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1901-08-15

Senate.

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

QUESTION

TELEGRAPH RATES

Senator PEARCE

asked the Postmaster-

General, upon notice -

Is it the intention of the Government to submit to Parliament a scale of rates of charges for postal matter and telegraphic communications ?

Will such scale of charges provide for a. uniform rate for the Commonwealth?

Postmaster-General

Senator DRAKE

- The matter is under consideration, and the intentions of the Government will be disclosed in due course.

CUSTOMS BILL

In Committee(consideration resumed from

August 14, vide p. 3714):

Clause 49 -

The following are prohibited imports : -

Any work which is or appears to be an infringement of any copyright existing in any part of the King's dominions: and of the existence of which copyright written notices have been given to the Minister by or on behalf of the proprietor.

Senator PULSFORD

- The paragraph refers to works which are or appear to be an infringement of copyrights "existing in any part of the King's dominions." But I cannot see why we should permit an infringement of copyright held in the United States, or any other part of the world ; and unless some justification can be shown for retaining the limitation in the paragraph, I shall move that it be omitted.

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Vice-President of the Executive Council

Senator O'CONNOR

. - The reason for the limitation is that the provision would be of no value unless the Customs authorities could have some means of knowing what was and what was not copyright: In regard to British copyright, there is no difficulty, because the records can be referred to, and written notice must be given on behalf of the proprietor. But it will be very difficult to carry out the provision effectually, if copyright in any part of the world had to be recognised, and the paragraph simply follows the sections of all the State Acts. There is such a thing as international copyright, and within its limits the different nationalities concerned might make some agreement for giving effect to their laws. If the limitation be not adhered to, the Customs authorities will be called upon to give effect to laws, the provisions of which they have no means of knowing. I think we must be satisfied with the present proposal, until there are further developments of international copyright law.

Senator PULSFORD(New South Wales). - If written notice on behalf of the proprietor were required, there would be no difficulty in administering the measure without the limitation. Notice from America as to a certain copyright should certainly be recognised.

Senator O'Connor

- How are the Customs officials to know that such a notice in writing is true ?

Senator EWING

- It seems to me that under the copyright laws of Australia, until registration takes place, there is no special right given. If a person has a copyright in England, it does not necessarily protect him in Australia.

Senator O'Connor

- Yes, it does, under an international copyright law passed lately.

Senator Sir Josiah Symon

- Under the Berne Convention protection is given to foreign copyrights in some instances.

Senator Lt Col NEILD

- Who is to determine whether a work is an infringement or appears to be an infringement of a copyright? Is that to be left to the collector or some official of the department, or is a literary expert to be called in? There is nothing in the world more open to question than the originality or otherwise of literary work. The paragraph at present appears either useless or mischievous, and ought to be made a little clearer by designating some authority to decide as to an alleged infringement.

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

That the words "existing in any part of the King's dominions " be omitted.

I cannot see in the remarks of Senator O'Connor any sufficient reason for limiting the action of a very beneficent international law. We should do our best to maintain the right of authors to property in their works, wherever those works are.

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Senator O'CONNOR

- I cannot consent to the amendment, because it would impose a duty on the Customs officials which, it is quite clear, they would not be able to adequately carry out under existing laws. There is a great difference between enforcing laws of copyright and aiding other nations to enforce such laws, and using the Customs for that purpose. That might very well be done by international arrangement, but to carry the amendment would make it necessary for the Customs officials to have all the copyright laws in every part of the world at their fingers' ends, in order that they might form some judgment as to the claims made. British copyright is something that can be known to all the officials, seeing that there is a register of all copyrights ; and in the paragraph we are only following what is provided in every Customs Act in Australia. If any reason could be given for the departure, I would be willing to assent to it, so long as it did not entail on Customs officials duties they cannot carry out.

Senator EWING(Western Australia). - It ought not to be left to the Minister or the Customs officials to decide whether a certain work is an infringement of patent or copyright, because that is a question which takes all the intelligence a court can bring to bear to decide. Persons who possess a copyright are not without their remedy. In Western Australia, for instance, they can appeal to the Judge and get an injunction, having proved an infringement ; and seeing that there is a proper tribunal from which a remedy can be obtained, it is giving a great power to the Collector of Customs, or the Minister, to say offhand that any work is an infringement. The question whether there is an infringement depends on facts, and on judgments given after mature consideration; but here a collector, without experience or education on the point, and without any evidence, can decide that a work is copyright and stop the importation of editions which infringe the copyright. A person who has a copyright has a monopoly which he is given reasonable means of protecting, and I do not see why we should extend to him greater protection in his monopoly than is extended to anybody else in the community.

Senator Sir JOSIAH SYMON

- I agree very largely with what Senator Ewing has said. This is one of the provisions which illustrates the danger of departing from the true object and scope of the Bill. The sub-clause has nothing to do with the protection of the revenue, and I agree with Senator O'Connor that it is undesirable to impose on the Customs officials duties from which they should be free. From this point of view I think the clause ought to be excluded. It is true that a similar attempt to protect copyright has been made in the customs laws of the other States ; but the language in the Queensland Act is of a character very different from that of the paragraph, which is exceedingly sweeping. The Queensland Act is directed against the specific interference with copyright which is known to have been carried on for years in America ; pirated copies of copyright books 'being published there and sent all over the world. Of course, the importation of these pirated editions is not allowed in England or anywhere else. The Queensland Act prohibits the importation of pirated editions of works copyright in the United Kingdom, printed or reprinted in any other part of the world. There is notice of the fact of a copyright existing in a book, and the importation of a pirated edition is prohibited. That is something an official can deal with, but, under the clause as it stands" the collector, or whoever has to decide this matter, will be asked to do what has been found by the House of Lords and the Privy Council to be extremely difficult - to determine, first, whether with regard to any particular work there is copyright in law, and, secondly, whether that copyright has been infringed. That would entail a responsibility which no collector could possibly discharge, and should not be called upon to discharge,

because the conclusion at which he would arrive might have the effect of imposing a penalty of £100. Perhaps a person may innocently import a work which the collector decides to be copyright, or the collector may declare a work to be copyright which is not copyright at all ; but the penalty for importing a prohibited article is inflicted all the same.

Senator Sir FREDERICK SARGOOD

- There is a practical reason why this or some similar paragraph should be in. the Customs Bill. First of all, it has been the practice to have such a provision in all Customs Acts, including the English Act. Bearing in mind that all goods coming into- the State first come under the knowledge and purview of the Customs, surely the officers should have power to stop pirated, editions at the outset, instead of letting them flood the market to the injury of legitimate publishers, who would then have to take action under some State or Commonwealth Act. I do not know that in the past any evil effects have arisen from; the application of the sections in the local Acts. I certainly notice, however, that the wording of the paragraph is different, and somewhat wider, than that of the Victorian Act.

Senator Lt.-Col. NEILD (New South. Wales).-- If Senator Pulsford .will be good enough to withdraw his amendment for the time being, I intend to move that the words " or appears to be " be omitted from the paragraph. The honorable and learned gentleman in charge of the Bill must, in his professional career, have learned the difficulties that surround the determination of what is copyright. The word " work " is. used in this paragraph. It is not defined in the Bill. It will necessarily, I take it, include labels, designs, and the rest of the paraphernalia of trade; and it would be very serious if an officer of- Customs decided that a certain shipment of goods was an infringement of a trademark or copyright, and that decision led to the exclusion of those goods from the Commonwealth. Such an action might involve thousands and thousands of pounds in costs. Then, too, the ship which brought the goods, would have to take them away again.

Senator Sir Josiah Symon

- Copyright would comprise designs of all kinds, including maps and plans, and possibly music.

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Senator Lt Col NEILD

- Speaking as a. man who has had considerable experience of commercial life, I have no hesitation in asserting that if the paragraph passes in its. present form it will be quite possible for some officer, with the most bona fide intentions in the world, to work almost irreparable damage in connexion with certain goods, because they bear a label which he views as an infringement of a copy-righted description. The paragraph would be quite sufficient without the words to which I take exception.

Amendment, by leave, withdrawn.

Amendment (by Senator Lt.-Col. Neild) proposed -

That the words " or appears to be" be omitted.

Senator O'CONNOR

- I have various grounds of objection to meet. Senator Ewing does not want any such provision as this at all. He does not wish to have these matters dealt with in any way by Customhouse officers. But I would point out that there is no reason in the world why the Customs officer should not have the right to deal in some way with copyright. That is to say, there is no reason why the Customhouse officers should allow works which are an infringement of copyright to enter a port, any more than they should allow counterfeit coin to come in. This is a power which has been possessed by the Customs officials in the States, and which is always given to Custom-house officers in Great Britain. Power, in whatever form it is set out, certainly ought to be given to stop what really is one of the worst forms of robbery, the robbing of a man of the results of the labour of his brains. Nowadays, when the English language is spoken and English books are read all over the world, we seriously deprive a man of the legitimate results of the work of his brain if we permit his books to be pirated. Therefore, some provision of the kind should be inserted. As to the form of it, I can see that there are some difficulties about passing the paragraph in its present form, because there is no doubt that it puts large responsibilities in the first instance upon the Custom-house officers. But their responsibilities would be increased altogether beyond the possibility of their carrying them out if Senator Pulsford's suggestion were adopted. Even as the clause stands, it appears to me that it is rather too wide. I should prefer to have it as it stands in the Victorian and New Zealand Acts, and, I think, also, in the New South Wales Act. It does not require any literary skill to decide whether a particular

book has been reprinted. The Victorian Act does not impose on the officers greater responsibilities than they can perform, and what I propose to do is to strike out paragraph (a), and insert a paragraph similar to the provision of the Victorian Act. The clause can be recommitted, if it does not quite meet all we desire. Senator Lt.-ColNEILD (New South Wales). - In view of the statement of Senator O'Connor, I ask leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Amendment (by SenatorO'Connor) agreed to -

That paragraph (a) be omitted with a view to the substitution of the following: - "A book wherein the copyright shall be first subsisting, first composed or written, or printed in the United Kingdom or in Australia, and printed or reprinted in any other part of the world, as to which the proprietor of such copyright, or his agent, shall have given to the commissioner a notice in writing that such copyright subsists, such notice also stating when such copyright will expire."

Paragraph (b) -

False money and counterfeit sterling, and any coin or money not being of the proper standard in weight or fineness.

Senator WALKER(New South Wales): At the present time a committee of the House of Representatives is sitting in order to determine, amongst other things, whether the Commonwealth should have power to mint silver and bronze coins. It must be within the knowledge of Senator O'Connor that it is customary to send to Great Britain light gold, silver, and bronze coins in order that the English mint may retire them, and if we are going to mint silver and bronze coins in Australia, surely it should be permissible for people in England to send Australian money, not being of the proper standard in weight, to this country for the purpose of its being withdrawn from circulation by our mints. I suggest the insertion of some such words as the following : - " Excepting light coins withdrawable from circulation by Australian mints."

Senator O'Connor

- How would it occur?

Senator WALKER

- The banks send old and light silver to the Mint in England and get good silver issued for it. The position might be reversed if we were to issue Australian silver coin.

Senator O'Connor

- We are dealing with what exists now, and what there is a reasonable possibility of existing, and all this provision does is to prevent the importation of counterfeit or light coin.

Senator WALKER

- We are not going to object to the sending back of light Australian coin to be re-minted ?

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Senator O'Connor

- No doubt there is plenty of light coin in circulation, but what we do here is to give power to the Customs officials to stop the introduction of false money, counterfeit coin, or coin not being of the proper standard in weight or fineness.

Senator WALKER

- There is an enormous loss in weight through the abrasion of coin, and we send home some £60,000 or £70,000 worth of light silver coin every year, and get good silver for it again. As we know, the shilling is intrinsically not worth more than 7d. at the outside. If we are going to coin our own silver and make the profit which is thus to be obtained, we must be prepared to withdraw coins when they are below the standard weight. And when such light Australian coins are sent back here to be re-minted, surely we are not going to punish those who send them back ? I suggest that there should be added to the paragraph the words - "Excepting light coins withdrawable from circulation by Australian mints."

Senator CLEMONS

- The paragraph as it stands prohibits any One :from importing the coin df any country that :is not of the proper standard in weight or fineness. I would like to know if it is intended to exclude coins from every part of the world, because if it is, one who is a collector of ancient coins may render himself liable to a penalty of £100 if he imports coins that are not of the proper standard in weight or fineness. I submit that the paragraph might well be amended by inserting after the word " coin " the words - " of the realm or of any British possession." I think

Ave should limit this prohibition to British coins.

Senator EWING(Western Australia). - Might I suggest to Senator Walker that he is dealing with a difficulty that does not exist. When we get Australian mints, the difficulty he seeks to provide for will arise, but we shall then bring in legislation to regulate the conduct of those mints,- and in that legislation there will, no doubt, be inserted such a clause as he desires.

Senator O'CONNOR

- The matter to which Senator Clemons referred is hardly worth consideration, because the number of coins that would be imported as curios would be really inappreciable. Customs officials would never insist upon the enforcement of a penalty in the case of the importation of ancient Roman coins or curios of that kind. The expression used in the

Victorian and West Australian Acts I find is - " False money or counterfeit sterling and any coin of the realm or of any British possession or any money purporting to be such not being of the established standard of weight or fineness."

Senator Clemons

- That is exactly what I ask for.

Senator O'CONNOR

- It seems to me that the paragraph would be better in that form, and I therefore move -

That all the words in the paragraph after the word "coin" be omitted, with a view to insert in lieu thereof the words " of the realm or of any British possession, or any money purporting to be such not being of the established standard in weight or fineness. "

Senator PLAYFORD

- I point out that if the paragraph is agreed to in that form, we will be prohibiting the introduction of light money of British coinage, while, so far as the foreigner is concerned, we will not interfere with him at all. Thus we shall be handicapping British money. It seems to me that the Collector of Customs, in drafting the paragraph as it stands in the Bill, made it as wide as he could, in order that no advantage should be given to the foreigner over the Briton.

Amendment agreed to.

Paragraph (c) -

Blasphemous, indecent, or obscene works or articles.

Senator STEWART

- I desire the omission of this paragraph, not because I approve of the importation of articles or works of the character mentioned,, but because I do not think the power of saying what works or articles are blasphemous, indecent, or obscene should lie with an officer of the Customs. If any importer brings such articles into the Commonwealth, let him be prosecuted in the ordinary way before the courts of the country, and let it be decided by the Judges whether the articles complained of do come within that category. Articles will be prohibited under the paragraph as blasphemous, indecent, or obscene just as the collector for the time being thinks fit. He may be a man of very puritanical ideas, -and will draw the line very rigidly, or he may be the opposite, and go to the other extreme.

Senator Playford

- The Minister decides it now.

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Senator STEWART

- I think it is very objectionable to put this power into the hands of the administration for the time being. It is a power which I do not think they should have, or desire to have.

Senator CLEMONS(Tasmania). - I do not rise to discuss the paragraph, but to ask Senator O'Connor in whom, under the Bill, rests the power of prohibiting these imports. I know that in many Customs Acts the power rests with the Minister, but I cannot see any direct provision in the Bill to show that the power under this Bill is to be with the Minister.

Senator O'CONNOR

- This clause declares these goods to be prohibited, and under it the officer who may be in charge of the landing of the goods is directly given the power to seize them, and once it appears that they are prohibited goods, they may be forfeited under clause 220. The first question to be settled is whether these are prohibited imports or not, and somebody must judge whether they are to be allowed to go through.

