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1901-06-27

Senate.

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

ELECTION PETITION

Saunders versus Matheson

Vice-President of the Executive Council

Senator O'CONNOR

- I beg to present a petition from Henry John Saunders, describing himself as an elector of Western Australia, his residence being Perth. It is a petition against the return of Senator Matheson. Certain facts are set out in it. It is respectfully worded, and it concludes with the prayer that it may be declared that the said Alexander Percival Matheson is not duly elected and returned as a member of the said Senate, and that the petitioner may have such further and other relief as the justice of the case demands. I move- That the petition be received.

I have taken this action solely as the representative of the Government in the Senate, charged, as it seems to me, with the duty of seeing that petitions which are brought before this House claiming the redress of any grievance, shall be before the Senate in such form that they will have consideration. I know nothing whatever about the facts of the petition or as to its merits. I express no opinion about it. I am simply taking this action formally, in order that the petition may be brought before the Senate. It appears by a certificate indorsed upon it that the petition was delivered to the Clerk on the 23rd May, 1901, and that £50 was lodged with him as security for costs.

Question resolved in the affirmative.

Senator O'CONNOR

- I move-

. That the petition be referred to the Elections and Qualifications Committee for inquiry and report.

That upon such inquiry the committee have power to send for persons, papers, and records.

That the President shall fix the time for the first meeting of the committee.

That of the committee four shall form a quorum.

The first and second paragraphs speak for themselves. With regard to the third, I understand that, as a general rule, under the standing orders, the mover for a committee fixes the time for the first meeting, and then the committee inaugurate their proceedings. As there is no mover for this committee, I have taken the liberty of asking the President to fix the time for the first meeting.

Question resolved in the affirmative.

PROPERTY FOR PUBLIC PURPOSES ACQUISITION BILL

Bill presented by Senator O'CONNOR, and read a first time.

QUESTIONS

USE OF PARLIAMENT HOUSE

Senator Lt Col NEILD

- I desire to ask the Postmaster-General a question, without notice. Some few weeks ago, in answer to a question by me, he indicated his willingness to lay upon the table of the Senate a copy of the agreement about to be entered into for the use of these buildings. He indicated that he would do so as soon as a copy was available) and as I have waited for about three weeks, perhaps the honorable and learned gentleman will tell the Senate whether a copy is yet available?

Senator Drake

- I believe an agreement has not yet been entered into.

Senator Lt Col NEILD

- The honorable member is under a misapprehension. The desire of myself and others was that we should have an opportunity of seeing the agreement before it was entered into.

Senator Drake

- The draft agreement?

Senator Lt Col NEILD

- Yes. It was laid before the State Parliament some time ago, and surely we might have a copy as well.

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Senator Drake

- I understood that the honorable senator was asking for the agreement as completed. I will make inquiries, and see whether I can get a copy of the draft.

ACTS INTERPRETATION BILL

Adoption of Report.

Senator O'CONNOR

- I move -

That the report be now adopted.

I would like to satisfy 1113^ honorable and learned friends, Senator Sir Josiah Symon and Senator Clemons, that there is very high authority for use of the word "regnal year" in this Bill. I find that the phrase is used in section 35 of the Acts Interpretation Act of 1889.

Senator Sir JOSIAH SYMON

- 'mon. - The English Act?

Senator O'CONNOR

- Yes. Section 35 provides -

In any Act, instrument, or document an Act may be cited by reference to the short title, if any, of the Act, either with or without a reference to the chapter or by reference to the renal year in which the Act is passed.

Question resolved in the affirmative. Report adopted.

POST AND TELEGRAPH BILL

In Committee(consideration resumed from 26th June, vide page 1617) :

Clause 41 -

The Postmaster-General or Deputy Postmaster-General may at any time cause any postal article having anything profane, blasphemous, indecent, obscene, offensive, or libellous written or drawn on the outside thereof, or any obscene enclosure in any postal article, to be forthwith destroyed.

Upon which Senator McGregor had moved by way of amendment -

That the words " offensive or libellous," line 4, be omitted.

Senator MCGREGOR

- I hope that honorable senators will give fair consideration to this clause, and particularly to these two words. Every one knows that so far as the word " offensive " is concerned, it would be very hard to define its meaning. What might be offensive to one individual might be the contrary to some one else. Therefore, seeing that the Deputy Postmasters-General, as well as the Postmaster-General himself, have the power to deal with anything in the shape of a post-card or any other document that may be supposed to be offensive by one individual and not by another and to destroy without further investigation, we should be careful not to make the power too wide. As far as the term " libel " is concerned, it often takes a bench of Judges with a jury of twelve, and a dozen gentlemen of the legal profession, to decide what is a libel, and then they do not always reach a definite conclusion. To give any Deputy Postmaster-General power to define what is libellous without inquiry is carrying legislation to an absurdity. I have as much respect for the feelings of individuals as any one, but I do not think that we should place a provision in an Act of Parliament that would make our conduct look absurd in the eyes of the people. If there is any necessity for such legislation, it should be effected in some other way. Many Acts of Parliament may have to be passed respecting the carrying of letters and other documents in which offensive caricatures and prints- of that description can be dealt with. They ought to be dealt with, but such a provision is out of place in this Bill.

Senator DRAKE

- I do not propose to add anything to what I have already said in regard to this clause. It is not necessary on the outside of a letter to give anything more than a man's name and address.

Senator Clemons

- A post-card has two outsides

Senator DRAKE

- Quite so ; but if a post-card contains anything offensive or libellous it should be stopped at once. The mere fact of such matter being put upon a post-card shows that the sender desires to hold the intended recipient up to ridicule. The difference in cost between a letter and post-card is so small that the fact of a

postcard being used for the purpose of insulting a person indicates that the intention was to allow other persons to see the libel. The postal authorities should have power to stop such a communication at once. A libellous post-card has to go through the hands of numerous postal officials, as well as, perhaps, into the hands of a man's servants, and the members of his household.

