does not provide for a case of this kind, some amendment should be introduced in order to secure common justice to the manufacturer of articles in which . a certain amount of dutiable sugar is used, and which are' sent to a State outside the pale of intercolonial free-trade.

Mr. PIESSE

(Tasmania). - I think there is some misapprehension in this matter. In the case of jams sent to Tasmania or Queens- land, there would be no customs duties levied, and there would be nothing except a record of the amount and value of the goods so passed into the State. There would be no need for the payment of a drawback where the jam was made. A record will be kept of the consumption of goods in Tasmania, and Tasmania will be credited with the duty on the goods consumed. The honorable member has said that if Western Australia does not impose a duty

on jam, why should not the manufacturer of jam get a drawback ? There would be no question of a drawback from Western Australia at all, because Western Australia- will be in the same position as the other States of the union. We should make such provision that while Western Australia exercises her . right under the Constitution to impose duties upon Inter-State goods, such drawbacks would be allowed as would equal the amount . of the duty she imposed. That is- the only difference between the export of goods to Western: Australia and to any other State - the amount Western Australia puts upon those goods - and then the amount of sugar duty, collected in Victoria, where the jam was made - should be credited to Western Australia.

Sir EDWARD

BRADDON (Tasmania). - I think the honorable member for Tasmania, Mr. Piesse, has failed to grasp the necessities of the State he represents in this matter.

Mr Kingston

- Oh, no.

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Sir EDWARD BRADDON

- I think so, because, according to his contention, Tasmanian jam manufacturers could only obtain a drawback on the sugar employed in the manufacture of jams exported from Tasmania to the extent to which those jams were exported to some State which imposed a duty, on sugar. Surely that is not the right point of view from which to look at, the question. Let us approach it from the other side. Tasmania has already paid duty on the sugar employed in the manufacture of jams. That duty has gone into the public exchequer and has been turned to the public account. Surely Tasmania should now, under this Bill, as is already done under our local practice, be entitled to a drawback for any dutiable sugar which is used and exported in those jams.

Mr Piesse

- Exported where to?

Sir EDWARD BRADDON

- To any place outside the Commonwealth. We are now speaking of a State which, in regard to these fiscal provisions, occupies an essentially different position from that of any of the other five States.

Mr Kingston

- Only in a matter of detail, for which we make provision, I think.

Sir EDWARD BRADDON

- We are contending that the provision should be an ample one, to give protection to the people who are entitled to drawbacks, whether they hail from Tasmania or any of the other States outside Western Australia.

Mr Kingston

- It is all the same whatever State it is.

Sir EDWARD BRADDON

- Exactly. The honorable member for-

Mr Harper

- Mernda.

Sir EDWARD BRADDON

- The honorable member for Ammonia has raised some bogey about the duty on sugar not entitling any one to this drawback. He seems to think that it is not possible for duty to have been already paid on sugar which has been used and is still being used for the manufacture of jam.

Mr. Harper. - I did nothing of the sort.

Sir EDWARD BRADDON

- I am glad the honorable member does not, but he spoke as if he did. I shall be glad if he will eliminate that idea entirely from his mind and assist us in doing justice to those who are entitled to it under this particular clause.

Mr. HARPER

(Mernda).- The right honorable member who has just resumed his seat has referred to me as holding a certain idea. I think I know a little more about business than the right honorable member does, and also about the working of the Tariff. I have called attention to the fact that, according to the Bill, drawback does not admit of being given in any case unless an import duty on goods from abroad has been paid. That is what the Bill provides ; and if the right honorable member would apply his gigantic intellect to trying to improve the Bill itself instead of finding fault with those who are trying to do what they can to get over the defects of this clause, which does not meet the object he has in view, he would be more likely to attain his purpose. The clause provides that certain drawbacks have to be given on certain goods, the produce of the States other than Western Australia, but which are produced in the Commonwealth. If they do not pay duty there can be no drawback. How there can be a drawback upon goods that have not paid duty passes my comprehension. If the right honorable member proposes that there shall be drawbacks on