That somebody is the officer who ' happens to be in charge of the landing, and he judges subject to the supervision of his superior. Clause 197 and subsequent clauses are inserted for the protection of persons whose goods are seized. If a claim be made by the owner of the goods, the matter goes before the comptroller, who may give up the goods on obtaining security for their value in case of condemnation, or he may give them up altogether if he be satisfied that the officer has not acted properly. That being so, the matter can be brought before the court, to finally determine who is right and who is wrong. In the case of prohibited imports, action has to be taken immediately, and it must be left to the officer in charge to determine whether or not the goods are to be seized ; but there is ample opportunity for the owner of the goods to make his claim, and have his case brought before the comptroller, and, if he chooses, to appeal to the court.

Senator CLEMONS(Tasmania). - I gather that imports thought to be prohibited may be detained by a landing waiter at his discretion, and that then the matter is dealt with by the collector. But the term "collector" is very comprehensive, and, according to the interpretation clause, includes practically any individual in the employ of the Customs.

Senator Sir Frederick Sargood

- Any officer doing duty in the matter in relation to which the expression is used.

Senator CLEMONS

- From the landing waiter there is an appeal to some Customs official - not necessarily the highest official - in whose discretion it is to order the goods to be destroyed. That arrangement is not satisfactory, though it might be difficult to arrange it otherwise. Unintentionally, a, great deal of hardship might be inflicted, and clause 47, and subsequent clauses, ought to be improved in order to provide some direct reference either to the Minister or the court.

Senator PLAYFORD(South Australia). - Senator Clemons has had no experience in the working of such a provision as this. I have had a great many years' experience as. head of the Customs department in South. Australia, and know exactly what is done. This is a very necessary provision, and if Senator Stewart only knew what was imported from France and other parts of" Europe in the way of indecent pictures and blasphemous works, he would urge that the importation should by all means be stopped at once. This is a matter which has to be decided immediately, without waiting for the judgment of a court. The landing waiter, who may possibly be an inferior officer of Customs, observes some work which he thinks is blasphemous, and he stops it going into circulation, and consults his superior officer. Samples of the work are shown to the collector, from whom the matter goes to the Minister, who is really the man who decides whether the goods are to be confiscated or not. Then there is an appeal from the decision of the Minister to the court, as provided in this Bill. There is no harm done, because, if the landing waiter has been inclined to take a too severe view of the matter, that is soon stopped by the superior officer or the Minister ; and if all three make a mistake, then the court can step in, if the importer thinks it is a matter in which he has been hardly dealt with. A similar clause has. been in the South Australian Customs Act for many years, and I know, from personal conversation with the present collector in Melbourne, that he has had to decide several cases of this nature. It is evidently intended to act on the same principle under the Commonwealth, and allow all important questions of the kind to be submitted to the head of the Customs department.

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Senator Major GOULD

- We are told there is a provision under which there is an appeal from the Minister to the court, but we are very anxious to find the clauses in the Bill which enable that to be done. Is it provided in the Bill, or is it a matter of common law, that an appeal will lie against the decision of an officer when confirmed by his Minister? Clause 213 provides that no proceedings shall be commenced against any officer for anything done in the execution of his duty until certain notices have been given in writing. If it be within the power of a landing waiter to take possession of an article stated to be a prohibited import, the question is whether the owner will be compelled to bring an action against the officer in order to recover compensation, or whether he can bring an action against the Government of the day.

Senator Playford

- Against the Government of the day.

Senator Major GOULD

- So long as that is perfectly clear we are all satisfied.

Senator Pulsford

- That is not the case : the action is against the officer.

Senator Major GOULD

- If the action has to be taken against the collector, what is to be done if the Minister declines to finance that officer, on the ground that the latter has made a mistake, and must take the consequences ? There will then be no opportunity for the owner of the goods to get damages, because the officer in all probability will be a man without means to satisfy a judgment. It is just as well we should have a little more light on the matter before we pass this particular portion of the Bill.

Senator Sir JOSIAH SYMON

- Senator Playford has shown how a benevolent administration of the provision would work the greatest good, but there is not one word of what he has told us embodied in the measure. Senator Stewart is under some misapprehension as to the power of the Customs officials. If the administration is not intended to be, as it never is, harsh and unfair, the Minister will try to do what is right in the interests of the revenue, and the importing public. There are three ways in which a question in connexion with prohibited imports may be finally dealt with, and in each instance it is the court that in the long run has to decide. If the goods be prohibited imports, the person who imports them is liable to a. penalty. If that penalty is sought to be enforced, an information has to be laid against the importer, when the decision of the officer - which is not a decision, but a mere temporary expedient to bring about action - will be dealt with, and the court will decide, first, whether the goods are prohibited goods, and secondly, whether the person charged was concerned in importing them. If both findings be against the person charged, the goods will be liable to confiscation, and a penalty will be imposed.

Senator Playford

- As a rule the importers are not " game" to go into court.

Senator Sir JOSIAH SYMON

- Where the penalty is not sought, notice is given to the owner of the forfeiture of the goods, and he may put in his claim for them, as not being prohibited goods. The collector will then investigate the matter, and may either not press it any further, or may give up the goods and take security for them. Or the collector may tell the claimant to bring an action, thus throwing on him the obligation of seeking to recover his goods in the ordinary way. In this way the matter will again come before the court for decision : and the man may recover his goods without compensation. Or he may claim that there has been an unjust seizure, and bring an action for compensation. Then, if the Customs officer had acted unreasonably or improperly, and exceeded his duty, he will be liable to damages ; but it would be a question for the Minister to decide whether the department should pay the damages given against the officer or leave him to pay the damages himself.

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Senator Sir WILLIAM ZEAL

- It appears to me that honorable senators are making efforts to protect a man who has defrauded the revenue. It is idle to contend that prohibited goods would not be prohibited within the knowledge of an importer. These importers, as a rule, know perfectly well what they are doing, and if they bring into this country goods which are prohibited by Act of Parliament, I hold that they are properly subject to penalties, and that we should not waste the time of the country in debating an amendment that would give them an opportunity of escaping the retribution which should follow upon an illegal act. I could understand protests being made if the importers did not know that the goods were prohibited. It is all very well to say that a man could appeal to the court. This community, however, does not exist for the benefit of the courts : the courts exist for the community. It is a misfortune for any man to be dragged there. The Government are to be commended for protecting the public as they propose. If a man commits a breach of the law he should be punished for it. We are here to protect, not guilty people, but the innocent ; and if a man introduces into a community goods that he knows very well he has no right to introduce he is deserving of the pains and penalties which attach to that conduct.

Senator STEWART(Queensland).- My complaint about the paragraph in question is, not that it is prohibitory of blasphemous, obscene, or indecent literature, but that the law dealing with the matter has

been so strained - in Victoria, at any rate - that articles which do not properly come under that definition have been prohibited. I am very much afraid that if we permit this provision to pass in its present indefinite form trouble will arise in the future. We are simply putting the cart before the horse. If a man brings prohibited goods into this country - goods of a blasphemous, indecent, or obscene character - let him be brought before the court, and charged with an offence in the ordinary fashion. But, under this provision, any landing-waiter in the Commonwealth might find in a volume by Zola a phrase which might appear to be indecent to his prurient or too vivid imagination, and might stop the importation of that work on the ground that it was indecent or obscene. The Bill provides that the importer can then appeal to a superior officer, and if he cannot get satisfaction there he can approach the Minister. If he is not satisfied, he can then bring an action. The burden of proof, contrary to the principles of English law, is to rest upon the man whose goods have been stopped. The old-established maxim of English law is that a man is to be presumed to be innocent until he is found guilty, but in this case the burden of proof, that a work is decent, lies upon the importer, instead of upon the Government or upon the officers who have prohibited the importation. This is reversing the ordinary course of legal procedure. I object to it for that reason. If the Government, acting through its officer, says that a certain article or work is blasphemous, obscene, or indecent, let it bring a charge against the person who imports the article, and let the person charged be tried before the court. Let us have something definite to go upon, so that people will know exactly what works are prohibited under this definition. I believe that even Tolstoi's works have been prohibited in Victoria. I know that Reynolds' Newspaper and a number of other reputable British journals were prohibited from coming into this State under a somewhat similar provision to this. I do not wish to see anything of that kind done under the aegis of the Commonwealth Government. For that reason I think it is highly improper that the decision should lie either with the Minister or any of his subordinates. If the measure passes as it stands, the present state of affairs will continue, and we shall probably have to make the same complaints in the future as we had to make in the past. Senator Playford referred to certain articles which he himself had seen. I do not desire that such articles should be circulated within the Commonwealth. But we have never heard of a single individual being prosecuted for attempting to import such things. It would be a very much more salutary method of dealing with the business if people who imported articles of that character were brought before the court, exposed, and punished.

Senator Major GOULD (New South Wales). - It appears to me that the honorable senator who has proposed the amendment is really anxious that persons who seek to import indecent books and articles should be punished. His objection is to the method of procedure when an attempt is made to introduce them. It would be better, if it were made clear what course of action should be adopted with regard to the stopping of prohibited goods. It is also desirable that the clause should be made clearer with regard to what is to happen in the case of an action against an officer who has improperly stopped the goods of an importer. At present the importer would be placed in a most unfortunate position if he had to institute proceedings against a landing waiter from whom he could not obtain damages. The whole of the provisions with regard to proceedings against officers appear to me to give every possible protection to the individual officer, but they do not give sufficient protection to the public. When we come to the provisions dealing with that matter we should consider the advisability of placing members of the public upon a fair and equal footing with the officers of the Government.

Paragraph agreed to.

Paragraph (d) -

Goods manufactured or produced wholly or in part by prison labour or which have been made within or in connexion with any prison, gaol, or penitentiary.

Senator WALKER (New South Wales). - I am sorry that such a paragraph as this has been inserted in the clause, although I recognise that there is a strong feeling that we should not encourage prison labour.

Probably the honorable and learned senator is not aware that many goods that enter into the Commonwealth are manufactured partly by prison labour. I do not object to goods that are wholly made by prison labour being excluded, but to say "wholly or in part" would make the clause extremely difficult to administer. I move -

That the words "wholly or in part" be omitted.

Senator O'CONNOR

- I cannot accept the amendment. It is a principle that has been agreed to in all the States that the

products of the local prisons are not to go into competition with ordinary labour.

Senator Walker

- Does the honorable and learned senator mean to say that orders for door-mats are not received by the prison department in New South Wales ?

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Senator O'CONNOR

- Such articles are only supplied to the public institutions, and are not allowed to enter into competition with ordinary goods. We simply wish to extend that principle to the products of prison labour in other countries. If we have the right to say what goods shall come into a State, and what shall not, why should we not extend the same principle to goods that come from the prisons abroad as we extend to goods made in prisons at home ? The principle is a perfectly sound one, which I think will have the assent of the committee. Senator Walker will see at once that if we prohibit only goods manufactured or produced wholly by prison labour we may have imported some articles, every constituent of which has been manufactured by prison labour, but which have been afterwards put together by other labour. Take the case of furniture. There might be five parts of a piece of furniture made by prison labour, but the whole piece might be put together by outside labour. The same remark applies to everything else. I do not think any honorable senator will be found to say that, considering the view that has been properly taken in these States with regard to prison labour, we should allow foreign prison-made goods to come through the Customs.

Senator Major GOULD(New South Wales.) - I am sure that honorable senators generally are in accord with the idea that we ought not to have goods which are manufactured in prisons in other parts of the world introduced into the Commonwealth, and coming into the competition with goods manufactured here. But the idea of Senator Walker, in proposing his amendment, is rather to get over the difficulty, that because one infinitesimal portion which may have been manufactured in a prison, is introduced in to an article that article should not be allowed to enter the Commonwealth. An Indian carpet, for instance, might be prohibited, although it only contained a small portion of work done in a prison. I know the principle has been laid down in nearly all the States with regard to their own prison labour, that such products shall not be brought into competition with free labour ; and that has involved the prison administrations in a great many difficulties. When a man goes to gaol it is not desirable to keep him in idleness, but to give him some useful work to do. If it is desired to reform a man, it is not wise to keep him on the treadmill, but to give him such work as bootmaking or carpentering, whereby he may feel that he is doing some good. There is also the point of view that the general taxpayer, who has to find the money to keep persons in gaol, has the right to be indemnified against the cost by the prisoner doing something to sustain himself while he is there. The States are compelled, while keeping these men employed in this way, to utilize the results of their labour, and articles manufactured by prisoners are used by themselves, by prison warders, and in some instances by the military, in order as far as possible to reduce the expense to which the community is put in keeping persons in prison, and further, to give the prisoners habits of industry, that they may have an opportunity of becoming respectable members of society when they get outside. I am quite in accordance with the principle of the paragraph, and it would not be at all desirable that articles manufactured in prison should come into competition with goods manufactured by free people in the Commonwealth. I am sure that the Senate as a body would not countenance anything in the shape of the manufactures of prison labour coming into the country, and I suggest that the honorable senator should not insist upon his amendment.

Senator PEARCE

- I am surprised at Senator Walker moving any such amendment as this. The honorable senator is endeavouring to cut away the vital principles of the clause. It is a common practice in some of the prisons of America to make chairs, and these might be exported in parts and put together here in the States. If we struck out this part of the paragraph we would allow those goods to come in and compete with locally-made chairs. Joinery, doors, and sashes are also made in prisons in America., and it is more convenient to export them in parts. The amendment would nullify the spirit of the clause, and if, in moving it, the honorable senator's idea is to have free-trade, it appears to me that it is free-trade run mad. If the honorable senator proposes to carry out his principle to that extent, he will not receive much support.

Senator GLASSEY

- This amendment is a proof of the possibility of carrying philanthropy too far. Surely the honorable senator who moves it cannot argue that it is a fair thing that the working people of the Commonwealth should have to enter into competition with prison labour in America, Great Britain, India, or anywhere else, in connexion with the manufacture of boots and shoes, saddlery, or furniture of various kinds, which are made in prisons. If this is the sort of competition the honorable senator wishes the working people of the Commonwealth to engage in, it is philanthropy and free-trade unmuzzled. I hope the amendment will not be pressed, and, if it is, it will be the duty of the Senate to reject it.

Senator CLEMONS(Tasmania). - I recognise that this is a splendid opportunity for making a speech, but I rise simply to say that, so far as I am personally concerned, I approve of the paragraph as it stands, and I rise, also, to ask the honorable senator who moved the amendment to withdraw it.

Amendment negatived.

Paragraph (e) -

Exhausted tea, mid tea adulterated with spurious leaf, or with exhausted leaves, or being unfit for human use, or unwholesome.

Senator STEWART(Queensland). - I desire to have it made perfectly clear what steps the Customs officials intend to take to see that tea of this character is not permitted to come into the Commonwealth. I used to bring up the question of bad tea in the Queensland Parliament every session, and though I was constantly assured by the Government that every precaution was being taken to secure that nothing but the very best tea was admitted into the State, I find that the new health officer in Queensland recently discovered no less than 40 samples of tea imported which was of a most pernicious character. I would like to have some assurance that the people of the Commonwealth will be protected against this bad tea, and for the purpose I think it desirable that a special officer should be appointed who would be capable of analyzing tea. The real question is as to whether the tea will be brought under the notice of the experts. We have often heard that Customs officers can be bought, to put the matter in a simple fashion, and it is clear that I was deceived in the matter in Queensland, and that, notwithstanding continual assurances from the Government, bad tea was being poured into that State. It is evident that the Customs officials allowed that bad tea to get in without due examination. What I want to provide for is that no tea shall be allowed to be sold within the Commonwealth unless it is passed by a competent officer as pure tea, fit for consumption.