Senator STANFORTH Smith

- And it may be an anonymous communication.

Senator DRAKE

- Even if the sender signs his name, a man who would resort to such conduct towards a fellow creature would probably be such a person as had no means of effectively answering for his misconduct if he were prosecuted.

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Senator PEARCE

- While I might agree with the sentiments expressed by the Postmaster-General, everything depends upon the meaning attached to the word "libellous." The Postal department of Victoria has stopped such a newspaper as Reynolds' from coming into the State.

Senator Drake

- That is altogether different. A newspaper is not on all-fours with the superscription of a letter.

Senator PEARCE

- A Postmaster-General of narrow and bigoted views might do some such thing with regard to a postcard as has been done in Victoria with regard to Reynolds' Newspaper. The question is: what is offensive or libellous ? Such words can be stretched to have such a meaning that business post-cards might be interfered with.

Senator CLEMONS

- I am sorry that I am not able to support the amendment of Senator McGregor, but I wish to indicate to him that I am prepared to give him partial support. Every one of the words used in the clause with the exception of the ' word " offensive " is properly used. But what is " offensive " seems to be rather a question of taste, and if that is to be interpreted by the Postmaster-General and six other Deputy Postmasters-General, we must be prepared to see a considerable variety of interpretation. That variety we do not want. The word " offensive " is in an entirely different category from the other descriptions - "profane, blasphemous, indecent, or libellous." If a post-card contains anything libellous it should be stopped at once. It is to the interest of every one that a libellous postcard should be stopped immediately. But such a word as "offensive" as here used is undesirable.

Senator MCGREGOR

- I am quite willing to ask the Senate to allow me to amend my amendment, or rather to take the decision of the Senate upon the two words separately. Accordingly, I ask leave to withdraw the amendment, and will afterwards move the omission of the word " offensive."

Amendment, by leave, withdrawn.

Amendment (by Senator McGregor) proposed -

That the word "offensive" be omitted.

Senator DE LARGIE

- If the words objected to by Senator McGregor were omitted, the Postmaster-General and his deputies would still have great power under this clause. The words "blasphemous, indecent, profane, and libellous" give power enough without including the word "offensive," which is a word that few senators would care to see remaining in the Bill. I therefore trust that the Postmaster-General will see his way clear to accept the amendment.

Senator Sir JOSIAH SYMON

- I would point out that we shall soon have to consider a later 'clause, which gives the same power not to the Postmaster-General, nor even to so high an official as a Deputy Postmaster-General, but to any telegraph officer who receives a telegram. Any such officer has had hitherto and will have power to' refuse to accept and send a telegram if it contains " blasphemous, indecent, profane, or offensive " matter. The reason being that underlying this power. We ought to refuse to allow a scandalous post-card or telegram to pass through the hands of different postal officials and other persons until it reaches its destination. Though the word "offensive" is a very vague one, and gives great scope to the person who

has to decide upon its application, still the object has to be seriously looked at before the word is rejected.
Senator STEWART

- As this debate proceeds, I gather the impression, from what the Postmaster-General and other senators have said, that each post-card that goes through the post-office is subject to the scrutiny of every officer through whose hands it passes. I was always under the impression that post-office employees troubled themselves only with the addresses on postcards. Does the Minister now mean to tell us that a post-office employee, if he sees that a post-card is addressed in a particular way, turns it upside down and reads it through to find out whether there is any offensive matter in it? If so, that destroys the secret character of the post-office.

Senator Clemons

- We must recognise the possibility.

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Senator STEWART

- We should not recognise the possibility at all. A post office employee has nothing to do with any portion of any communication that goes through the post-office except the address. I have sent written matter on post-cards that I should not care to divulge to any person except the addressee, in the belief that what I was writing was secret, and could not come to the knowledge of any individual except the person to whom it was addressed. The assertion now made destroys this confidence. If the statement the Postmaster-General has made goes forth, the result will be that the post-card as a medium of communication between individuals will become obsolete.

Senator Drake

- One can get a letter card if he wishes a communication to be secret.

Senator STEWART

- We hear a great deal about giving power to the Postmaster-General and a number of Deputy Postmasters-General ; but before any document comes before the Deputy Postmaster-General or the Postmaster-General it will have to pass through the hands of numberless officials. As a matter of fact it appears to me that the employes of the post-office are to be turned into a semi-detective bureau.

Senator McGregor

- A gimlet brigade.

Senator STEWART

- Our legislation should proceed on the assumption that every communication that passes through the post-office is absolutely secret. If such an enactment as this is passed, every post-office employe will be devoting himself to seeing whether there is not a scandal in every paper or letter or post-card that goes through his hands. His time will be wasted in doing this detective work instead of stamping letters and post-cards, and doing that work which the country expects him to do. He will make himself a busybody, and, especially if he lives in a thinly-populated locality, he will peer into the private affairs of every one in that locality. Instead of discouraging that sort of conduct, this provision encourages it. We should oppose the clause thoroughly, and should discourage the idea that men are employed in the post-office to sniff scandal in every document, and indecency and profanity and blasphemy in every communication that passes through the office. I was much astonished to hear my honorable friend Senator Glassey declare that he had received many documents of this character. It appears that he has been a tip for rubbish. I have been as subject to public scrutiny as any one, but have never received a document of that character.