excise duties, let him propose an amendment to that effect ; but that raises a very important question of principle. That, however, is the only thing that will meet the right honorable member's object. We can only have an excise duty on sugar produced in Australia; and inasmuch as the Federal Act will not permit the Western Australian Government to put exceptional duties on goods other than those produced within Australia, it can be seen at once that it is only to that class of goods that the provision applies. Mauritius sugar would be in an entirely different position. The Western. Australian Government cannot impose exceptional duties upon goods which are imported from abroad. With respect to them, that Government has to accept the Federal Tariff. I trust I have now made my meaning plain. I say that this clause will not meet the object, with which I sympathize, of the honorable member for South Sydney. The right honorable member thought it was a good joke to refer to my district as " Ammonia." That may be Tasmanian facetiousness, but I resent it.

Sir John Quick

- Does the honorable member approve of allowing a drawback on goods produced in Victoria if excise has been paid - say on Victorian beer - and the goods are exported to Western Australia ?

Mr HARPER

- That raises the whole question of drawbacks on excise duties. As far as I can see the Bill makes no provision for granting drawbacks with respect to excise upon the exportation of goods to places beyond this country.

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Mr Kingston

- This is a Customs Bill, and does not deal with excise.

Mr. G.

B. EDWARDS .(South Sydney). - I propose to leave the matter of excise duties until we are dealing with the Excise Bill. Coming back to the question as to drawbacks to Western Australia, let me endeavour to make it clear to the committee in this way. Suppose we import sugar from Mauritius or Fiji, upon which we pay 1d. per pound duty, and say that that sugar is turned into confectionery, where you have roughly speaking about the same weight of the manufactured article as of the raw material. Suppose that that confectionery is exported to Western Australia, and that the Western Australian Tariff, or the Federal Tariff, or both of them, impose a duty of 1d. per pound upon confectionery. Then I say that Victoria, where the confectionery was manufactured, would pay 1d. per pound upon its raw material, turn it into confectionery, and be shut out of the Western Australian ports, for the reason that there was a duty of 1d. per pound in Western Australia, whereas confectionery coming from England would be made from duty free sugar. This I say would prevent Victoria from sending confectionery into Western Australian markets. The same thing would apply to every Other State. I put it to the committee whether, if Western Australia has certain demands for commodities which the Commonwealth can supply with this fiscal help, we should allow the Commonwealth to supply those demands, or bar it by a system of duties, and allow England, Germany, and America to send in the goods. They could do so and undersell us, and take the trade away. If the trade can be done by the Commonwealth, then, seeing that a concession has been made to Western Australia to assist her over some financial difficulties we ought to make special provision, both in the Customs Bill and the Excise Bill, to protect the natural commerce which we have had with Western Australia, and which we shall have again at the end of the five years' term. If the Minister in charge of the Bill would consent to the omission of the word " such " in the last line of the clause that would meet the case so far as the Customs Bill is concerned. When we come to the question of excise I believe it will be found that the feeling of the community, both here and in Western Australia, is in favour of such provisions in the Bill as will not prohibit this and other States from trading with Western Australia. I propose to move -

That the word "such," line 9> be omitted.

Mr KINGSTON

- I would ask the honorable member not to press his amendment. After carrying the clause I propose to ask the committee to report progress in order that I may look into a number of matters. Among those matters will be the remarks made by the honorable member for South Sydney.

Mr G B EDWARDS

- Very well, I will not press, it.

Clause, as amended, agreed to.

Progress reported.

STANDING ORDERS COMMITTEE

Minister for External Affairs

Mr BARTON

. - With the' indulgence of the House I move -

That the number of members appointed to serve on the Standing Orders Committee be increased to eight, and that the Chairman of Committees be an additional member of such committee.

The motion proposes to increase the number of members of the committee from seven to eight. I think it will meet the views of the entire House that the Chairman of Committees should be allowed to observe the whole of the work of the Standing Orders Committee as it progresses.