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Senator O'CONNOR

- It is impossible to provide in the Act for every step which is to be taken in connexion with every matter of administration. We must rely on the officers to carry out their duty according to the spirit of the Act. We must rely on the power of the Minister to make regulations for carrying it out, and for any matters which cannot be detailed in the Act itself. The operation of the Bill will be in the hands of persons specially skilled, and who have been carrying out work of the kind for years. Because we do not find every step detailed in the Bill, it is not to be supposed that there are therefore defects in it, or that there is any necessity to provide for everything in the Bill. In respect to tea, the officer in charge of the ship, or of the wharf, will, in the first instance, judge for himself; and if the tea obviously comes within this paragraph, he will act upon his own responsibility. If there is any doubt on the subject, there is an expert analyst connected with the department to whom samples will be submitted, and the department will act upon his report. The honorable senator may be assured that if this power is given to the officials there will be provision made by regulation, and by the ordinary administration of the department, for carrying out the work properly. If it is not carried out properly the department will be in the same position as any other department which is subject to the criticism of Parliament, of the press, and of public opinion in a variety of ways. It is only in that way that the efficiency of administration can be secured in all departments.

Senator Sir William Zeal

- And by the competition between the importers.

Senator O'CONNOR

- As the honorable senator suggests, those traders who are engaged in supplying the market with proper goods will take every precaution to see that deleterious goods, which come into competition with them, are kept out. Having regard to all the safeguards) Senator Stewart need be under no apprehension that the provision will not be properly carried out.

Senator Sir FREDERICKSARGOOD (Victoria). - I am not sure that the Minister is quite correct. The honorable and learned senator has taken a very rosy view of what is going to occur in connexion with the examination of tea. We cannot do better, in dealing with the matter, than to reflect upon what has taken place in the past, and I confess that the statement of Senator Stewart was fully warranted so far as experience in Victoria is concerned. This matter is in the Victorian Customs Act specifically provided for by a series of five sections which are taken from an Imperial Act. As a matter of fact, on more than one occasion tea has been condemned under those sections in Victoria, and it has afterwards been exported from Victoria and imported into other States and sold there.

Senator O'Connor

- The honorable senator will see that one of the reasons which have made that possible is the diversity of administration in the different States, and if we have one method of administration for all Australia, it will be impossible for that to be done.

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Senator Sir FREDERICK SARGOOD

- That is why I consider it advisable to have the one administration, and not to leave it to be a matter for regulations which may be altered by any Minister of Customs who happens to be in power. The fifth of the sections in the Victorian Act to which I refer relates to tea, and is a copy of the Imperial Act.

All tea imported as merchandise into Victoria by land or sea shall be subject to examination by an officer of the Customs appointed for that purpose by the commissioner.

That has been in operation for the last fifteen years, with beneficial results in Victoria, and I would prefer that these sections of the Victorian Act should be embodied in this Bill rather than have these matters left to regulations.

Paragraph agreed to.

Paragraph (f) -

Oleomargarine, butterine, or any similar substitute for butter.

Senator GLASSEY (Queensland). - I think it is not wise to pass this paragraph, and I suggest that it should be withdrawn. This is an article I know something about. Very many years ago the question was raised in the House of Commons, and the late Lord Playfair, no mean authority upon matters of the kind, delivered an exhaustive and interesting address with regard to the value of these products. He did not suggest that they should be sold as butter, but as an article which is a valuable substitute for butter. He so impressed the House of Commons by his statements that his suggestion was adopted, and these articles are sold under their proper names as substitutes for butter. Prior to coming to this country I sold many hundred weights of this preparation, which is simply fat flavoured like butter, and a very excellent article of diet. Many poor persons, when butter is scarce and dear, find that they can purchase this perfectly wholesome article at a cheaper rate; and I suggest that this sub-clause be omitted.

Senator PULSFORD (New South Wales). - I rise with great pleasure to support the suggestion that the sub-clause be omitted, and I think I can give some information which will surprise the honorable senators. According to the Annual Statement of Trade of the United Kingdom, vol. 1, pages 4 and 5, it appears that, from 1896 to 1900, the highest importation of margarine, which included all kinds of artificial or imitation butters, was 953,175 cwt., and the lowest 900,615 cwt. in any one year, or an average of considerably over 110,000,000 lbs annually. It would be very extraordinary if this Senate were by legislation to stigmatize a trade of this character as a wicked trade which ought not to be allowed. As to the annual value of this imported margarine, we are told that the lowest importation was £2,384,384, and the highest, £2,549,476. There is another form of butter or butterine of a very valuable kind known as cocoa butter, which, under this sub-clause, would also be prohibited. In the five years I have mentioned the lowest importation of this cocoa butter was 242,940 lbs. and the highest 1,601,132 lbs., while the value ranged from £11,299 to £80,162, the value of cocoa butter being equal to that of ordinary butter. I am not in any shape or form interested in either the production or sale of oleomargarine, but I know that everything Senator Glassey has said is perfectly correct as to the wholesome character of the article, which, as Sir. Lyon Playfair no doubt in his speech said, does not contain those constituents that cause butter to so rapidly grow rancid. What an honest Legislature has to do is to see that an article, which, though wholesome, may be of a low quality and cheap, is sold under its proper name, and not to treat a trade of this kind as a fraudulent trade. Under this clause, as I have said before, if a ship brought a small quantity

of this oleomargarine from any part of the world the shipment might be forfeited and the ship itself seized - consequences which simply confound our common sense.

Senator MACFARLANE(Tasmania).Some years ago I was in Amsterdam, and although Holland produces the finest butter in the world, I found oleomargarine on the table instead of butter at the hotel at which I was staying. The Dutch are a very frugal race, and this article, which is cheap and wholesome, is largely consumed in Holland.

Senator McGregor

- Now the "cat is out."

Senator MACFARLANE

- If oleomargarine be a wholesome article of diet, I do not think we ought to prohibit its importation.

Senator MCGREGOR

- I hope the Senate will insist upon the sub-clause remaining. Butter is produced plentifully in Australia, where we are doing all we possibly can to maintain proper rates of wages and other conditions to enable our people to live better than do the people in Holland. In the latter country the people export the butter they make, and live on the oleomargarine themselves.

Senator Pulsford

- The Dutch are the greatest exporters of oleomargarine in the world.

Senator MCGREGOR

- But the Dutch live on oleomargarine themselves to a very great extent, and in the country from which Senator Glassey comes, the people send away their oats, wheat, and everything else, and import Indian meal to live on. Do we want that sort of thing in Australia? Do senators wish to eat good butter themselves, and make their servants eat oleomargarine? If we want oleomargarine in this country, we have all the ingredients with which to manufacture it ; but it is a question whether, if it came into common use, I would not be opposed to its being produced here. If people are not in a position to buy butter, I -would rather see them eating good dripping than any counterfeit. It is for the purpose of protecting the people of Australia against fraud that this sub-clause is introduced, and we do not want them reduced to the position of sending away thousands of tons of butter to other parts of the world, while they themselves live on oleomargarine.

Senator Major GOULD(New South Wales). - I think another "cat has been let out of the bag," when we are told that the manufacture of oleomargarine may be allowed in our States, but that we are not to be allowed to import it.

Senator O'Connor

- We might just as well charge Senator Gould with looking after the free-trade " cat."

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Senator Major GOULD

- Very possibly we are looking after the free-trade " cat." I am really surprised that Senator O'Connor is going to adopt the other "cat" as his own. I should take it from his remarks that he now says that if we are to have oleomargarine it would be better to have it manufactured in our own States and not imported, so that the local manufacturer may have the market to himself. But this is not a Bill in which to deal with the Tariff and say what duties shall be paid or what articles shall have a prohibition placed on them. This Bill professes to deal with the machinery for a Tariff Bill, and it provides that, for certain grave public reasons, a particular article shall be placed among prohibited imports. But no question of international importance arises in connexion with the exclusion of butterine. We are told that oleomargarine may be sold here as butter; but,

After all, is this the sort of provision which should be inserted in a Bill of this character 1 If oleomargarine could be shown to be unwholesome or dangerous to public health there might be a very strong case against its importation ; but statistics prove that large quantities of this preparation are consumed by people in other parts of the world, where there are strict laws against the adulteration of food and the sale of articles under a false title, and all precautions are taken. One or two of the States have a provision of this kind in their legislation, and Senator Sir Frederick Sargood seems to regard it as undesirable to strike this sub-clause out, on the ground that in Victoria there is a law prohibiting the manufacture and importation of oleomargarine ; and that it would not be fair for the Commonwealth to allow this substance to be introduced against the will of the State. But clause 51 provides that -

All goods lawfully prohibited to be imported into any State shall, as regards that State, be prohibited imports for the purposes of this Act. That protects Victoria ; but why should we force a law of this character on other States who have not thought it necessary to pass legislation of the kind, especially when it cannot be shown that to prohibit the importation is for the benefit of the people? As to people eating good dripping if they cannot get good butter, we would all be glad to see the people sufficiently prosperous to live on the very best ; but there are poor people in this and every other country. Will Senator McGregor say that because a man is poor and cannot afford butter, he should not be allowed to eat oleomargarine, if the latter be a good and healthy substance ? This is a matter which should be left entirely to the States, and I hope Senator O'Connor will see his way to consent to the omission of this sub-clause, which was not in the Bill as originally introduced, but was inserted on amendment moved, I am not sure whether at the instance of the Government or by some private member.

Senator O'Connor

- The amendment had the strong support of the leader of the Opposition.

Senator Pulsford

- No ; that is a mistake.

Senator Major GOULD

- What does it matter whether the amendment had the strong support of the leader of the Opposition or not ? I am sure that Senator O'Connor, when he finds the leader of the Opposition opposing proposals of the Government, will not tell us that because of that strong opposition we ought not to support those proposals.

Senator O'Connor

- I made that interjection in answer to the honorable senator's statement of the history of this subclause.

Senator Major GOULD

- The Government after full consideration, and, after consultation with their own officers, and with full knowledge of the Victorian law, deliberately omitted such a sub-clause as this. The Government may have found that an amendment of the kind was agreeable to a majority then in the House, or may have accepted it for some other reason ; but when we, having brought our independence and unfettered judgment to bear on the Bill, suggest that the sub-clause should be withdrawn, we may fairly expect the representative of the Government to meet us in this matter, unless he has a good and sufficient reason to justify a refusal.

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Senator O'CONNOR

- It will not help us in arriving at a determination, if we enter into the history of when or how, and in what way, this provision was introduced into the Bill. The sub-clause passed the other House, and is before us now, and if it is good on its merits, it ought to remain. Very little help is afforded by raising suggestions as to motives, whether of free-trade or protection, which may animate honorable senators in dealing with this question. I put the matter on a different footing - the Government put it on an entirely different footing - and if it cannot rest on the footing on which I place it, I admit it has no right whatever in the Bill. One honorable senator has said that this Bill is to regulate the collection of customs duty. That is quite right ; but it is not all. The Government, as representing the people, act by their own officers in different ways. It is the same Government officers, whether administering the Customs Act or the Public Health Act, or any other of the various measures which a Government can administer, and it is for that reason -that the Government stands in the position of protecting the health and welfare of the people in every way. Where we see we can give to an officer power which will aid in conserving the health of the public we give that power. Is it not for that very purpose we have placed amongst prohibited articles exhausted tea 1 The matter is not strictly connected with the collection of revenue, but we have inserted the provision, because a Customs officer has the best opportunity of preventing such articles going into consumption to the injury of the health of the community. We also, in order to protect the community in another way, prevent at the very outset the importation of blasphemous, indecent, or obscene works or articles, not because that matter comes within the purview of the collection of the revenue, but because we take in hand the regulation of those tilings which may do damage to the community. For the very same reason if we find that there is an article which lends itself more readily than any other to fraudulent use, or to being put forward for sale as a substitute for butter, and which it is very difficult to detect, we have a right to give

power to officers of the Customs to see that in this respect the public are not being imposed upon. I do not say for a moment that oleomargarine or butterine are fraudulent. There may be a large number of honest persons in the trade. But the substance itself is of such a character that it is very difficult, indeed, to detect the fraud. I should like to remind honorable senators who may not have studied the subject technically what this substance really is. I will quote from a well-known authority, Winter Blyth, on "Foods - Their Composition and Ingredients." In regard to this particular substance, he says : -

Oleomargarine, butterine, Dutch butter, butterine, edible fat. and similar appellations all denote different varieties of a manufactured article made expressly to imitate butter. It is an important industry in the States, and is also largely produced in Holland (hence the name of Dutch butter) and in Belgium. As manufactured in Chicago it would appear to be at all events a cleanly article. Animal life is plentiful in the States. American technical operations are on a gigantic scale, and too much capital is involved in the matter to allow of any process likely to disgust the consumers. The chief constituent used is beef fat, which consists for the most part of stearin-margarine (so called) and olein. The olein and margarine melt at a much lower temperature than the stearin. Mutton fat contains more stearin than beef fat : hence in summer the softness of beef dripping as compared with the solidity of mutton fat.

Then he describes the methods of manufacture.

The oleomargarine is at this stage quite tasteless, and has no flavour of butter. This flavour is given by churning it with milk ; lastly, the product is coloured with an art and rolled with ice, after which it is either made up into pounds, or packed into kegs for export. Arrived in this country, it is either sold honestly as margarine at the price of about a shilling a pound ; fraudulently, at a higher price as butter, or it is used as an adulterant of butter.

The chemical proportions are then set out, but I need not trouble the committee with them. It is recognised in England that there are so many opportunities for fraud in connexion with the manufacture of this substance that there must be special legislation on the subject. It is regulated by an Act "for the better prevention of the fraudulent sale of margarine," 50 and 51 Vict. The Act was "passed in 1887, and the general provisions of it are that margarine, if sold, must be sold in certain sized packets, and must be branded legibly with the word " margarine." If it is not sold in that way a penalty is incurred. Why is that trouble taken about the matter in England ? For the reason that margarine itself would be nearly unsaleable. What makes it saleable ? The colouring matter and the tasting matter which make it like butter. It is the very process of completing the manufacture which makes it like butter, and it is only because it is like butter that it is sold. That is the reason why it is so difficult to distinguish between oleomargarine and butter. It is a substance by which a great deal of fraud can be carried on. Therefore, at the very inception the Commonwealth Parliament is asked to say that, before this article gets into general consumption, our Customs Act shall prohibit an article which is dangerous to health, and is used either to adulterate butter or as a substitute for butter. I have heard some honorable senators say that this substance is not dangerous to health. There is no doubt that pure margarine or butterine is not dangerous. Pure margarine, which comes from a country like the United States, where animal life is plentiful, may probably be produced by means of processes which are pure, as pointed out by Winter Blyth in his book. But when margarine is brought from places where these processes are not purely carried on - where any "kind of waste material may be used - we are face to face with a very undesirable condition of things. It is one thing to have a manufactory carried on here under certain conditions which we can inspect, and quite another thing to have a manufactory carried on at the other end of the world under conditions about which we know nothing.