Senator DRAKE(Queensland - Postmaster-General). - I think that when a man puts offensive and libellous matter on a post-card he does it with a view to having it published, and he, at all events, has no right to complain if it is extensively seen. The proposal to omit the word "offensive" and leave in "libellous" will make the difficulty that was enlarged upon last night - that of deciding what is libellous and what is not - considerably greater. If we say that a man on the outside of a letter may put offensive, but not libellous matter, we shall entail on the Deputy Postmaster - General the duty of deciding what is libellous. I think it is best to leave in all the words. We are merely following the State of Victoria in that respect, and the reason why the power is given to the Deputy Postmaster-General is because he holds the highest official position in the State.

Question - That the word "offensive" proposed to be omitted stand part of the clause - put. The committee

divided -

Ayes 18

Noes 8

Majority..... 10

Question so resolved in the affirmative.

Amendment (by Senator McGregor) negatived -

That the words " or libellous " be omitted.

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Senator MCGREGOR

- I have no desire to vote against a great part of the clause, but some proviso should be added similar to that contained in clause 27 - that is, any one who considers he is unjustly treated should have the power of appeal to some tribunal from which he could get satisfaction. Members of the public should have an opportunity to protect themselves against undue assertiveness in connexion with this clause, and I therefore move -

That the following words be added: - "No action shall be brought against the Postmaster-General or any officer of the department for anything done under the provisions of this section, but any person aggrieved by anything done by the Postmaster-General, or a Deputy Postmaster - General, under this section may appeal to a Justice of the High Court or until the establishment of such court to a Judge of a Supreme Court of a State by summons or petition in a summary manner, and the decision of the Justice shall be final."

Senator DRAKE

- There is no analogy between this clause and clause 27. Clause 27 contemplates that newspapers, after they have been detained, will be kept in the office pending appeal. We are now considering a clause which provides, in the case of letters or post-cards that contain anything objectionable or offensive on the outside, that they shall be destroyed. What is the use of giving an appeal when the letter or post-card has been destroyed? There would be nothing to appeal upon. This is only an extreme course that would be resorted to in the case of matter which was so objectionable that it was desirable, in the interests of the whole community, that it should be destroyed at once. What satisfaction could a man obtain if he were given leave to appeal to the Full Court? He could not recover damages against the Postmaster-General for having, in the exercise of his rights, destroyed such a communication. It would be entirely useless to move an amendment of this character.

Senator KEATING

- The Postmaster-General has argued excellently for the exclusion of sub-clause (4) of clause 27. I think other senators, as well as myself, pointed out, when that clause was going through, that the right of appeal there given was of very little value, inasmuch as it was an appeal that was only granted to an individual who felt aggrieved by the destruction of postal matter in connexion with which he had some proprietary right.

Senator Drake

- But it would not have been destroyed ; it would only have been stopped in the office.

Senator KEATING

- If senators will refer to sub-clause (3) of clause 27 they will see that any posted newspaper found to contain seditious, blasphemous, indecent, or obscene matter may be destroyed by the Postmaster-General.

Senator Drake

- May be destroyed, but not forthwith.

Senator KEATING

- That was subject to an amendment moved by Senator Pearce, and some little alteration was made. Even after the time necessary to elapse before it could be destroyed, the other clause would still apply, namely : -

No action shall be brought against the Postmaster-General or any officer of the department for anything done under the provisions of this section, but any person aggrieved by anything done by the Postmaster-General or a Deputy Postmaster-General under this section may apply to a justice of the High Court by summons or petition in a summary manner and the decision of the justice shall be final.

Senator Ewing

- What relief could a justice give ? . Senator KEATING.- That is the question that the Postmaster-General put. ' If he could give no relief under clause 41, he could give no relief under clause 27. I submit that if the sub-clause is in order in being attached to sub-clause (27), it should also be equally in order here. In each case, . the Postmaster-General has power to destroy the article, but in one case his power of destruction is limited. A certain time must elapse to give the individual interested an opportunity to prevent the destruction. But, if he has not prevented the destruction, there is nothing in clause 27 to prevent him taking advantage of the relief extended to him.

Senator Drake

- The amendment the honorable and learned senator refers to was not carried.

Senator KEATING

- Then the argument of the Postmaster-General as to the necessity or otherwise of such a sub-clause being attached to clause 41 applies with a far greater degree of force than I originally thought' it did. I remember the amendment being moved, and, if it was not carried, subclause (3) of clause 27 still reads - Any posted newspaper found to contain seditious, blasphemous, indecent, or obscene matter, may be destroyed by order of the Postmaster-General.

And there is the right given to any individual who feels he is aggrieved to appeal to the High Court. If he is given an appeal in that instance, I say we should equally extend to him an appeal for redress under this clause. If there is any reason at all for such an appeal under clause 27, where the power is simply vested in the Postmaster-General, there is seven times as much reason for inserting such a provision in clause 41, where the power is- vested not only in the Postmaster-General, but in every one of his deputies.

Senator Sir Frederick Sargood

- I would sooner trust the Deputy Postmaster-General than the Postmaster-General. There will be no political influence with him.

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Senator KEATING

- Senator Sir FrederickSargood may trust the Deputy Postmaster-General more than he would the Postmaster-General, but I differ from him. Perhaps his experience and mine have been dissimilar. I think I would sooner trust .the Postmaster-General.

Senator Sir Josiah Symon

- He is more removed from local influences.

Senator KEATING

- Yes, and more directly answerable to the Legislature.

Senator Ewing

- If the provision is inapplicable to a previous clause, how is it applicable here ?

Senator KEATING

- I am not saying that it is. The Postmaster-General says it is inapplicable in clause 41. If it is not inapplicable in clause 27, then it is even more applicable in this case.

