790. Section 244 of the Customs Act, 1913, is as follows :—

(1) If any person admits in writing that he has committed an offence against the Customs Acts, the Minister may, at any time before judgment or conviction, whether proceedings have been commenced in respect of that offence or not, accept from that person in full satisfaction of the penalty or fine thereby incurred by him such sum as the Minister thinks fit.

(2) The sum so accepted by the Minister may be less than the penalty or fine provided for the offence.

(3) The Minister may cause to be published in the *Gazette* a notice of the particulars of any settlement made by him in pursuance of this section.

Counsel assisting the Commission explained that similar powers exist in Australia under sections 265 and 266 of the Australian Customs Act, 1901. In England there is a power given to the Commissioners of the Treasury or Customs to restore seizures and to mitigate penalties by section 209 of the Customs Consolidation Act, 1876. Counsel also explained the practice of the New Zealand Customs in applying section 244, in these words (R. 7772) :—

I am instructed that it is frequently found necessary by the Department to recommend action by the Minister under this section in cases : (1) involving urgency due to the early departure of vessels ; (2) where the minimum penalty provided under the law is considered unduly harsh and the imposition of a smaller penalty is fully warranted ; (3) where the Department is satisfied as to the guilt of the party concerned but is unable to furnish sufficient evidence to secure a conviction by the Court ; and (4) where publicity is considered to be undesirable. It is not, however, as I understand it, the practice of the Department to recommend action under section 244 in cases which involve deliberate defrauding of the revenue . . .

791. In his evidence before us the Comptroller based the application of section 244 to the case of Westland Breweries upon the ground that the evidence did not, in his view, disclose that the manager or the directors were parties to the offences, and that he considered the management of the company were only negligent. He thought the management should have known what was going on, but were merely negligent in not knowing.

792. On the 30th May, 1941, a Customs investigating officer made a long report on the case to the Comptroller. He had made inquiries at the company's head office and had asked for the production of books and documents, though he did not make a search under a Customs warrant. In his report he showed that the quantities which he estimated would be produced at each brewery, from the materials used, corresponded fairly closely, after making due allowance for wastage, with the quantities actually sold. From these figures he ascertained the amount of duty short-paid to be £9,289, and he considered that this amount could be substantiated. At a later date the Comptroller, in a memorandum to the Minister of the 18th August, 1941, gave as a reason for permitting time for the payment of a balance of duty amounting to £7,075, this statement—viz., " . . . remembering also that the amount of £9,000 is in excess of what we can definitely establish as short-payment of duty (possibly by some £500 . . :)." The conclusion to be drawn from the company's own books was therefore that it had short-paid duty by an amount of between £8,000 and £9,000.

793. The investigating officer then considered the question whether the case should be dealt with under section 244. He said that, for a large penalty, the case would be tried in the Supreme Court, and most likely on the West Coast, and that in the past the Crown had had difficulty in obtaining a conviction before a West Coast jury. He said that the company was a public one, consisting of 229 shareholders, the average holding being 240 shares. He said : " It has been claimed (and I have failed to establish anything to the contrary) that the frauds have been perpetrated in ignorance of the directors and management." He said that to penalize unduly the shareholders would hardly be reasonable, and that the brewers were the persons who should be penalized. The investigating officer said, further, that the Department felt that the only real value of Court action was the deterrent effect, but that publicity should be given to the matter per medium of the *Gazette*. On this point he continued : " This would at least bring the frauds before the notice of the business community. Further publicity could be given by the press should they care to publish the *Gazette* notice."