This legislation is not new. In Western Australia margarine is a prohibited article, and I have no doubt for the same reason that we are proposing to prohibit it. It is also prohibited by the Customs Act of Tasmania. I notice also that it is prohibited by the Customs Act of Canada. In Victoria there is special legislation on the subject which prevents oleomargarine being manufactured except under certain conditions, which are the English conditions. I mention these circumstances for the purpose of showing that this matter is looked upon, in some of the States, at all events, as a matter to be dealt with through the Customs. Senator CLEMONS (Tasmania). - I confess that when I first read this provision I had some doubts about it, but now I am free to confess that I have no doubt whatever. The doubt I had at first was as to whether the consumption of the articles set forth in the paragraph would be harmful. Since hearing the authority quoted by Senator O'Connor, I have no doubt whatever that margarine is perfectly cleanly, and not in any

way injurious, and that there is no cause for objecting to its importation into the Commonwealth except because it is cheap. I do not feel inclined to class these commodities amongst prohibited articles because they are cheap, and I am astonished that Senator McGregor should have supported the provision. I do not believe that Senator McGregor will venture to assert, after the authority which has been quoted by Senator O'Connor, that margarine is a substance that would do injury to persons that consume it. The authority quoted shows that it is a cleanly article. It is manufactured in huge quantities in the United States, and imported into England in tremendous quantities. We can only assume, therefore, that it is a perfectly wholesome food. That being so, what reason is there for prohibiting it? We are told that it is manufactured from beef fat, that milk is added to it, and that then it is ready for consumption. It will not be disputed that beef fat is a wholesome article of food.

Senator Sir William Zeal

- If it is sound.

Senator CLEMONS

- If the honorable senator is going into refinements of that kind he can put the same qualification upon any article imported into Australia. It has to be admitted, after the authority which has been quoted, that it is a cleanly substance.

Senator McGregor

- I say it is not, and I have worked in a factory where it is manufactured.

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Senator CLEMONS

- Apparently Senator Sir William Zeal misunderstands the authority quoted by Senator O'Connor, and Senator McGregor knows better than the authority. It would, therefore, be a waste of time to try to convince them: But, in my opinion, an attempt to prohibit the importation of an article of this kind is ridiculous and contemptible ; and for Senator McGregor, who poses as a legislator for the poor man, to try to prevent him getting cheap food, when it is harmless, is a course of action which will meet with no approval from me. Senator O'Connor told us that this was a Bill to protect our health, and to regulate, amongst other things, the collection of duties. He also indicated that it would interfere, as far as possible, with the ordinary convenience of the public. In that respect it differs very little from most of the Bills which have been introduced in this Chamber. The honorable and learned senator also admitted that an attempt is made in this measure to convert it into a kind of Prevention of Adulteration Act. I agree with Senator O'Connor in supporting the prevention of adulteration of our foods, but I contend that this is not the proper means to secure that object. If we attempt to prevent all manner of adulteration by means of a Customs Bill, we shall fail lamentably, or else the Bill will be so large that we shall not be able to finish it in a session. If I desired to enlarge upon the subject, I could point to a thousand articles coming into our ports any one of which might be prohibited by a customs regulation on the ground of adulteration. Every article of food we consume might be objected to on that ground. When it is proposed to object to the introduction of oleomargarine, I point out to Senator McGregor that oleomargarine and other similar substances are now being manufactured in the Commonwealth, and their manufacture here is legalized. Taking Senator McGregor on his own ground, what then does he propose % What he really proposes is, assuming with him that this substance is very bad, that we shall have a monopoly of a fraud, or of a dangerous practice, in the manufacture of an article which is deleterious to every inhabitant of the Commonwealth who consumes it. If Senator McGregor wishes to stop any injury being received by inhabitants of the Commonwealth through the consumption of deleterious substances, I am entirely with him ; but the senator will agree with me that this is not the method in which to do that. This proposal can only secure that a limited amount of the substance that may come from abroad shall not be landed here; but it does not in any way touch as much of the stuff as may be manufactured in the Commonwealth itself.

Senator McGregor

- This is not the place to deal with that. We can do that otherwise.

Senator CLEMONS

- If we bring in a Bill to prevent the manufacture or the sale or disposal of bad oleomargarine within the Commonwealth, we can quite properly in that Bill prevent the introduction of bad oleomargarine. Why should we, because we want to prevent the consumption of bad oleomargarine, prohibit the introduction of a sound wholesome food ? I see no reason for the paragraph, and am entirely in accord with Senator

Glassey with respect to it.

Senator Lt.-Col. NEILD (New South Wales). - I join issue with the honorable and learned senator who has just sat down, and I say that the Commonwealth is given no power whatever to deal with food adulteration. Senator O'Connor, in this proposal, seeks to do under a Customs Bill that which he cannot do under the Commonwealth Constitution. Under what section of the Constitution can the honorable and learned senator find any excuse for attempting to legislate for the prevention of food adulteration, however excellent the attempt to deal with it may be? I shall be with the honorable and learned senator to the furthest extent in the prevention of food adulteration if he can show me any authority that we have for it. I defy him to do that. It is notorious that a great number of articles of food are adulterated. All the world knows, for instance, that anchovy sauce is composed largely of red lead, and the proceedings which honorable senators may have read in some of the London Law Courts clearly showed that mushroom ketchup is made out of the horses that die in the streets. It is notorious also that Worcester sauce is very largely compounded from the decayed livers of bullocks. These are some of the cheerful things that we swallow every day. I do not know anything about this oleomargarine. I may have eaten it, or I may not, but I understand that it is a wholesome article, and one that is largely consumed by people who cannot afford the more expensive forms of butter. It is simply a butter made from substances other than cream. I am going to vote against the paragraph for the simple reason that it attempts to do that which we have no authority to do. It is a positive attempt to grab an authority that the Constitution Act does not give. I agree with Senator demons in one argument that he put forward ; but I carry it further than he carried it. The honorable and learned senator conclusively showed that this was a proposal to keep out of Australia that which we can, and do, make in Australia, and I say that while we here propose to take the authority to keep the article out of Australia, the Vice-President of the Executive Council cannot tell us that we have the smallest power, or that the Constitution Act gives the slightest authority to the Commonwealth, to prevent the manufacture of any article of food in the Commonwealth, however deleterious it may be. It is not part of our duty or authority, and in a spasm of virtuous tomfoolery we are attempting to keep something out of the Commonwealth, because it may be deleterious, knowing all the time that we cannot interfere with its manufacture in the Commonwealth. As we have not the smallest pretence for saying that we will prohibit the manufacture of the article in the Commonwealth, what an extravagance of farce it is to propose to prohibit its importation. I shall vote against the paragraph on that very ground - that it is an absurdity to attempt to exclude an article the manufacture of which we cannot possibly regulate.

Senator PLAYFORD (South Australia). - If the argument of the honorable senator who has just spoken, is carried to its logical conclusion it will prevent our dealing with exhausted tea, and a great many other articles. Because we cannot find a direct authority in the Constitution, it is not proved that we cannot deal with a subject of this kind in a Customs Bill. Certainly in a Customs Bill, prohibiting the introduction of certain articles, we have the power to prohibit practically what we like.

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Senator Lt Col Neild

- Will the honorable senator show me where the power to prohibit lies in the Constitution Act ?

Senator O'Connor

- In the power to make laws regarding Customs.

Senator Lt Col Neild

- This is adulteration. It is not Customs.

Senator PLAYFORD

- It is not a mere question of adulteration. There are no direct words in the Constitution Act to give us the power to deal with any of the matters referred to in clause 49, but we have the general power to deal with all matters appertaining to Customs, and it is very well recognised that in a Customs Act we have power to prohibit certain things coming into the country if we believe their consumption to be injurious. The question at issue seems to me a very plain one. We must be able to give good and sufficient reasons that the introduction of articles we propose to prohibit will be injurious to the morals or health of the people. The introduction, for instance, of exhausted tea is not injurious to the morals of any one except perhaps the blackguard who imports it and sells it as pure tea. We know that good oleomargarine would not affect the morals or health of the people, and there is not the slightest ground for objecting to the introduction of a substance which in itself is absolutely harmless and is even a good and useful food. The only ground

upon which Senator O'Connor can object to it is that it may lend itself to adulteration. Does not the honorable and learned senator know that almost everything we use will lend itself to adulteration, and that upon that ground we could exclude thousands of other articles? This article should be allowed to come in, and its adulteration should be dealt with by the States, precisely as it is dealt with by Great Britain, where its sale is prevented unless it is properly labelled. Every precaution is taken by competent analysis of samples to see that it is really what it professes to be, a good and wholesome food. As such it is sold by the ton in Great Britain to people who cannot afford the more expensive article. It is a great mistake for us in this Bill to interfere with a matter the regulation of which ought to belong to the States. If they wish to pass laws to prevent this article being palmed off upon people as butter, let them do so. Why should we, acting for the whole Commonwealth, prevent the introduction of an article which may in the State of South Australia be legally introduced? I do not see why we should assume this power for the States, and tell them that we know better than they that this article is injurious and harmful. I think we are going far beyond our province in passing such a provision.

Senator Sir WILLIAM ZEAL (Victoria). - Oleomargarine and butterine, if manufactured from pure ingredients, are not objectionable articles of food, but that is not the point at issue. This is an article which lends itself to an imitation of butter, and is sold to poor people as butter. The Legislature of Victoria, in its endeavour to protect the poor man and prevent him from being imposed upon by getting margarine instead of butter, decided that margarine, when introduced into the market, should be coloured in a distinctive way to distinguish it from butter, and should carry a brand to say that it was margarine or oleomargarine. I am astonished at some honorable and learned senators attempting to throw dust in the eyes of the public by saying that it is necessary that we should pass laws that will enable this fraud to be carried on. If we make special provision so that the public may know what they are buying, no harm can be done. I would suggest that the words "unless colored to distinguish it from butter, and branded in a manner to denote its manufacture" should be added to paragraph (1). If those words are inserted I do not see how there can be any objection to the introduction of oleomargarine into this country.

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Senator DE LARGIE

- I hold that the Senate is about to take up a very inconsistent attitude. We have just decided to exclude prison-made goods from the Commonwealth, and I do not see why butterine, which can be so easily palmed off on the public as genuine butter, should be allowed to come in here. It is very difficult to distinguish the real butter from butterine, and I have been told that I have been using it without knowing it. There are even stronger objections against the introduction of butterine than against the importation of prison-made articles, because the butterine more easily lends itself to the perpetration of frauds upon the public. This matter involves considerations, not only of health, but also of economy. We know that we have good, wholesome butter - perhaps as good as any in the world - produced in Australia in ample quantities, and I think it should be our object to exclude an adulterated article rather than to admit it upon the score of its cheapness. I was amused at the indignant tone adopted by Senator Clemons, at what he seemed to think was an attempt to interfere with the opportunities of the working classes for obtaining cheap food. But I would point out that the working classes do not worship at the shrine of cheapness, because they know that the cheaper the price of food, and the less it costs them to live, the lower their wages will go.

Senator Clemons

- No ; I deny that.

Senator DE LARGIE

- The honorable and learned senator may be an authority on law, but I cannot accept his dictum on political economy. I would recommend him to read a few books on political economy. It is one of the basic principles of political economy that wages go down as the cost of living decreases.

Senator Playford

- In England the wages have gone up considerably, whilst the cost of living has gone down.

Senator DE LARGIE

- I know something of the cost of living and wages in the old country, and I say it cannot be disputed that "the cheaper the people can live, the less the wages will be. I defy any senator to quote one political economist of any standing who says the contrary. I hope the Senate will act consistently in this matter,

and deal with butterine in the same way as we have done with exhausted tea and other equally objectionable articles.

Senator STANFORTH SMITH

- The question is not one of free-trade or protection, as some honorable senators have sought to persuade us. This is a machinery Bill which, among other things, is intended to prohibit certain articles, which we regard as injurious, from coming into the Commonwealth, and unless this provision is, as Senator Lt.-Col. Neild says, contrary to the Constitution, I am certainly going to vote for it. We have been told that the butter industry of Victoria is one of the finest in that State, and that it is likely to become one of the largest in Australia. I believe that the butter industry in the Commonwealth should be open to the competition of the world so far as importations of butter are concerned, but that it should not be brought into competition with the mean and spurious imitations of butter that, whilst perhaps made of good materials, may at the same time contain very injurious ingredients. There is no food that is more likely to be adulterated than oleomargarine, which can be made out of the vilest fats and compounds, and we should not allow this article to be introduced into Australia to the injury not only of our people, but of a great industry.

Senator Pearce

- And yet we manufacture it here.

Senator STANFORTH SMITH

- What is done here is under our own jurisdiction, and I trust that the State Governments of Australia will see the necessity of prohibiting the manufacture of an article which is produced for the purpose of deceiving the public. I shall not object to the amendment of Senator Sir William Zeal so long as it is clear that the provision made will prevent any chance of oleomargarine being palmed off as butter. If we prohibit the introduction of exhausted tea we should certainly shut out such an article as butterine. We have heard how various comestibles are made up on the Continent, and we know that the horses that die in London are sent to the Continent to be made into German sausages. No doubt we have eaten a good deal of this kind of meat without knowing it. Although we have eaten what is known as "tinned daa" over in Western Australia, we do not want oleomargarine imported here which may be, in reality, the tinned fat of horses. I think the amendment, if it has the effect that is claimed for it, will meet all the objections that have been raised against the clause.

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Senator O'CONNOR

- I propose to accept the suggestion of Senator Sir William Zeal which appears to me to be a very good one. We are all agreed that no opportunity should be given for placing imitations of butter upon our market, and I move -

That the words "unless coloured and branded as prescribed" be added to paragraph (/).

The amendment will, I think, appeal to those who think that the Commonwealth ought to prevent the introduction of goods which lend themselves to the perpetration of frauds. I have made the amendment take the form it does because we know that all sorts of ingenious devices are resorted to in order to overcome prohibitory enactments, and if we set any particular mark or guide for the importers, they will very soon find ways of getting over any difficulty that may be created. Therefore it is necessary to leave it to the Government to prescribe by regulations, which will be laid before Parliament in the usual way, the conditions that will have to be complied with before this article can be admitted.

Senator Lt.-Col. NEILD (New South Wales). - I only rise to refer to the remarks of Senator Playford, who, while apparently devoting himself to proving that I was wrong ended by showing that my argument was perfectly right. My argument was, and is, that the Government are attempting to exclude an article, the manufacture of which they cannot prohibit in the Commonwealth; and Senator O'Connor admits that, because he asks why the State Governments do not prohibit the manufacture.