Senator DRAKE

- There is a difference between the two cases. When we were considering clause 27 a suggestion was made to amend the clause, by providing that a newspaper should not be destroyed until after such an interval as would enable the sender of it, or any person who felt aggrieved by its detention to appeal. I pointed out then that there was not the least likelihood of the discretionary power given in the clause being exercised in such a way as to prevent any aggrieved person having the right of appeal. The committee considered that a sufficient explanation, and would not amend the clause. Under clause 27, power is given to stop a newspaper containing, for example, an objectionable advertisement. In the exercise of that power the whole issue of that newspaper would be stopped, and succeeding issues would be stopped if they contained the same advertisement. The right of appeal is given,' however, and if the aggrieved person succeeded in his case, the newspaper would pass through the post in future, and all the copies that had been stopped would be delivered to their addresses. There is no analogy between these two cases. We are dealing now with a communication of such an objectionable character that the Postmaster-General, or any Deputy Postmaster-General is ordered to destroy it forthwith.

Senator Sir JOHN DOWNER

- It appears to me that Senator Keating's argument is unanswerable, or at least I have not heard an answer to it yet. What is a postal article ? We have to go to the definition clause to find that out, and there we discover that amongst other things it includes newspaper's. Therefore, what is the difference between the two clauses ?

Senator Drake

- Clause 41 deals with something of an objectionable character written on the outside of a posted article." Senator Sir JOHN DOWNER

- I do not think the Postmaster-General should have said that, because I have been reading the clause, and I have noticed that although it purports to deal with objectionable matter on the outside only, it also deals with enclosures. However, it cannot do very much harm. Provisions of this kind exist in many Acts of Parliament. They are assertions of authority by local officers who want perhaps to have the biggest powers in their own hands, but they generally administer them very well, and not much damage is done. When we are solemnly enacting a measure, as we are now, however, the question is, whether we ought not to be a little cautious.. It appears to me that to give under clause 41 the power to open letters, and to judge offhand whether they are obscene or not, and to say there is no possible appeal for damages, is distinctly inconsistent with clause 27, which recognises that in the course of his duty the Postmaster-General may make mistakes, and that there should be a remedy for the person aggrieved.

Senator HARNEY

- In my opinion the answer given by the Postmaster-General is an absolute one. As I understand the honorable and learned gentleman, he says that clause 41 deals with articles, not newspapers, going through the post. It is particularly aimed at articles other than those dealt with in clause 27.

Senator Clemons

- No.

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Senator HARNEY

- Allow me to deal with the Postmaster-General's answer. The Postmaster-General also says that clause 41 only refers to offensive matter written on the outside of a postal article. He states that such articles may be destroyed forthwith, and that no appeal should be given, because an appeal could not benefit the person whose property had been destroyed. Senator Keating's point was that there is a distinction between this clause and clause 27, because in the latter we give the right of appeal; Senator Drake tells us that the distinction is, that one clause deals with continuing matter and that the other does not. Clause 27 deals with newspapers containing advertisements. If you destroy one newspaper because of a certain advertisement which it contains, it is right that the person aggrieved should have an opportunity to test whether a subsequent issue containing the same advertisement should also be destroyed. ' In that case something remains in the person interested in the newspaper which has been destroyed, namely, a right to ascertain whether he could put the same thing in a subsequent issue. Clause 41, however, deals with isolated articles, and therefore nothing is to be gained by giving an appeal when the article is destroyed. Clause 27 provides -

No action shall be brought against the Postmaster-General or any officer of the department for anything done under the provisions of this section ; but any person aggrieved by anything done by the Postmaster-General or a Deputy Postmaster-General under this section may appeal to a Justice of the High Court by summons or petition in a summary manner, and the decision of the Justice shall be final. Do honorable senators see the distinction there ? For the destruction of a newspaper passing through the post under clause 27 there is no action for damages.

Senator Keating

- Not against the Postmaster-General .

Senator HARNEY

- Well, who else could it lie against ?

Senator Keating

- It might lie against the Government.

Senator HARNEY

- If the honorable and learned senator looks at it carefully he will see that clause 27 says you shall have no remedy in the way of obtaining compensation for what is done. If you should be forbidden to send

certain matter through the post, then for that class of grievance you have the remedy of going before a Justice of the High Court, who will say whether similar matter may in future be sent with impunity through the post. The whole point of the appeal provided for in clause 27 is that it implies a repetition of the article destroyed. In clause 41 we are dealing with something which carries with it no implication of repetition. In effect the whole clause is aimed at filthy, disgusting, nauseating things put in a pillar-box, and these many words are placed in the clause as being ejusdem generis and giving a wide power of destruction. If a thing is destroyed because of its nauseating character, whether physically or intellectually, the person aggrieved cannot get compensation. Therefore, the appeal in clause 41 is meaningless, and is very different from that in clause 27, where the result of the appeal is to show whether, although the posted matter is destroyed, similar matter may be sent through the post in future.

Senator Sir John Downer

- There is nothing said about compensation.

Senator HARNEY

- If the honorable and learned senator will turn to clause 27 he will find that it is there set forth -

No action shall be brought against the Postmaster-General or any officer of the department.

It might be said, " Well, an action may be brought against some one else." But who is to be the some one else?' The action must be brought against the wrong-doer, and the wrong-doer is the person who intercepts the article. If it cannot be brought against him it cannot be taken against any one. .

Senator Clemons

- Look at the final words in sub-clause (4).

Senator HARNEY

- No action lies for an alleged wrong done in this case. That is to say, you have . no right to recover, in a court of law, anything that would recompense you £ or the injury done, but if you are aggrieved otherwise than as to the wrong done to you, you can go to a Justice of the High Court, and have that grievance removed.

Senator Clemons

- That is a very liberal interpretation of the clause.