Question resolved in tie affirmative.

ADJOURNMENT

Friday Sittings. - Members' Railway Passes

Minister for External Affairs

Mr BARTON

. - I move -

That tie House do now adjourn.

For the information of honorable members I may state that after the Customs Bill has been finished to-morrow, the State Laws and Records Recognition Bill will be taken.

Mr.MAHON (Coolgardie). - -I desire to ask the Prime Minister whether he proposes to make any alteration in regard to Friday sittings? .If the Minister will turn to the notice paper, he will find that it is in rather a congested condition. The time is now come when there might be some alteration in the hour of meeting on that day. We might sit in the morning as the other House does. That would give us an additional hour or two for private members' business, without interfering with Government matters.

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Mr O'MALLEY

- Would it not be better to devote every Thursday afternoon and evening to private members' business? It is really not- fair to limit private" members' business to Friday afternoons. Honorable members want to get home on Fridays. Why should not the Government be the losers?

Mr Page

- The honorable member has got the time for private members' business monopolized.

Mr KING O'MALLEY

- Surely the honorable member will admit that I did not take long to place my motion before the House last week. As the arrangement stands at present, private members are not able to. reach their business, and our people are thinking we are asleep.

Mr JOSEPH COOK

- I should like to support the request for a little more time for private members' business. I really think the suggestion made by the honorable member for Coolgardie is the proper one. I would ask the head of the Government to consider whether he could not meet us by calling the House together at 11 a.m. on Friday instead of at 2 p.m. as now. The two. additional hours in the forenoon would give us all the time that we require at present.

Mr. Y.

L. SOLOMON (South Australia). Before the Prime Minister replies, I desire to ask him whether, any arrangement has yet been mode by the Commonwealth Government in reference to the payments to be mode to the various States for railway passes for members of this Parliament ? If so, I would ask whether the Minister has any objection to letting the House know exactly what is the monetary liability of the Commonwealth in regard to the matter ?

Mr. BARTON

(Hunter- Minister for External Affairs). - With reference to the last question, I may state that the matter is in a state . of negotiation between the Minister for Home Affairs and the railway commissioners of the various States. Certain proposals have been made. They are not" yet finally settled, but when they are I shall be happy, to afford the information. In regard to the suggestion that the House should meet every

Friday morning, I should like to point this out to honorable members - and to bespeak their good will in this respect - that the time allotted to Ministers for doing the vast amount of work, which must be done outside Parliament, is already very limited, especially when we consider that there must be one and sometimes two Cabinet meetings a week.

In fact, there may come a time very soon when we shall have to sit in Cabinet practically every day. To sit on the morning of Fridays then would result in this, that the administrative work of the Commonwealth could not be carried on by any means unless the whole of it were left to be conducted by secretaries instead of by Ministers. That is the position we find ourselves in. We have made an arrangement by which, instead of keeping the hours to which most of us have been accustomed in the State Parliaments, we are enabled to get away by half-past ten nearly every evening. To do that we have to sit early, and that again squeezes down to the narrowest point the time available for administrative work, for Cabinet meetings, deputations, and a hundred and one other things which the Government are called upon to attend to. That is the difficulty in regard to Friday sittings. With morning sittings on Fridays there might also be a difficulty in obtaining a quorum. I will consider the whole question. I will not move at once about it, because I do not think that the business-paper for Fridays is yet in any state that could be called congested. I wish to meet the views and the convenience of honorable members in every way, but they must see the difficulty, and I hope that they will take this statement from me. I will consider the whole matter before doing anything, and if possible try to meet their wishes in this regard. I hope that they will bear with me also when I be-, speak their consideration for the work of the administration of the Commonwealth. The only other matter which I desire to mention is that, after the State Laws and Records Recognition Bill has been passed through committee to-morrow, if there be sufficient time, it may be convenient for some honorable members to give the House their views with reference to the Defence Bill-Question resolved in the affirmative.

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22:30:00

House adjourned at 10.30 p.m.