Senator MCGREGOR (South Australia). - I am sorry the Government have accepted the amendment, although it is better than nothing. I would like to point out - particularly to Senator Gould - that when I referred to the "cat being out" I had no idea in my mind in regard to either protection or free-trade. When I heard an honorable senator speak about the cheapness of oleomargarine and other compounds, which I call abominable, it reminded me of a lady of title in Ireland, who, after making her purchases, used to ask the tradesmen whether they had any margarine or dirty butter which she could buy for the use of her

servants. That was the idea that flashed through my mind, and that idea still lingers. Will honorable senators tell me that because a thing does not kill, it therefore is not injurious? We do not take things because they are not injurious, but because they are beneficial ; and if oleomargarine is beneficial, then let us get rid of butter. No matter where oleomargarine is manufactured, it is like manufacturing butter in a soap works or candle factory. It would be a disgrace to allow this compound to come in, if we can by any means prohibit its importation. I know of one instance where a hundredweight of cart grease was taken into an establishment, and the question was whether it should be done up in firkins or in pounds. It was decided that it should be put up in both forms, and without extracting any of the dirt or filth, the cart grease was so transformed that few people could tell the difference between it and butter. The Commonwealth, in another place, is endeavouring to do something for the encouragement of farmers and the farming industry. Are not only the States Parliaments but the Commonwealth Parliament to spend weeks in legislating, and thousands of pounds in giving encouragement and assistance to the dairying industry, and then allow this vile stuff to be brought into competition with butter, on the ground that it is going to give cheap food to somebody ? In the older countries - in the slums of London, Glasgow, and on the Continent - where oleomargarine is consumed, the people are poverty stricken and immoral. The conditions of life under which people live, undoubtedly affect their morals, and a part of the conditions of the lives of those people is the consumption of that abominable article of food. In the interests of the physical well-being and morality of the people, I ask honorable senators to prevent the bringing into the Commonwealth of such an abomination as oleomargarine.

Senator EWING(Western Australia). - The first question the Senate has to consider is whether the introduction of oleomargarine is damaging to the health or morals of the community. Senator O'Connor has , by the authority he quoted, made it manifest to us that oleomargarine injures nobody ; and no honorable senator has offered any serious argument showing that it is not wholesome.

Senator STANFORTH SMITH

- Has the honorable senator any objection to Senator Zeal's amendment ?

Senator EWING

- I object to the amendment because the object, which is to secure the purity of food, is absolutely foreign to a Customs Bill.

Senator O'Connor

- It is to prevent fraud.

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Senator EWING

- The Customs Bill is to prevent fraud through the Customs, and not general fraud throughout the community. The two tilings are absolutely and entirely separate. Is there any evidence before the committee that there is anything wrong with oleomargarine ? We have written authority that the preparation is pure, and similar testimony has been given by almost every senator. Senator Smith, for a free-trader, uses a very ingenious argument, when he says he would impose this restriction, because the introduction of oleomargarine would interfere with an industry of this country. If Senator. Smith desires to prevent competition in this direction, he should do it when the Tariff Bill is before the House, and then not as a free-trader, but as a protectionist.

Senator De Largie

- Why did Senator E wing not take the same stand in regard to prison-made goods ?

Senator EWING

- Two wrongs do not make a right. I look on the importation of prison-made goods as an evil to the community, and nobody except Senator McGregorhas shown that there is any evil in oleomargarine. Senator McGregor has been a very unfortunate man to come in contact with a class of people who feed their servants on food which is unfit for human consumption - a class of people almost unknown in Australia.

Senator McGregor

- They are in Australia even now.

Senator EWING

- I am sorry to hear that, because my experience has been much happier. If we want to prevent fraud, ample means are provided, and when we are dealing with the Customs, let us confine ourselves to.

Customs matters. If we exclude oleomargarine, we might just as well say that because Worcester sauce is adulterated, as every one admits it is, it should be excluded from the Commonwealth, that because whisky can be adulterated we should exclude it from the Commonwealth of Australia. In the opinion of most it is desirable that the people of this country shall get cheap food. But the object of the Customs Act is not to secure that end, but to prevent the defrauding of the revenue, and to provide for the administration of the department. The moment we go outside that object we depart from the honest and reasonable scope of a customs law, and endeavour by an indirect method to make a law which the committee should not enforce upon the community.

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Senator Sir FREDERK SARGOOD

- In 1893 the Parliament of Victoria dealt with this very important matter. They were moved to do so by the producers of butter - that is, by the farmers who produced the milk, and by the creameries and butter factories, who justly complained that margarine was being used injuriously to the butter industry, and that it was being mixed with butter. The consequence was that when this commodity was exported and attempted to be sold in the home markets it lowered the average price of genuine butter and injured the credit of the industry. They claimed that it was in the interests of the State as a whole that the butter industry should be fairly treated, and that every encouragement should be given to insure, first, that butter should be properly produced in Victoria under sanitary conditions ; and, secondly, that it should not be adulterated by the admixture of margarine. Steps were taken to place the dairies and creameries on a proper footing in that respect, and to insure that butter for export was properly packed, and left our shores in the condition in which it was when it was manufactured. At that time comparatively little was known about margarine. . In common with many others, I was of opinion that it was a very undesirable and injurious product. But, being compelled to look into the matter, I must confess that, somewhat against my own inclination, I came to the conclusion that margarine, properly manufactured, was a perfectly cleanly and healthy ingredient. But that did not alter the fact that it should be sold as margarine, and not be allowed in any sense to be sold as anything else. The consequence was that an Act was passed in November, 1893, which was very largely a transcript of the Imperial Act, from which the leader of the Senate has already quoted. The stringent sections of the English Act were copied, providing not only for the proper manufacture of margarine, but also that the packages should be of a certain size, and should be branded in a certain way. It was also provided that any retail shopkeeper selling margarine should put up a notice to that effect. Heavy penalties were imposed upon any one attempting to sell margarine as any other substance, or for mixing it with butter. Those sections effectively protected the local butter industry. The Act also provided for the careful examination of imports. So that not only was the production of margarine locally provided for, but the import of margarine was placed under proper supervision, so that there was an examination as to its component parts. I think Victoria has done all that she could have done to protect one of her largest industries. At the same time it is perfectly right that some provision should be placed in this Bill to protect the producers of butter all over the Commonwealth. The paragraph under discussion will give fair protection to all the States with regard to the importation of margarine. I think I am right in saying that the wish of the committee is that margarine should not be allowed to be sold for butter, or to be mixed with it. In this connexion, however, I may say that at the time the Victorian Act was in committee samples of margarine and of genuine butter were placed on the table, and a number of honorable members sampled both commodities. The vast majority preferred the margarine to the real butter. I merely mention that in passing. I do not think that the amendment moved by Senator Sir William Zeal, and agreed to by the leader of the Senate, carries out clearly enough what I venture to think is the wish of the committee. Certain words taken from the Victorian Act, which is really a transcript of the Imperial Act, would be better. If my suggestion is adopted the paragraph will be made to read as follows :

-

Oleomargarine, butterine, or any similar substance for Butter if coloured in imitation of or so as to resemble butter.

All we want to do, so far as I can see, is to prevent margarine being coloured in imitation of butter.

Senator Drake

- Could it not be coloured after it had passed through the Customs ?

Senator Sir FREDERICK SARGOOD

- That is where State action ought to come in, as in Victoria. But the amendment simply says - "Shall be coloured in such a way as prescribed."

Senator O'Connor

- The amendment says that " unless coloured as prescribed " margarine is not to be admitted.

Senator Sir FREDERICK SARGOOD

- Why should it be coloured?

Senator O'Connor

- Because then it will be known from butter.

Senator Sir FREDERICK SARGOOD

- Suppose the regulations provided that margarine should be coloured pink. We do not want to injure the trade in margarine. All that is required is to prevent it being sold as butter or mixed with butter. As the words of the Victorian Act have stood the test of eight years, and are copied from the Imperial Act, surely they ought to be sufficient to provide that margarine shall not be imported being the colour of butter, or in any way resembling butter. So long as we say that margarine shall not be coloured to imitate butter we carry out what the committee want. The Victorian provision has been proved to be absolutely safe and efficient, and it will be better to adopt it than the words proposed.

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Senator O'CONNOR

- I recognise that there is a good deal in what Senator Sir Frederick Sargood says. The aim he has in view is the same as my own, and I take it that that is also the aim of Senator Sir William Zeal in making his suggestion. The only difference is that I wish to have power in the hands of the Collector of Customs to make a regulation about the matter, in order to follow out the different devices that may be adopted for getting over any definition that may be put in the Bill. Unless that is done all sorts of questions will be raised as to whether margarine is coloured so as to resemble butter. On the other hand, if we make it perfectly clear that margarine must be coloured so as not to resemble butter we may rely upon it that the Custom-house officers will take good care that the regulations are framed in such a way as not to destroy the import itself. It may be that a duty will be put upon margarine. If so, it will be a means of revenue ; and if it is coloured in a proper way the Government will be anxious to make no regulation which will interfere with its coming in, though they will take good care that the definition is of such a character that it comes in as margarine and not as butter. I am willing to accede to the principle of the amendment, but as I understand that the words that I have suggested have been accepted by Senator Sir William Zeal, Senator Playford, and others, I think there is no reason why we should not go to a division.

Senator Major GOULD(New South Wales). - We have now got to the position that the Government admit that it is fair to allow oleomargarine and butterine to be imported into Australia. Previously, we could not get that admission at all. All sorts of reasons were given why it should not be introduced into any State. I am glad that the representatives of the Government have come to the conclusion, after considering the matter, that there is no serious objection to the importation of margarine on the ground of its being unwholesome or dangerous to the public health. Senator O'Connor only wants it admitted under proper safeguards ; but my objection is to putting any restrictions upon the importation of this article, not that I want to see it come into competition unfairly with foods produced in our own States or used for the purpose of adulterating food prepared in our own States, but simply because the States are entitled to protect themselves in this matter, and it should not be done through a Commonwealth Customs Bill. I would omit the words of this paragraph altogether, and if a man chose to import oleomargarine or butterine I would let him do so. But the moment these articles are introduced a Public Health Act or an Adulteration of Foods Act in each State should protect the public against having them fraudulently sold as butter, and should provide that they should be sold only as oleomargarine or butterine. Take the case of a State that does not wish to prohibit the introduction of oleomargarine. Why should we, in this Customs Bill, say that the people of that State should not be permitted to have oleomargarine? Why should we say that, in order to prevent this article being fraudulently sold, it should be coloured as prescribed, when the colouring we are going to give to it may itself be deleterious and may destroy the value of the article altogether ? Suppose the Government prescribe that it is to be coloured green. A man seeing it coloured green may believe that arsenic has been used for the purpose of producing the green colour, and may refuse to buy it on that account. The question is, whether there is any justification for excluding an article

of food shown to be wholesome, and not deleterious in any way whatever. Have we the right to say that, before that article can come into the State, it shall be put into such a condition that people will object to buy it? I hope that Senator Playford will not accept the suggested amendment, and I trust honorable senators generally will see that this is not a reasonable way of dealing with the matter.

Senator CHARLESTON

- I think the Government would act wisely in accepting Senator Sargood's amendment if they are going to accept any amendment at all. I do not object so much to Senator Zeal's amendment as to the words " as prescribed " added to it by Senator O'Connor. None of us will know just what may be done under those words, and the very purpose for which the Government have been fighting all the afternoon, can be accomplished by regulation under them. If we accept Senator Sargood's amendment we shall know exactly what restrictions we are placing on the introduction of this article, and by accepting that amendment we shall be acting more in the interests of the public than by carrying any amendment on this paragraph containing the words "as prescribed."

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

Ayes 16

Noes 7

Majority 9

Question resolved in the affirmative.

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

Ayes 15

Noes 8

Majority 7

Question resolved in the affirmative.

Paragraph (g) -

All goods the importation of which may be prohibited by proclamation.

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Senator Major GOULD

- I take exception to the immense powers given to the Government under this provision. I still adhere to the principle that Parliament itself should have an opportunity of making its voice heard in the decision of the articles which it is considered desirable to exclude from the Commonwealth. It is to be assumed that .when a measure of this kind is brought forward the Government have very carefully considered the kind of articles that should be prohibited, and yet we find they have inserted a drag-net clause, which will leave in the hands of the Government the whole decision as to what goods shall be prohibited imports. The Government, in the exercise of the power given under this clause, could prohibit the importation of any article. If the Parliament were in session, when such power was exercised, there would be an opportunity of reviewing the action of the Government, but if Parliament were not sitting, the Government would have a perfectly free hand to do what they liked, and without being subject in any way to review by the proper legislative authority. I will never vote in favour of allowing the Government to do what the Legislature itself ought to do. It may be urged that grave necessity may arise for prohibiting the importation of certain articles, but I hold that it would be better even to allow such articles to come in for a time, until parliamentary action can be taken, than to give this very wide power to the Government. If the Government could suggest a way in which this power could be limited, but so that they might still be authorized to prohibit the importation of diseased cattle or fruit or anything of that sort, there would not be so much objection to the provision ; but if we leave the matter open, as it is now, we cannot tell where it will end. The Government recognised, after discussion, that oleomargarine, is an article that should not be absolutely prohibited, but that its importation should be restricted under certain conditions. But we will assume that it had been decided to allow of the free introduction of margarine, and that after Parliament had gone into recess the Government had been approached and asked to prohibit its importation because it was proving injurious to the butter industry. Under the power given in this paragraph, the Government might issue a proclamation absolutely prohibiting the importation of margarine, despite the decision that had been arrived at by Parliament. I understand that Sir Frederick Sargood intends to propose certain further provisions, one of which will have reference to prohibiting the importation of animals suffering from disease. Many senators will agree with him with regard to that, and I should feel

inclined to extend a power of that kind to the Government, because we should be clearly defining what class of imports should be prohibited. If the Government would limit their powers to certain classes of articles that might prove dangerous to the community, I would go with the clause. It may be urged that the Government cannot now specify the whole of the articles that it might be desirable to prohibit, and that we must be content to trust the Government, but although the power it is proposed to give might be exercised wisely, I do not think we should be justified in handing over to the Government the functions which properly belong to ourselves. The Government might make the most improper use of a power of this kind. It might be availed of in order to prohibit the importation of stud cattle, on the ground that those who now have the breeding of cattle in their hands in the Commonwealth should not be unduly interfered with. A Ministry might prohibit the introduction of sugar from abroad with a view to preventing competition with our local sugar growers. A protectionist Ministry might be able to show a great deal of justification from the fiscal stand-point for taking such a course, and they might regard it as offering a ready means of overcoming the black labour and other difficulties that now surround the sugar industry. It may be said that these are extreme cases, but I wish to impress upon honorable senators the extreme character of the power that it is proposed to give the Government in dealing with matters of this kind. We should not be safe with any Government in power, because the principle is wrong and vicious. There are certain duties which devolve upon the Legislature, and we should not abrogate our powers in the way that we are now asked to do. I hope the Government will consent to the elimination of this particular provision which is not to be found in either the New South Wales or Victorian statutes; and if they do not consent to this course, I hope the Senate will most determinedly resist any delegation of its power to the Government, more especially when there is a danger that that power may be exercised directly in the teeth of what the Parliament and the people may desire.

Senator O'CONNOR

- Senator Gould seems to forget that the authority in whom we propose to vest this power is the Government of the Commonwealth.

Senator Major Gould

- The Government of the day.

Senator O'CONNOR

- The power for the benefit of the people is vested in the Executive. The honorable senator also seems to forget that it is necessary in a hundred ways to intrust very large powers to the Executive as representing the people - powers which may be exercised at any moment, and which can be used for the benefit of the community only if they are exercised at the particular time. Our Constitution is not so absurdly impracticable as to leave the Executive Government in the position of not being able to do what may be urgent for the benefit or saving of the community from some injury, simply because Parliament does not happen to be sitting, and there is no power to summon Parliament. What is the whole theory and principle of responsible government? In regard to certain matters of general application, laws can be made which must be followed by the Government as by any other portion of the community; but there are certain powers which have to be exercised outside of these Acts, and which must be exercised by the Executive. How does the Executive exercise those powers? Surely under the control of Parliament, and it is always open to Parliament to question the exercise of those powers.

Senator Major Gould

- Parliament may be in recess for six months.