Senator HARNEY

- I am endeavouring to explain what is the value of the appeal to the Justice of the High Court. I contend that the Bill says no wrong is done to me by the destruction of this document, but I may go in a court and say, while I cannot complain of that document being destroyed, I am aggrieved, inasmuch as its destruction implies that I cannot post another of a similar kind. I think it is a perfectly comprehensible position.

Senator Sir John Downer

- It is incomprehensible to me.

Senator HARNEY

- Intelligible I mean.

Senator Sir John Downer

- Not to me.

Senator HARNEY

- If the honorable and learned senator is not convinced, then the fault lies with ray expression, not with his understanding.

Senator Sir John Downer

- The honorable and learned senator is perfectly clear. -

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Senator HARNEY

- There are two things involved in clause 27, first the right to destroy a document, and secondly the right of the person whose document has been destroyed to go to the court and say, " May I post another article of a similar character?"

These are my opinions. An action can only give you two things - either the restitution of that of which you have been deprived or something in substitution therefor. When you say no action lies, the thing being destroyed, that means that you cannot get' money compensation therefor. What are you to get if you are an aggrieved party ? You are to get the right merely of issuing another document of the same kind.

Senator McGREGOR(South Australia). - I even accept the interpretation of Senator Harney, but I still continue to argue that it is just as necessary that this proviso should be inserted in clause 41 as in clause 27. The effect of a proviso of this description on the Postmaster-General, and his host of deputies, would be to make them careful as to what they consider libellous, profane, objectionable, or offensive. But that is not all. Suppose a trade circular was issued, having upon its cover some caricature or picture that might by some Deputy Postmaster-General be considered offensive, and be destroyed. The result of a proviso of this description would be that the aggrieved person could appeal to the court, which would decide whether the caricature, picture, or inscription bore the interpretation put upon it. Notwithstanding the legal display we have had, I still contend that the proviso would have as much effect in this clause as in clause 27.

Senator Harney

- It cannot bring the dead to life.

Senator McGREGOR

- There is too much power in the hands "of one individual to interpret what is objectionable. It is necessary that there should be some final court by which consideration should be given from every stand-point to any complaints, and a proper understanding arrived at as to whether what is complained of was objectionable or not. This proviso will have the effect of making the authorities careful. . Senator EWING (Western Australia). - ' I cannot agree with Senator Harney. He started upon a justification of the proposition, which even his ingenuity was not able to conclude. The clause seems quite clear to me, and I quite agree with Senator McGregor that there is nothing in it which prevents a person from recovering damages for wrong done. Senator Harney has argued that under clause 27 a person is precluded from recovering damages. What does it say -

No action shall be brought against the Postmaster-General or any officer for anything done under the provisions of this section.

But any person aggrieved - that is any person to whom a wrong is done - may apply to the Judge to get a remedy for his grievance, To give a homely illustration. You cannot issue a writ against the Crown, but you can proceed by petition of right, another mode of procedure. So this Bill says that you cannot proceed by ordinary action against the Postmaster-General, but you may adopt another method of procedure, which is a simpler and easier method.

Senator Sir John Downer

- It does not alter the remedy, but it alters the method of getting it.

Senator EWING

- That is the position. It does not take away a man's right to be compensated for his grievance, but it says that, instead of having an expensive action at law, you shall take proceedings before a Judge in Chambers. If it is applicable to the previous clause, it is quite applicable to the clause to which Senator McGregor wishes to apply it.

Senator Sir John Downer

- It should be more so.

Senator EWING

- Yes because here a man's property is destroyed. There is nothing in this 'measure to take away from a man a right of action for that destruction if improperly done. All Senator McGregor said, is that, instead of proceeding by means of a long legal action, it will give him the right to apply to a Judge in Chambers. If the Postmaster-General destroys my property on the ground that it was improper or offensive, it would be for him, if I took action against him before a Judge in Chambers, to justify his conduct, and if he could not do that, he would have to pay me such recompense as the Judge chose to fix.

Senator CLEMONS

- I agree that the onus should be on the Postmaster-General under this clause.

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Senator EWING

- It would be. The person doing a wrongful or arbitrary act, and saying, " I did it because the law says I am to do it," would have to prove the correctness of his procedure: If the article destroyed was offensive, the person destroying it would have to prove that it was offensive. The onus of proof would surely lie on the Postmaster-General. I am strongly in favour of Senator McGregor's view, because in achieving his object

he would enable the person who was aggrieved to settle his grievances by a quick and easy method. Senator CLEMONS(Tasmania). - I am entirely in accord with Senator McGregor. The words " shall be forthwith destroyed," used in conjunction with' the word "offensive," constitute a very great danger' indeed. It is quite possible for any Deputy Postmaster-General to interpret words used in joke as having . an offensive meaning. For instance, a man might write to a friend about a third friend, and, in the course of his communication, might call the third friend in joke "a silly idiot." Those words might be regarded by the Postmaster-General as offensive. But the letter might, in addition to containing the words " silly idiot," contain other words of importance, and its destruction might mean a great loss to the intended recipient, and might bring about trouble and hardship. Considering that the Senate has agreed to leave in the word "offensive," we should hesitate considerably before we decide to permit some Deputy Postmaster-General, on concluding that a letter contains anything offensive, to order the document to be forthwith destroyed at his absolute discretion.

Senator FRASER

- I should like to know whether the appeal lies only against the action of the Postmaster-General in destroying a communication regarded as offensive, or against his action under the other terms used in the Bill.

Senator O'Connor

- Against the whole of it.

Senator FRASER

- If the appeal lies against the whole clause, I think the amendment is a wrong one. If, however, the amendment only refers to the word " offensive," I see no danger in the amendment.

Senator Clemons

- It includes that.

Senator FRASER

- What sense is there in allowing an appeal against any action by the. Postmaster-General in regard to matter which is " profane, blasphemous, indecent, or.libellous " ?

Senator Ewing

- Why not ? If the Postmaster-General destroys matter as profane when it is not profane, why should not the owner have a remedy ?

Senator FRASER

- The Postmaster-General will surely be a man of common sense.

Senator Keating

- So will the Judge be. Senator FRASER. - Are we going to refer such a matter to half-a-dozen men when one man of common sense could deal with it 1 It is not common sense to deal with matters in that way, nor is it business-like. In 99 cases out of 100 the Deputy Postmasters-General are men who will take precious good care not to err .on the side of stringency. They will rather err on the side of leniency, as they have done in the past in the States.

Senator Clemons

- They will have a sense of added importance when they are Deputy Postmasters - General ' of the Commonwealth.

Senator FRASER

- That will make them all the more careful not to do any harm to any single individual. If they do, Parliament is perfectly ready at all times to redress grievances, and to bring Postmasters General, or Premiers, or other high officials to book for wrongs that they have done. It is not reasonable to allow an appeal in regard to blasphemous, profane, and indecent matter. The literature of some foreign countries, such as France, is demoralizing.

Senator Clemons

- Why did the honorable senator not vote for the elimination of the word "offensive"?

Senator FRASER

- I was not present.

Senator Stewart

- The French are the most moral nation iii Europe, and the Scotch are the worst.

Senator FRASER

- If Senator McGregor will agree that this amendment shall only apply to the word "offensive," I will heartily support that, but I hope the amendment will not be carried in regard to the whole clause. ' I do not care to move any amendments myself, but as there are able barristers all about me, and if they move* an amendment of the kind I shall be glad to support it.

Senator Ewing

- This does not give any new cause of action.

Senator FRASER

- If such appeals are confined to the word "offensive," I will support an amendment of that kind.

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Senator DRAKE

- We are wasting a long time over the clause. If an appeal is to be given, it is quite impossible to limit it to any particular class of offence. I am willing to put in an appeal clause similar to that contained in clause 27, but first of all it will be necessary to omit the word "forthwith." It would be no use to give the right of appeal if the subject-matter, which would be the principal evidence, had been destroyed. I think the Postmaster-General or his deputy must have the discretion of retaining the matter pending appeal.

Senator Charleston

- Is the Postmaster-General going to give a time limit for these appeals?

Senator DRAKE

- I will leave it the same as clause 27.

Senator Fraser

- Do I understand the Minister to say that he is going to submit an appeal for the whole clause.

Senator DRAKE

- Yes.

Senator O'Connor

- The article will be destroyed all the same.

Senator DRAKE

- What I propose to move is the addition of the following subsection : -

No action shall be brought against the Postmaster-General or any officer of this department for anything done under this section, but yet any person aggrieved by anything done by the "Postmaster-General or a Deputy Postmaster-General under this section may appeal to a justice of the High Court by summons or petition in a summary manner, and the decision of the justice shall be final.

I move -

That the word "forthwith," line 6, be omitted.

Senator Charleston

- How long has the aggrieved person the right of making the appeal ? Can he appeal within six or twelve months and say he is aggrieved. The Postmaster-General in his own interest and in the interest of his own deputies must state that no action can be taken after a certain time.

Senator Drake

- An aggrieved person would have to take his action within a reasonable time.

Senator Sir WILLIAM ZEAL

- I am rather surprised that the Postmaster-General permits any amendment. It seems to me that this is an entirely reasonable power to put into the hands of reasonable men. We must suppose that the members of the Government are reasonable and businesslike. This clause does not say that the letters shall be destroyed, but it says that the Postmaster-General or his deputy may do certain things. Do honorable senators suppose that a man who occupies the distinguished position of Postmaster-General will be an idiot, and will deliberately endanger his position 1 Are senators prepared to allow obscene and blasphemous literature to be sent through the post. If I were the Postmaster-General I should stick to the clause because, it seems to me, it is only a reasonable provision. I am quite sure he will never abuse his authority, but if he does public opinion which will punish him well for what he does. I therefore ask senators to deal with this matter as they deal with their own business, in a common-sense way, and give to the Postmaster-General the same powers which any business man would give to a business man. I shall support the clause as it stands.

Senator FRASER(Victoria). - I dislike the amendment very much. I say it is a disgrace to any country to

allow obscene matter to go through the post. What right should there be to appeal against the dissemination of blasphemous and obscene matter?

Senator CLEMONS

- To find out if it is blasphemous or obscene. We want to find out if the destruction was warranted. No one objects to the destruction of these things.

Senator FRASER

- Do senators contend that a Minister will take such a step as this if he has any doubt-at all without consulting the Attorney-General or the Solicitor-General? Surely a Minister who was not a lawyer would consult the lawyers of the Government?

Senator MCGREGOR(South Australia). - I can assure Senator Fraser that every senator here is just as anxious to prevent blasphemous and obscene matter passing through the post as he is, but we want to be protected against any interpretation which the Postmaster-General or his deputies may put upon certain things which are passed through the post. I am sure Senator Fraser is just as reasonable as any one else, and he ought to see if he reads the clause properly, that the article would be forthwith destroyed and there would be no consulting the Attorney-General or any one else. This amendment is to provide against any unnecessary haste.

Amendment (Senator Drake's) agreed to.

Senator Charleston

- I think that after the words " no action shall be brought," there should be inserted the words "after one calendar month."

Senator Drake

- Put it after the word "appeal."

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Senator Charleston

- There ought to be some limit.