Senator O'CONNOR

- That is the very time when it is necessary to exercise those powers. If Parliament were sitting, and a Bill could be passed through in the course of a few hours, there might be no necessity for any powers of the kind. But if there is necessity to act promptly for the benefit of the Commonwealth, why should not this reserved power, which always must exist, be left in the hands of the Government, subject to the control of Parliament and to the censure of Parliament if it be not properly exercised? Any man who has had anything to do with responsible government must know that a Government who confined themselves simply within the four corners of an Act of Parliament would indeed be unworthy of safeguarding the interests of the State. Occasions constantly arise in which it becomes necessary for the Government to act on their own responsibility, trusting to ratification by Parliament if their action has been in the public interest. I appeal to honorable senators who have any experience of responsible government to say that

this reserve power is very seldom exercised, and that any Government who exercise it must know they do so with a full sense of . their responsibility to justify to Parliament what has been done. If responsible government is to be more than a mere name - if men are placed in a position for carrying on the business of the country and invested with executive power - we must be prepared to trust them to exercise that power in an emergency. Parliament is not omniscient, and cannot foresee all occasions when it should be exercised, and the Constitution, based as it is on common sense and the requirements of human affairs, always allows this reserve power. Senator Gould might go on multiplying all night instances in which this power could be abused ; but, on the other hand, I might multiply instances in which the power would be necessary, and in which, if it did not exist, the community might suffer.

Senator Charleston

- Can Senator O'Connor mention one?

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Senator O'CONNOR

- I can mention several. It will be admitted that circumstances might arise which would make it extremely undesirable to have an importation of arms or ammunition into the Commonwealth. It might come to the ears of the Government that arms and ammunition were being imported in such a way as to be a menace to public safety. What power would there be to prevent that importation if there were not a provision of this kind ? Such a contingency cannot be anticipated, and put into a Bill like this. Then, again, a certain description of drug might be suddenly introduced which was not contemplated in any of the clauses, but which might be distinctly harmful to the community. Are we to wait until we have time to get an Act through Parliament before any action is taken, while in the meantime the country might be flooded with some import which ought to have been stopped, and which Parliament itself would have consented to stop on the very threshold? This is exactly the same power as that which is vested in the Executive under a series of statutes which deal with the public health. Very large powers are given in regard to declaring what is an infected port, because it cannot be anticipated what an infected port is. We cannot lay down all the conditions which make an infected port, and, therefore, power is given to the Government to act in an emergency.

Senator Major Gould

- That is a different kind of emergency prescribed by the statute itself, and only detail is left to be carried out.

Senator O'CONNOR

- I see no distinction between the sub-clause and the power given under quarantine Acts to enable a Government to select any ports of the world and to judge the circumstances and conditions which justify their preventing the landing of passengers off ships from those ports, although the exercise of the power may lead to serious interference with the course of trade and with individual liberty.

Senator Major Gould

- No one can object to that.

Senator O'CONNOR

- The honorable senator knows perfectly well no one could object, because the laws are already in existence.

Senator Charleston

- This clause merely deals with the importation of goods.

Senator O'CONNOR

- I am dealing with the principle, and will come to the application of the principle to Acts of this kind in some of the States. There are various Acts which deal with the importation of diseased animals and stock. In the Queensland Act the Governor .in Council is given power to restrict or prohibit the importation of any stock or carcasses from such places beyond the colony, and at such times¹ as may appear expedient. The whole matter is left at large as to the circumstances, time, and place. Do not let us play at responsible government. If we are to have responsible government, and a Ministry which can be unseated if it forfeits public confidence - if the power of scrutiny and criticism by Parliament is to be of any value - we must give the chief executive power to act under responsibility. We must not tie their hands in such a way that when the moment for action comes, it will be impossible for them to do something which should be done for the benefit of the community, and which must be done the moment when occasion

arises. Sometimes it is found that diseases in fruit trees and other plants are spread .by importation from a particular quarter, and in some of the States there have been statutes passed only lately which give the Executive power to deal with matters of the kind. But there might not be such statutes, and, surely, it should be within the power of the Commonwealth Government, to stop at the very inception the importation of anything which might cause injury to the whole community," leaving Parliament to say afterwards whether the Government have exercised the power properly. I now come to the application of the power given in this very clause, and to show the reasons why the power is given. Officers of Customs are the officers and representatives of the Government, and although they act primarily and mainly in the collection of revenue, inasmuch as their opportunities enable them to stop the beginnings of danger to the community, they are vested with power to prevent the importation of the goods contemplated in the sub-clauses we have already dealt with. There are many other instances in. which it is necessary to exercise power in regard to matters which the Legislature has not thought of, because the Legislature cannot anticipate everything. There may be occasions in which this power should be and must be exercised - cases even more urgent than those we have already, dealt with ; and in several of the States that power has been given. But before going further, I would like to refer to the way in which the power is given in England. In the English Customs Act the- importation of arms, ammunition, gunpowder, or any other goods may be prohibited by proclamation or Order in Council.

Senator Major Gould

- "Other goods" mean goods of the same character.

Senator O'CONNOR

- Nothing of the sort. I am quite aware that there is a rule called the rule of ejusdem generis, but that rule can have no application to a clause of this sort.

Senator Major Gould

- Surely it can.

Senator O'CONNOR

- Any person who considers this clause for a moment will see that the rule has no application.

Senator Major Gould

- -Will Senator O'Connor take the English section in lieu of the sub-clause in the Bill ?

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Senator O'CONNOR

- I am quite willing to do that, but I prefer to have it in my own way. A similar power is given in India, where according to the Customs Act, the Governor in Council may from time to time, by notification in the Government Gazette, prohibit the taking by sea or by land goods of any specified description into or out of British India, or any part of British India.

Senator Pearce

- India is not a good example to follow in this respect, because there government is mainly carried on by proclamation.

Senator O'CONNOR

- The honorable senator is quite right. India is not governed by responsible government, but I am pointing out that this power, which undoubtedly exists, is exercised under the Customs Act of that country. I find that in the Western Australian Act, after a list of prohibited articles, there is the following provision at the end of the section : -

Any article or goods being a manufactured or natural product the importation of which may be prohibited by order of the Governor.

That is exactly the same power as we ask for here. In the Tasmanian Act there is a provision very much to the same effect -

Any article being a manufactured or natural product the importation of which may be prohibited or restricted by the order of the Governor.

I do not think there can be any question that that power is no greater than the power we ask for in this Bill, which is to be exercised in the interest of the Commonwealth itself, not of the Government or of any individual. Unless we are to cut down in such a way as to make useless the powers of the Executive Government, the committee will not refuse to give this power, trusting to its being wisely exercised under the scrutiny of Parliament, public opinion, and the public press.

Senator WALKER

- The honorable and learned senator's remarks are' convincing up to a certain point ; but may I suggest to him that it would be well to have at the end of the paragraph some such words at these -

In an extreme emergency during a parliamentary recess.

We must trust the Government to meet an emergency.

Senator O'Connor

- Suppose Parliament were sitting and took a month to pass the Bill?

Senator WALKER

- If it is a matter of emergency, Parliament' will pass the Bill very quickly. I recognise that there must be some elasticity in these matters. I would suggest that this drag-net provision shall have added to it some such words as I have suggested.

Senator CLEMONS

- I have listened with some pleasure to Senator O'Connor, and I say frankly at once that it must be evident that a certain power is not only desirable, but absolutely necessary. It must be obvious to every one that the Executive must have power to meet an emergency. But I would suggest that we should adopt the words of the English Act, which are as follows : -

The importation of arms, ammunition, gunpowder, or any other goods may be prohibited by proclamation.

Senator O'Connor has told us that the words " or any other goods " would cover everything that is intended to be "covered by paragraph (g). If that be so, I content myself with asking Senator O'Connor whether he will accept an amendment based upon the English Act, which we all admit to be better than any authority that can be quoted from any of these States 1 By so doing he will shorten the discussion, and the amendment will be promptly carried by the committee. On Senator O'Connor's own showing, there is no reason why he should not accept the suggestion. We have heard him say that it will cover all that is included in this paragraph, and it will add certain things which we all desire to be within the operation and scope of the clause.

Senator O'Connor

- May I answer the honorable and learned senator by asking him a question? Will he inform me whether, in his opinion, the words "any other goods " include anything more than arms, ammunition, and gunpowder?

Senator CLEMONS

- I am perfectly willing to say that on a matter of such importance as this I shall not think of differing from Senator O'Connor.

Senator O'Connor

- I would rather have the provision in the form in which it is proposed.

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Senator CLEMONS

- I am sure the committee realize that it is very desirable indeed that the Government should have power to proclaim the stoppage of the importation of arms, ammunition, and gunpowder. Senator O'Connor has told us deliberately, with the full consciousness of what he was saying, that the words I suggest will include everything that is included in the paragraph we are discussing. I therefore submit, with all respect, that the amendment I suggest should be adopted.

Senator Pearce

- The word "goods" includes arms and ammunition, and why put in additional words ?

Senator CLEMONS

- If we were to apt on those lines, Senator Pearce will agree that of the eight paragraphs in this clause we might as well leave out seven. Paragraph (g) would cover the whole scope and operation of the clause. The other paragraphs are merely redundant. This is a Bill the chief merit of which is pith and brevity. Why, then, all these redundant paragraphs, when one short clause would cover the whole ground ? The amendment I suggest should be accepted above all because it has the authority of the English Act, which is greater than any authority derived from our State legislation.

Senator O'Connor

- I should prefer the wording' of the Tasmanian Act.

Senator CLEMONS

- I can only feel highly flattered when Senator O'Connor tells me that he prefers the language of the Tasmanian Act to that of the English. Act ; though that is not a compliment to me personally, because I have never had the honour of framing Acts in the Tasmanian Parliament. But Senator O'Connor must be joking. He will not tell the committee seriously that he prefers the legislation of Tasmania to the legislation of England. The position I am reduced to is that of indicating to the committee what I propose to do in case the paragraph as it stands is negatived.

Senator PEARCE

- The difference between this and the other paragraphs is that, in respect to the articles referred to in the other paragraphs, the committee have decided that it is necessary that their prohibition shall not be left to the will of the Executive. We are of opinion, for instance, that the prohibition of the importation of exhausted tea should be dealt with, not by the Executive, but in an Act of Parliament. The two instances which have been quoted from the English Act referred to articles to the importation of which we have no objection at the present time, but circumstances may arise when we would feel that they ought not to be introduced, and it would then be necessary that there should be some power to prohibit their introduction. Senator Major GOULD(New South Wales). - When the Vice-President of the Executive Council was replying to the objection raised earlier in the evening to the inclusion of this paragraph, and when challenged to point out some instances in which it was necessary to have this reserve power of the Executive, he quoted the references mentioned by Senator demons. The honorable and learned senator also alluded to the question of allowing diseased fruit or plants to come into the Commonwealth. We all recognise at once that it would be a very fair power to give the Government to prohibit the importation of articles of that character, but we say that it ought to be specified in the Bill itself. While there are many articles which the Government could properly take steps to exclude, there will be articles which, by means of this paragraph, the Government could exclude without proper consideration. It is placing an unnecessary power in the hands of the Executive, and one which ought to be exercised by the Legislature itself. That we trust the Executive to a great extent is, of course, a truism. Even though we do not agree with their policy, we admit that whatever Government may be in power, they will do what they consider right and proper in the true interests of the country, but we do not want to place them in the position of doing that which the Legislature itself ought to do. That is the burden of the objection to this paragraph. This provision is not found in the Acts of the two larger States of the Commonwealth, so far as population is concerned, New South Wales and Victoria, but in those of the two smaller States, Tasmania and Western Australia, where possibly the same battles have not been fought with regard to the rights of the people as against the power that Governments will sometimes exercise. I do not want to unduly debate the matter, but I wish to have on record my protest against placing in the hands of the Government the power to do that which the Legislature is properly charged with doing. We know that in Western Australia a little time ago the Government exercised a power of proclamation, with regard to the prohibition of certain articles, and their action was regarded as detrimental to the interests of the people. I protest against giving the Government similar power under this Bill.

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Senator PULSFORD

- The paragraph now before us appears to me to be one of the most objectionable of the many, in my opinion, objectionable provisions in the Bill. The power that it is sought to give to the Government is too widespread. It has been shown, and it cannot be denied by the Government, that the prohibition of the eight or nine articles referred to in the previous paragraphs of this clause could have been effected under this single paragraph, and there was no occasion for us to spend the afternoon in debating whether those items should be considered as prohibited imports. What more could any Government have or any Parliament give ? I cannot accede to such a power being given to any Government, and I cannot but express my surprise at any Government being willing to take such a power, should the Parliament be willing to give it.

Question - That the paragraph stand part of the clause - put. The committee divided.

12

AYES

9

NOES

Majority 3

AYES

NOES

Question resolved in the affirmative.

Paragraph (h) -

All goods having thereon or therewith any false suggestion of any warranty, guaranty, or concern in the production or quality thereof by any persons, public officials, Government, or country.

Senator PULSFORD(New South Wales). - It seems to me impossible to conceive that it is really intended that the words " or therewith " should be included in this paragraph. There may be some statement in an invoice accompanying goods that they have been made by a certain firm when they have not been made by that firm, and the importation of those goods will then be prohibited. Goods are to be prohibited, if these words remain in, because some invoice or paper that is of no weight or consequence at all has been sent with them. I move -

That the words "or therewith," line 1, be omitted.

Senator O'CONNOR

- These words are necessary. I take it that the honorable senator assumes that it is necessary to have this power where there is a false suggestion of warranty on the goods themselves. What the honorable senator objects to is where the false suggestion is on something connected with the goods, or sent with the goods. The honorable senator must see that a false suggestion may be printed on the packet itself or outside a case or canister, or it may be that the false suggestion may not be on the goods in order to purposely evade the first part of the paragraph. There may be a wrapper outside the goods with nothing of the kind on it, while inside there may be the document or advertisement, whatever it is, carrying the false suggestion. Surely that would have the same effect as the other in creating a wrong impression by fraud, and why should not that be met. What objection can there be to strengthening the clause in order to carry out what the honorable senator will admit is a proper intention. I hope the honorable senator will see that it is necessary to preserve these words.

Senator Pulsford

- Does the honorable and learned senator wish me to understand that the word " therewith " may not be read to cover some statements in an invoice or paper which is in no way connected with the package?

Senator O'CONNOR

- It must be with the package.

Amendment, by leave, withdrawn.

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Senator Sir FREDERICK SARGOOD

- I move

That the following be inserted as a new paragraph to follow paragraph (h) : -

Infected cattle, sheep, or other animals, and hides, skins, horns, hoofs, or any other part of cattle or other animals which the Governor-General may prohibit in order to prevent any infectious or contagious distemper or disease.

This provision has been in operation for a number of years in Victoria, and has been found effectual ; and it has been suggested to me by experts as being necessary in order to make this clause complete. It may be urged that, in view of the general powers conferred under paragraph (g), there is no necessity for this paragraph ; but it seems to me to be very desirable that we should insert a sub-clause of this sort as a definite instruction to the Ministry to carry out certain things. The matter dealt with is one of sufficient importance for us to make it the subject of a specific instruction, because it is one affecting the public health of the Commonwealth.