Senator Keating

- - May I point out that the matter referred to could be better dealt with in part 9 of the Bill - "Notice and Limitations of Actions " 1

Senator Sir JOSIAH SYMON

- There seems to be no apparent analogy between the provisions of clause 27 and clause 41. I think we ought to pause before we add the amendment, and I hope the Minister will not move the amendment which he indicated. I gather that the Minister provides that there shall be an appeal to a Judge of the High Court by any person aggrieved. That would be perfectly applicable to the provisions of clause 27, but wholly inapplicable to the injury done under clause 41. Clause 41 simply confers an arbitrary power upon the Postmaster-General or his deputy to absolutely destroy an article. The deed is done. He has sat in judgment. He has pronounced sentence, and executed it. Then what good is the appeal to be ? If you provided at the end of the clause that no party aggrieved should be deprived of the remedy to sue for damages for any injury which he has sustained, there would be some redress, but a mere appeal would be nothing. It would be an appeal against a conclusion at which the Postmaster-General had arrived in finding that there was offensive matter - on a postal article, and had ordered it to be destroyed. That would bring no redress, and would be of no earthly good to the person who posted the article or to the person to "whom it was addressed.

Senator Drake

- That was my contention exactly

Senator Sir JOSIAH SYMON

- I want to point out the difference between the two clauses. Clause 27 provides for a totally different set of circumstances, to which an appeal is absolutely inapplicable. It does not provide for the destruction of these things, but the Postmaster-General or his deputy may refuse to transmit or deliver them. But the posting of these articles may go on. The provision of sub-clause (4) gives an opportunity to the person aggrieved to have it settled whether there is anything seditious, blasphemous, or libellous in the matter posted. If the High Court decides that the retention of these newspapers was erroneous, they may continue to be posted.

Senator Clemons

- -What is the value of the appeal ?

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Senator Sir JOSIAH SYMON

- I do not think that the appeal in section 27 is of much value, but it is of some value, because it relates to newspaper articles, and it is very important that the publisher or printer of a newspaper should be in a position to know whether he has or has not printed anything seditious. The appeal enables him to get an authoritative decision as to whether a particular article is seditious or blasphemous. In clause 41 the policy is something totally different. Of course there is great force in the argument as to the wide meaning of the word " offensive," but if it is to be of any force at all this power should be arbitrary. At any rate, with the appeal suggested, we really give no redress to the person aggrieved. If we want him to get redress, then we should put in a proviso that any person aggrieved by the execution of the powers contained in the clause shall have the right of action against the Postmaster-General for any injury he may have sustained.. Whether that could be I do not know. No man is deprived of his remedy under clause 41. If, for instance, the Postmaster-General destroys a valuable document or postal article belonging to me, there is nothing in this measure which deprives me of my remedy if I can show, that he was wrong.

Senator MCGREGOR(South Australia). - I think Senator Josiah Symon must have been engaged over some' legal document, or else he was asleep, when this matter was being argued. It was clearly pointed out, or any one might have understood from the discussion, that a business firm might go to the expense of printing 500,000 trade circulars, with some caricature upon them that might not be objectionable or offensive except to some particular individual who happened to be Deputy Postmaster-General at the time, but because of that they would be destroyed. The sole effect of this appeal would be that the interpretation of the court would be given as to whether the matter was objectionable or not. Honorable senators will see that although there would be only one issue destroyed, the firm might desire to issue millions of them afterwards. If the court decided that the circular was not objectionable, blasphemous, obscene or libellous, then the firm would go on issuing them. I say that this provision has just as much effect in connexion with clause 41 as it has under clause 27.

Senator Harney

- But this would come in under clause 27.

Question. - That the words proposed to be added (Senator McGregor's amendment) be so added - put.

The committee divided -

Ayes..... 13

Noes 11

Majority 2

Question so resolved in the affirmative.

Amendment agreed to.

Senator CHARLESTON

- Before we pass this clause I should like to point out that if the Postmaster-General destroys the article seized, it will be impossible for the person aggrieved to prove his case ?

Senator Drake

- We cannot alter that now.

Senator CHARLESTON

- Look at the character of the postal articles that we are dealing with now. It is not at all likely that the sender would keep a copy.

Senator McGregor

- Then he could not appeal.

Senator CHARLESTON

- The person aggrieved might be on the right side, but the fact that the article had been destroyed by the Postmaster-General would prevent him from proving his case. I think the Postmaster-General should insert a proviso that the article shall not be destroyed within one month from the date of seizure.

Senator MCGREGOR

- I should like to point out to Senator Charleston that if an individual has any correspondence which is at all likely to be destroyed, he' will take care, in view of this proviso, to retain a copy of it. If he is foolish enough not to do so, then he spoils his right of appeal.

Clause, as amended, agreed to.

Clauses 42 to 47 agreed to.

Clause 48-

If neither of such persons can be found or makes such application within three months after the sending of such notice, or if the said contents have been posted or are in fraud or violation of this Act, or of any Act relating to the customs or of any regulation or order made under the authority of this Act, or with intent to evade payment of the postage properly chargeable on the letter or packet containing them, such letter or packet shall be destroyed and its contents forfeited, unless the Postmaster-General directs the said contents to be restored to the writer or sender of the said letter or packet. And if the contents aforesaid are not money or a security or order for money payable to bearer, the same may be destroyed, sold, or converted into money in such manner as the Postmaster-General or Deputy Postmaster-General directs, and the proceeds thereof and such money, security, or order shall be paid into the consolidated revenue fund.

Amendments (by Senator Drake) agreed, to-

That the words ' and such money, security, or order,' line 19, be omitted.

That after the word "fund," line 20, the following words be inserted: - "And if the contents aforesaid are money, or a security, or order for money payable to bearer, the same shall form part of the consolidated revenue."

Clause, as amended, agreed to.

Clause 49 similarly amended and agreed to.