Senator MCGREGOR

- I hope Senator Sir Frederick Sargood will persist in his amendment. Of course, the matter referred to in the proposed new paragraph might be dealt with under paragraph (g), but I agree with the honorable senator's view that this would be a distinct instruction to the Government, and I believe that wherever Parliament can lay down a particular course of conduct for the Government they should do so. It may be impossible for us to foresee everything that it may be necessary to do in the public interest, but it is clear that some restriction such as that proposed should be placed upon the importation of diseased stock.

Senator Sir WILLIAM ZEAL

- would point out to Senator Sir Frederick Sargood that there is an objection to this paragraph which did not exist when it was passed by the Victorian Parliament. This provision, as far as I remember, was directed principally against the introduction of diseased animals from Queensland.

Senator Sir Frederick Sargood

- No, it was introduced long before that.

Senator Sir WILLIAM ZEAL

- At any rate that was really the application of it, and it became very useful in preventing hides infected with the tick disease being sent down to Victoria, Now, however, as we are dealing with the whole of the States, it seems to me that this paragraph has not the same application, and will not be of the same service as formerly. Under the ordinary Custom-house laws the Government have quite enough power to prevent the introduction of cattle, and there is really no necessity for the paragraph.

Senator O'CONNOR

- I must object to the amendment proposed by Senator Sir Frederick Sargood, and I think that when I explain the position he will see- that the objection is reasonable. It is quite true that this provision will be found in almost every Customs Act ; but I think that it was copied from one Act to another at a time before the Legislature had adopted the present method of dealing with infected or diseased animals. That is to say, that when these Customs Acts were passed there was no way, except through the Customs or under some rules of quarantine, of dealing with these matters. Now, however, that we have elaborate Acts giving power to the various Governments to deal with diseased cattle, it seems to me to be very much better to leave the matter in the hands of the States, and give power to the Commonwealth, as is proposed under clause 51, to enforce the State laws as to prohibited imports. Clause 51 provides that all goods lawfully prohibited to be imported into any State shall, as regards that State, be prohibited imports. So that, if in any State there is a direct prohibition of any stock coming from certain places, that prohibition must be observed by the Customs officials.

Senator Sir Frederick Sargood

- Is that in accordance with the Constitution?

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Senator O'CONNOR

- There is nothing to prevent it ; but, on the contrary, there is a clause in this Act which expressly enables Custom-house officials to carry out the inspection laws of the States. Inasmuch as they have dealt with these matters in the various States in their own way, it is much better to leave the whole thing in their hands and when necessary carry out their powers with the aid of clause 51. I would point out that if the proposal of Senator Sir Frederick Sargood is carried into effect all diseased animals will, by the very wording of the clause, become prohibited and liable to forfeiture there and then. A State like Victoria for instance may have a statute dealing with the whole question of infected animals, and it may in certain cases be provided that an animal shall be destroyed, whilst in other cases, where treatment may suffice, a quarantine station may be established where the animals can be treated for a certain time until they are free from disease, and can safely be allowed to go into consumption. If we declare such animals to be infected and liable to forfeiture we shall come into direct conflict with the law of the State, and I think it is better to deal with these matters in each State in the way provided for by the State laws. One State, owing to its geographical position, may receive large numbers of cattle, and may treat then in quarantine in such a way as to obviate any public danger, and in such a case it might be very objectionable if the Commonwealth law were to involve any interference with present methods. I think the honorable senator will see that the reason I have given is a sufficient one for the objection of the Government.

In most of the States there is power to deal with all infected animals, their fodder, the ships' fittings used in their conveyance to the port, or anything that is likely to harbor disease. The public interests are well served at present, and cannot be better safeguarded by a new customs law, but on the other hand we may give the Customs power, the exercise of which may seriously interfere with the way in which a particular State desires matters to be dealt with. There may be cases in which State laws do not provide for prohibiting the importation of diseased animals, but these will furnish instances in which the powers given under paragraph (g) may very well be brought into operation.

Senator CLEMONS(Tasmania).- I hope the Government will not accept this amendment. I think that

paragraph (g) is so comprehensive that it covers everything that is required, and that the proposed new paragraph would be mere surplusage. Furthermore, seeing that the Commonwealth has power under the Constitution to legislate with regard to quarantine matters, I think we should deal with a subject of this kind under a Quarantine Act. That is an argument which has some weight with me, because I recognise that the amendment practically covers matters which come within the purview of a Quarantine Act. I suggest that whether the matter be dealt with by the States or the Commonwealth, a better substitute could be found than a provision in the Customs Bill. I am fully in accord with Senator Sir Frederick Sargood as to the desirability of prohibiting the importation of all these things ; but with the clause in full operation the amendment would be unnecessary.

Senator Major GOULD(New South Wales). - When I first read the proposed amendment I was inclined to agree as to the desirability of it ; but since then I have had the opportunity of seeing some of the arguments adduced in the other Chamber where a similar proposal was negatived by a considerable majority. Some of those arguments have great force. It was pointed out that under the amendment, infected cattle, as soon as they were imported, would have to be destroyed, instead of being put into quarantine. At present, infected cattle are put into quarantine, and if the disease can be got rid of, the animals come into use again. Valuable stud animals brought to the country, might be found to be diseased, and it would be a serious thing if they had to be destroyed without any effort being made to cure them in quarantine. This is a matter which had better be left to the quarantine laws, and I suggest that the amendment be withdrawn in view of the class of animals which might be interfered with. Under the sub-clause (g), about which we have had such a fight, and which has been passed, the Government could, by proclamation, deal with infected animals, so that there is no need for an amendment of this character, even if cattle could not be dealt with more effectually under the present quarantine regulations. Amendment, by leave, withdrawn.

Senator Sir FREDERICKSARGOOD (Victoria). - I move -

That the following be inserted as a new paragraph to follow paragraph (h) : -

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

This provision is also copied from the Imperial Act and the Victorian Act. In the past there have been frequent loss of life and damage by the explosion of mineral oils below the proper flash point, and a Royal commission is now inquiring into the whole matter in the old country. In looking through the interim report of that Royal commission I was astonished at the number of fatal accidents that have occurred in England from this cause ; and I urge that the amendment will have the effect of preventing similar fatal accidents. This is a matter that so far has not been dealt with by any State legislation.

Senator Playford

- I think there is a Kerosene Act in South Australia in which the flash point is fixed at 115 or 120 degrees.

Senator Sir FREDERICKSARGOOD. This new sub clause is strongly recommended by experts in the Custom-house.

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Senator O'CONNOR

- I should have no objection to the amendment if it were made sufficiently elastic to provide for all cases which are likely to arise under it. I understand that at the present time there is a good deal of difference in the temperature of the flash test in the different States. In some States the test is considerably below 100 degrees, although it is said that that is the limit of safety. I think that in Tasmania it is below 10 degrees.

Senator Clemons

- Yes ; the Tasmanian legislation is very bad on this point.

Senator O'CONNOR

- As improvements and inventions are continually being introduced, it would be much better to leave the temperature of the flash test, and also the mode of testing, to be prescribed by regulation. In the Victorian Act there is a most elaborate description of the apparatus which has to be used for testing, but I understand that that apparatus has become quite inapplicable, having been superseded by some other appliance. If the proposed sub-clause be amended in such a way as to leave everything connected with

the test to be prescribed by regulation, 'I shall have no objection to offer to it.

Senator Sir FREDERICKSARGOOD (Victoria). - What Senator O'Connor suggests is exactly the provision of the English Act : and for years past a large quantity of mineral oils with a low flash point has been imported into that country, with the result that many lives have been lost. The Imperial Parliament have been repeatedly asked to pass an Act fixing the flash point at 100 degrees, which scientists recognise as safe; but unfortunately the mineral oil "ring," particularly in America, has had so great an influence, that it has been able to successfully fight against the introduction of any amendment. The matter has become such a scandal in England that, as I said before, a Royal commission is now sitting, and has already brought up an interim report, recommending that no mineral oil shall be allowed to be imported at a lower flash point than 100 degrees. I am sorry to hear that in Tasmania the flash point is considerably below that temperature, because it stands to reason that if these oils will explode at a temperature of less than 100 degrees elsewhere, they must be specially dangerous in Australia. I do not wish to lose the amendment altogether, but I urge on the Minister the desirability of fixing the flash point at not less than 100 degrees. Unless that be done, pressure will be brought to bear on the Government to continue the present disgraceful state of affairs.

Senator CLEMONS(Tasmania). - I can add my testimony to what has been said by , Senator Sargood. I have a very vivid recollection of what happened in connexion with this matter three years ago in England, where this was a growing evil, many hundreds of deaths being traced directly to allowing the use of mineral oil with a lower flash point than 100 degrees. One thing the Royal commission has made certain is, that the lowest flash point compatible with safety is 100 degrees. That question has received great consideration, but no greater consideration- than it deserves, and if Senator O'Connor can give Senator Sargood an opportunity of inserting this new subclause, he will, in my opinion, be doing considerable good for the whole of the community. The evil caused by these low-grade oils requires suppressing in Australia, though I feel inclined to apologize to Tasmania for the interjection I made a little while ago. In that State the law does fix the flash point at 100 degrees, but - and this is where the legislation is bad - oils are" allowed to come in at a lower flash point subject to their being labelled as specially dangerous.

Senator O'Connor

- That is the English provision,. I believe.

Senator CLEMONS

- That is the provision which has given rise to the great evils now being inquired into by the Royal commission. It is most desirable that no oils should be allowed to enter the Commonwealth, under any circumstances, with a lower flash point than 100 degrees. No great inconvenience or harm will be sustained by any one in the Commonwealth by the amendment, which we have good warranty for adopting. I earnestly hope that Senator O'Connor will accept the amendment retaining the minimum flash point at 100 degrees.

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Senator O'CONNOR

- I will accept the amendment as it is, on the understanding that, if I see any way in which I can alter it so as to make it less stringent, I may ask the committee to recommit the clause. There are so many inventions and new developments in connexion with these mineral and gaseous oils that it does not do to lay down a hard-and-fast rule, which may not only become unnecessary, but have the effect of restricting trade. I wish to have an opportunity of fully inquiring into the matter.

Amendment agreed to.

Senator WALKER(New South Wales). - I should like to ask Senator O'Connor whether he will consent to place paragraph

at the end of the clause? It is a dragnet provision, and should be at the end.

Senator O'CONNOR

- If it is necessary to recommit the clause, I will make the alteration Senator Walker suggests, otherwise I may be obliged to leave the paragraph as it stands.

Clause, as amended, agreed to.

Clause 50 -

No spirits, opium, tobacco, snuff, cigars, or cigarettes shall be imported except in packages of the prescribed size. Penalty : £ 1 00.

Senator PULSFORD

- I am well aware that restrictions on the size of packages have been very common in Customs Acts, but I think the time has come when Australia can afford to be a little more liberal, and do away with these extremely arbitrary requirements. We are accustomed to allow the importation of other goods in packages of the size the merchants find to be most convenient. Therefore, it does not appear to be right that the importers of opium, tobacco, snuff, cigars, and cigarettes should be bound down to import only in packages of a size prescribed by persons who are not in the trade, and cannot be as good judges as the merchants and importers themselves. There is no real reason for the retention of this provision, except that it has been to some extent consecrated by long usage.

Senator Major GOULD

- It maybe that there are very strong reasons why this clause should be retained in the form in which it stands in similar Acts. But what we want to do is to facilitate trade as far as we can, and unless there are good reasons there should not be any provision in the Bill providing that packages must be of a prescribed size, and that importers shall be liable to so serious a penalty as £100 in the event of their not obeying the strict letter of the law. If the Vice-President of the Executive Council can show valid reasons, no doubt there will be no difficulty with regard to retaining the clause, but in view of the desirability of facilitating trade as much as possible I am inclined to vote against it.

Senator O'CONNOR

- All persons who have had anything to do with Customs business will recognise that it has always been looked upon as a safeguard for the Customs revenue to have specified sizes for packages of highly dutiable goods. The solicitor for the English Customs, whose book I have quoted before, says : - Next to the right of search, the most important factor in preventing smuggling is the limitation of the size of vessels which may be used in carrying dutiable goods, and of the packages in which highly dutiable goods may be imported and exported.

If the experience of the United Kingdom for so many years, and the universal testimony of the Australian States, is that such a clause as this is necessary for the prevention of smuggling, the committee should not lightly disturb that condition of things, which has been working so well up to the present time. I take it that the onus is upon my honorable friend, Senator Pulsford, to show some reason that did not previously exist why this alteration should be made. For many years the trade has been used to the introduction of these goods in certain sizes. The practice is well known and recognised. There is no hardship in it, and if we make a change we shall be running a great risk of losing revenue, and encouraging smuggling. The provision acts in the interests of the honest trader as well as of the revenue. For these reasons I hope that the committee will leave the clause as it stands.

Senator CLEMONS

- We must all agree with what Senator O'Connor has said, but it is as well to point out that clause 50 is not in accordance with the English Act, nor, so far as I know, with any Act in force in any of the Australian States.

Senator O'Connor

- The English Act is much more stringent.

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Senator CLEMONS

- Precisely. Seeing that there are serious differences between this clause and the existing Acts, it is worth our while to consider whether there are reasons for imposing a restriction in the proposed form. It is obvious that the clause does not contemplate the prevention of loss of revenue, nor is there anything in it to prevent smuggling. What it really does is to prevent any private individual from importing spirits, tobacco, cigars, snuff, or opium, however ready he may be to pay duty, unless he imports them in packages of the prescribed size. We do not know what the prescribed sizes will be. That is a matter for regulation. In nearly every Act that we can take for comparison the prescribed size has been specifically mentioned. In some cases it is provided that no individual may import tobacco of less weight than 40 lbs.

Senator Sir Frederick Sargood

- It is 60 lbs. in 'Victoria.

Senator CLEMONS

- In this case the size may be 100 lbs. This will simply have the effect of preventing private individuals

from importing their own spirits and tobacco. The measure plays into the hands of the large importers. I happen to know of cases where supplies of cigars have been imported privately. In fact I personally have had the benefit of such importations ; but it is extremely doubtful whether I could get that benefit if this clause came into operation. Is it desirable to put such a restriction on private enterprise ? I cannot see any reason for departure from a procedure that has the sanction of every British community we know of. Senator PULSFORD(New South Wales). - I quite recognise the force of the remarks made by Senator O'Connor, as to the desirability of checking any possibility of smuggling if that can be done ; but at the same time it is quite clear that if the different States have different sizes of packages, an important question will arise as to which set of sizes will be adopted by the Commonwealth. It would be desirable for Senator O'Connor to lay before the committee a statement of the sizes now adopted by the various States, before we finally deal with the clause. The clause might be postponed to-night, and next week with that information before it, the committee would be able to come to a reasonable conclusion. So far as I am concerned, I shall raise no objection to the retention of a clause which may be necessary for the checking of smuggling.

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Postmaster - General

Senator DRAKE

. - The difficulty that Senator Pulsford has seen need not necessarily arise, because if the trade has been accustomed to import tobacco, we will say, in packages of various sizes, there will be no difficulty in prescribing in the regulations that tobacco shall not be imported in packages of less than a certain size, leaving it open for the tobacco to be imported in packages of greater weight. This provision is, according to the authority which the Vice-President of the Executive Council has quoted, intended to prevent smuggling. Senator demons seems to speak very confidently when he says it was not intended to have such an effect; but I think he could not have heard the passage which my honorable colleague read. The clause gives power to make regulations prescribing the size of the packages. "The Memoranda on some Branches of Customs Works," prepared by the Solicitor to the Customs in England, sets forth that - No foreign spirits, except us aforesaid, may be imported in casks or other vessels of less content than 20 gallons ; nor in bottles (glass or stone) unless properly packed in case as cargo.

That is the provision in the English Act.

No tobacco, including in the term cigars, cigarettes, and snuff, may be imported unless it is in whole or complete packages of not less than 80 lbs. net weight.

I am not stating what would be the size of the packages or the weight which would be prescribed by regulation, but I am simply pointing out that the difficulty which Senator Pulsford fears need not necessarily arise. If the trade has been accustomed to import tobacco in cases of 60, 80, or 100 lbs. weight, and the regulations prescribe that it shall not be imported in cases of less than 60 lbs. weight, no inconvenience will be caused to the trade. I do not think we need suppose for one moment- that the Commissioner of Customs will frame the regulations in such a way as to embarrass trade. It is clearly desirable, in order to prevent smuggling, that there should be some limitation as to the size of packages containing highly dutiable goods.

Senator CLEMONS(Tasmania). - In the Tasmanian Customs Act there is this proviso, which I should like to see in the Bill -

Provided that any person may make entry inwards of any tobacco, snuffs, cigars, or cigarettes, as samples only, for the purpose of trade, or exclusively for his private use.

It goes on to provide that such person shall make a declaration that the tobacco, &c, is a sample in the one case, or in the other that it is for his own private use, and that if he makes such a declaration falsely he shall be liable to a penalty not exceeding £50. We have provided a penalty of £100 in this Bill, and I would be willing to allow such a penalty to be attached to a proviso that would enable any private person to import tobacco. I believe the revenue would benefit if this permission were given, and I fail to see that there is any objection to it. It has the warrant of the Tasmanian Act. There is no reason why a private individual willing to pay duty, ready to make a declaration as to the value of the goods imported, and rendering himself liable to a penalty of £50 or £100 for making a false declaration, should not be allowed to import* his own cigars.

Senator Drake

- Look at clause 145.

Senator CLEMONS

- That does not meet the object I have in view. My opinion is that the Commonwealth will require all the duty it can possibly obtain out of tobacco, and I am anxious, that every facility for its importation shall be given. I will ask Senator O'Connor to give me an opportunity of proposing an amendment to the effect I have indicated. A proviso like that in the Tasmanian Act would lead to an increase in revenue. We do not want to interfere more than is necessary with the right of private individuals to buy and sell. Make them subject to a penalty of £200 if the committee likes, but let them import their own tobacco and cigars if they wish to do so.

Senator O'CONNOR

- I understand that Senator Clemons' suggestion is that the clause if followed out in the spirit of most of these statutes, would prescribe regulations under which only comparatively large packages of cigars, for instance, could be imported. Then Senator Clemons said that it ought to be open to private individuals to import small parcels of cigars.

Senator Clemons

- Or to bring them out with them.

Senator O'CONNOR

- The difficulty is that small parcels are so easily stowed away. There would be no difficulty with regard to an honest person, but others might bring small parcels on shore without being seen, or the goods might be stowed away in some part of a ship where they could not be discovered. In these circumstances, if we were to allow, under the guise of imports by private individuals, packages of any size to be brought in, we should simply be giving an opportunity for smuggling.

Senator Clemons

- I should agree to fix the minimum weight at 20 lbs. A package of that weight could not be smuggled.

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Senator O'CONNOR

- This is really an expert matter, which the Custom-house officials can deal with better than any one else. It is impossible for the committee to say that a package of 20 lbs. is one of proper size to permit to be imported. We have not got sufficient information on the subject. This points to the advisability of leaving the whole matter to regulations. It can be provided in the regulations that private individuals shall have the right which Senator Clemons considers they ought to have, and proper safeguards can be devised. It would be impossible in any enactment to provide all the necessary safeguards. If it is to the advantage of the Customs department that this provision should be made, we may be sure the regulations will be framed in such a way as to give every facility for importations by private individuals so far as that can be done without risk of smuggling. When the Customs revenue is so important to the Commonwealth, we ought to be careful to allow no leakage whatever that we can possibly avoid. The uniform practice of the Custom-house is to insist upon importations in certain sizes. I do not think the committee ought to interfere with that. If we do we take upon ourselves a very large responsibility. I am quite in sympathy with the honorable and learned senator as to the desirability of the course he suggests if it can be managed. Regulations may be devised to carry it out, and it is better to leave it to regulations. The difficulty is to arrive at a scale which would operate fairly, and not to adopt the size of packages used in one State more than in another. That is a matter of some difficulty in adjustment. It will be done however, by regulation, and the direction in which the regulation will lean will certainly be towards lessening the size of the packages, and thereby facilitating the dealings of merchants in this particular kind of goods. If we tie them down to the hard-and-fast provisions of a statute, then, no matter what changes may take place in the trade, they will be bound by them. On the other hand, if we deal with the matter by regulation, the revenue will be protected, and the honest trader will be protected, while if it is necessary to alter the size of the packages that can be done. I do submit that the proposal in the Bill is really a very great improvement upon the hard-and-fast line which is drawn in the different statutes dealing with this matter. It may be well left to the Minister and his officers to make regulations, so that while they protect revenue they will not interfere with trade.

Senator Major GOULD (New South Wales). - I do not think there is any desire on the part of honorable senators to create any difficulty which can be avoided. The arguments which have been adduced by

Senator O'Connoras to the necessity of not unduly interfering with this matter have been very convincing to most of us. Perhaps it would be an advantage to allow this question of size to be determined by regulation for the reasons he has given. Still, we are confronted with the difficulty that, if a man wants to introduce a small quantity of goods, he does not know whether he will be allowed to do so or not.

Senator O'Connor

- As soon as the regulations are framed he will know.

Senator Major GOULD

- Suppose a man has a couple of boxes of cigars with him when he arrives here.

Senator Sir Frederick Sargood

- That is done constantly, and is allowed by the Customs.

Senator Major GOULD

- If it is recognised it is all right. But if a man found out that he would be liable to a penalty of £100 for bringing out a couple of boxes of cigars it might be an inducement to him to try and smuggle them.

Senator O'Connor

- The same argument will arise in regard to any of the statutes dealing with these matters.

Senator Major GOULD

- If we are assured that there is not likely to be any difficulty in regard to a matter of this kind, it is not worth fighting it any longer. I presume that the packages prescribed will be of the minimum size existing in the various States at the present time. I do not propose to submit any amendment, but I should like it understood that when the regulations are being dealt with, the Minister in charge of the matter will see that some safety valve is allowed, by means of which a person coming into the country may bring a box or two of cigars with him without risk.

Senator O'CONNOR

- I assure the honorable senator that the matter will be taken into consideration.

Senator Pulsford

- Am I to understand that Senator O'Connor distinctly gives us some guarantee ?

Senator O'CONNOR

- I do not give any guarantee. All I can say is that when the matter is being considered in connexion with the regulations, I will take care myself that it is brought under the notice of the Minister of Customs that if possible some provision ought to be made to deal with the case which has been referred to. That is all I can say, and I cannot guarantee anything.

Senator PULSFORD

- There should be no difficulty about giving such a guarantee as I speak of. The minimum size of a package in one State may be 40 lbs., and in another 60 lbs., and it might easily be stated that 40 lbs. shall be the minimum size of a package for all Australia. I can see that some annoyance may arise if in some States the minimum size at present is 40 lbs., and we provide that for Australia the minimum shall be 50 lbs.

Senator Sir FREDERICK SARGOOD

- I do not think any difficulty can possibly arise. The Chambers of Commerce of the various States have not taken the slightest objection to this clause, and the various merchants who deal in these goods are perfectly content with it. I know that the Bill has been very closely scrutinized by those interested. With regard to the difficulties referred to by Senator Clemons, as a matter of fact I have imported to Victoria for my own use a few boxes of cigars, although the minimum is 10,000, and I have done the same in Canada and in England. There is really no difficulty in the matter.

Senator CLEMONS(Tasmania).- I wish to say that I am perfectly satisfied with the assurance given by the Vice-President of the Executive Council. I am very glad to have it, and I thank the honorable and learned senator for his attitude in this matter. I feel certain that we can safely leave it in his hands.

Clause agreed to.

Clause 59 -

The master of every ship arriving from parts beyond the sea shall -

Within one day after arrival make report of the ship and her cargo by delivering to the collector an inward manifest in duplicate.

Answering questions relating to the ship and her cargo, crew, passengers, stores, and voyage.

Produce documents relating to the ship and her cargo.

Penalty: £100.

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Senator PULSFORD

- In paragraph (b) we have the words "answer questions," and in paragraph (c) the words "produce documents," and these two phrases are defined by the interpretation clause. It is a very unusual thing to have such words referred to in an interpretation clause for the express purpose, and that alone, of making the clause in which they are used briefer, and in that way for the sake of brevity, to sacrifice what is more important, and that is accuracy. Very few people reading these expressions - "answer questions" and "produce documents" - would think of referring to the interpretation clause, and the phrases as they stand would ordinarily be accepted as complete. By a short amendment of this clause the interpretation clause may be relieved of the whole of the two paragraphs referring to these phrases. The terms "answer questions" and "produce documents" only occur some three times in the whole of the Bill, so that really no saving is gained by the lengthy paragraphs which appear in the interpretation clause. I move - That the words "truly and to the best of his ability put by the collector" be inserted after the word "questions" (line 7).

Senator O'CONNOR

- I hope the honorable senator will not press the amendment. It is a mere matter of drafting, and the words which he refers to are really included by reference to the interpretation clause. It is quite true that this is a new method of drafting, but it is a most convenient one. Any persons sufficiently interested in the customs law to read clause 59 will certainly, or ought certainly, to read every portion of the Bill, which may be necessary to throw any light upon it. Can the honorable senator seriously say that it is any advantage to make the Bill longer by putting into this clause words which are already implied in the reference to the interpretation clause?

Senator Major GOULD

- Is it not unusual to define such words in an interpretation clause?

Senator O'CONNOR

- I admit that it is a new departure, but it is a very good precedent, which I hope will be followed in other Bills. The whole scheme of the drafting of the Bill is that these short phrases are to be used to save a repetition of the same words over and over again, and that there is to be a general interpretation of them. Senator PULSFORD (New South Wales). - I have pointed out several times that this is a Bill to govern the operation of the Customs throughout the whole of this great country. It will come when passed into law into the hands of all sorts of Customs officers in remote parts of the continent, and it is therefore desirable that its clauses should be as simple and as transparent as possible, and that there should be as little need as possible to refer from one clause to another to find out what is meant. I have shown that there will be no addition to the length of the Bill, because by the insertion of the few words I have suggested in the two or three places where these phrases occur, the whole of the references to them in the interpretation clause can be eliminated.

Senator Major GOULD

- I believe that the object of Senator Pulsford is to make the Bill more simple for the individual who is called upon to answer questions. Senator O'Connor admits that it is a most unusual thing that such words as "answer questions" should be explained in an interpretation clause. I should have expected that there would have been no necessity to interpret what these words mean, because we might assume that if questions were to be put to an individual relating to a ship and her cargo, 'crew, passengers, stores, and voyage, it was implied that the person questioned shall give a truthful answer to the questions or be subject to a penalty. I trust that Senator Pulsford will not press his amendment to a division, but will be satisfied with moving it and giving his reasons for it.

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Senator CHARLESTON

- It seems to me that the amendment is altogether unnecessary. It must not be forgotten, that it is the master of the ship that we are dealing with under this clause, and he will be thoroughly conversant with the duties imposed upon him under a Bill of this kind. When asked questions he will naturally be expected to give true answers. I rather like the draftsmanship of this Bill, which refers all the details as to penalties

to the interpretation clause, thus doing away with the continual repetition of words. I hope the amendment will not be pressed.

Senator PULSFORD(New South Wales). - If the committee are not with me in desiring this change, which I believe would be a decided improvement, I do not desire to waste time. I, therefore, ask leave to withdraw the amendment. Nevertheless, I regret that Senator O'Connor has not seen his way to accept my proposal.

Amendment, by leave, withdrawn.

Senator PULSFORD(New South Wales). - I would like to ask one question with regard to this clause. Supposing a ship arrives from Europe and voyages to Western Australia, South Australia, Victoria, and New South Wales, will the ship-master have to report at each of the four places ?

Senator O'Connor

- Certainly; a shipmaster has to do that now.

Senator PULSFORD

- A ship-master has to do that for four different States, but now that the four States have become one Commonwealth, will he still have to report at each ?

Senator O'Connor

- He will have to report at every port he goes into, because that is necessary to give the Customs authorities control over the goods.

Senator PULSFORD

- If a ship arrives in Sydney, her last port of call having been Melbourne, will it be considered as arriving from parts beyond the sea? As this is all one country, I should have thought one report would suffice.

Senator O'CONNOR

- No doubt it is intended that the ship shall report at each port she comes into, and I think the clause had better be made clearer, in order to put the point beyond question. I propose, therefore, to insert the words " at any port." Coastal ships are dealt with separately in another part of the Bill.

Senator Major GOULD(New South Wales). - I do not see that there is any necessity for requiring a master to report at every port he enters in Australia. I know that coastal vessels are dealt with in another part of the Bill, but assuming, for the sake of argument, that a vessel from Perth calls at Adelaide, Melbourne, and Sydney, would the master be compelled to report by delivering an inward manifest and duplicate at each port ? If not, I do not see that another vessel from the other

Side of the world should be compelled to do so ; and, unless it is absolutely necessary, it would be well not to throw this responsibility upon the ship-master.

Senator O'CONNOR

- There is no doubt that wherever a ship arrives with a view of landing any goods at all, there ought to be a report, because the Customs officials ought to have control of the goods. The Customs officials have the light to inspect and know what goods are on board, and to compare the manifest with the goods. The shipmaster will have to report undoubtedly at every port at which the ship delivers any cargo or passengers.

Senator PULSFORD(New South Wales). - It appears to me that several questions of delicacy arise under this clause. I would suggest that Senator O'Connor, while asking us to pass the clause with the amendment he suggests, should consent to recommit the clause if any honorable senator finds it desirable to submit an amendment hereafter. What is this inward manifest to be, which the master is called on to deliver in duplicate? If the ship calls at four different ports, has the master to deliver a complete manifest of the whole of the cargo, or simply a manifest of the goods to be landed at that port?

Senator Drake

- The manifest of the goods he is going to deliver.

Senator O'CONNOR

- An amendment has been suggested by Senator Sir Frederick Sargood, which I am willing to accept. I move -

That after the word "arrival," in paragraph (a), the words "at any port"; and after the word " duplicate " the words "of goods for such port," be inserted.

Amendments agreed to.

Senator Major GOULD(New South Wales). - Would it be necessary for the ship-master to comply with

sub-clause (c), if the vessel were not delivering cargo at a port?

Senator O'CONNOR

- The law entitles the Custom-house officer to see the manifest for the whole of the cargo if he thinks fit ; otherwise, there would be no safeguard. It only means that the ship-master will have to produce the manifest.

Senator MACFARLANE(Tasmania).There is a practice in New Zealand which might help us. There the ship-master has one manifest from the beginning of the voyage to the end, and additions are made as he goes along.

Senator O'CONNOR

- Probably an additional manifest, or a separate manifest, would be all that would be required under ordinary circumstances. But there must be power to look at all manifests if necessary.

Clause, as amended, agreed to.

Progress reported.

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22:00:00

Senate adjourned at 10 p.m.