Clauses 50 and 51 agreed to.

Clause 52-

Whenever any person is adjudged bankrupt or insolvent by any court of competent jurisdiction within the Commonwealth the Postmaster-General if so directed by the order of the court may order that until a date to be specified in such order such date not being later than the time when such bankrupt or insolvent has passed his last examination any postal article addressed to such insolvent shall be delivered to the official receiver or person named in such order.

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Senator HARNEY

- I think we should eliminate this clause from the Bill. It appears to have been in the South Australian Postal Act, but it is open to the objection that I urged against clause 54 when I was speaking upon the motion for the second reading. The matter provided for in the clause really does not arise in the conduct of postal business. The effect of the clause is, I think - as will be apparent to every one - that the moment a person becomes insolvent or bankrupt it is open to his creditors by an application to the court to convert the post-office officials into spies of his correspondence. The object clearly is to prevent the making away of assets that frequently follows upon bankruptcies. I am in entire sympathy with those who would put a stop to the pernicious habit among traders of becoming bankrupt in order to wipe out existing debts.

Senator Pearce

- Traders only ?

Senator HARNEY

- Or private individuals, but traders mainly. Many bankrupts make arrangements at the time they become insolvent that the money they have shall be secured to their wife or to some friends. But while I am in favour of the object of the clause, I am very much opposed to its method. Whenever such a case has arisen in courts of law I have never hesitated to object to the administration of justice being carried out by a system of espionage. It seems to me a shocking thing that because a man has become bankrupt it is to be open to third parties to obtain control of communications passing between him and his wife or his friends, to open- those Communications, and to eavesdrop, so to speak, in order that they may come to the court and show that something he has sworn in an affidavit or some statement in the evidence which he has given verbally is untrue. Thereby they not only make him fail in his attempt to obtain his discharge, but may punish him for perjury. This is a grossly underhand and subtle method of getting at a person who may be disposed to do wrong. After all, the post-office is only an institution whereby the thoughts of persons may be exchanged at a distance.

Senator Clemons

- The post-office conveys a little more than thoughts. Sometimes it conveys money.

Senator HARNEY

- Sometimes money is conveyed in packages ; but this clause is aimed at the conveyance of thoughts.

Senator Sir JOSIAH Symon

- -And property.

Senator HARNEY

- The clause would be very futile indeed if it touched property passing through the post-office.

Senator Playford

- That is all that is intended to be done.

Senator HARNEY

- If it is only intended to touch property passing through the post-office, there would be an end to my objection ; but, unfortunately, we have to take what is implied in the words of the clause ; and the words imply that it gives the postal officials control not merely over property passing through their hands, but over thoughts expressed in letters.

Senator Sir Josiah Symon

- Only when directed by the court.

Senator HARNEY

- The reason that that control is wanted is to be able to find out any negotiations that may be passing between, the bankrupt and any third parties. What the clause says is that where a person is a bankrupt or an insolvent it is open to apply, to the court, which may order that the letters,, of the bankrupt may be opened.

Senator Drake

- No; only that they shall be delivered. I do not think it gives, the power to open them.

Senator HARNEY

- That does not. really alter the effect in the slightest degree because while the clause does not say that - the postal officials can open the documents,, . it says that they shall direct them into the: hands of a person who will open them.

Senator Drake

- No.

Senator HARNEY

- Why then do they reach the hands of that person.

Senator Clemons

- Because he is the-; owner of them, the property of the bankrupt, being vested in him.

Senator HARNEY

- Then he can exercise the rights of ownership, and one of those rights is, I take it, to read them. It is.. only a subtlety to say that the clause does* not permit the letters to be read.

Senator Drake

- I think the receiver is. only a trustee.

Senator HARNEY

- If the argument is; that the object is merely to deliver th&' documents into the hands of the legal owner, ' the bankrupt having become a personano.n, who is wiped out, so to speak,, while the official receiver stands in his. shoes, the same objection applies ; because,, upon whatever pretext the documents come-, into the hands of the official receiver, they are to be used by him. . One of the ways in which he will use them is by causing them to be opened and read. The real object underlying the clause is, not to prevent bankrupts from making away with physical goods through the post-office, but in order that the official receiver, in a backhanded spying manner, may be able to find, out what arrangements the bankrupt is . making with his wife, with his family, or with his friends, to make away with hi a. property. That is the only object of tha clause which can make it of any use.

Senator Playford

- A very good object,, too.

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Senator HARNEY

- It may be ; but let. us view it in its true character, and then let us see whether we as a Legislature are

going to lend ourselves to being paid detectives. I was about to say, when I was met with interjections, that the real object of postal business, is to convey thoughts from one individual to another: Suppose we narrow the space, and put the insolvent in his private room with his wife or with some friends. What would honorable senators think of a Bill which said to the household servants - " Once you see it published in the newspapers that your master is insolvent, you are at liberty to put your ear to the keyhole and tell us what is between him and his friends." If it were put in that clear bold form in a Bill, our sense of what was decent and manly would revolt against it. This provision is as if you assisted a person to either put his ear to the keyhole or to look in through a skylight upon the bankrupt in order to find out what was passing confidentially between him and his friends. There are provisions in many Bankruptcy Acts that a person may be treated as an insolvent although there has been no proclamation given to the fact at all, nor such a thing as a public notice. The effect of this clause would be that once a man was put in that position, if a letter were written by him giving directions as to dealing with his property, that letter, unknown to him, might come into the hands of the official receiver, and be read by him, and when the unfortunate man was under examination he would be subject to a star chamber method of inquiry which is contrary to the principles of fair play that prevail in all our courts of justice.

Senator Sir Josiah Symon

- It can only be done under the direction of the court.

Senator HARNEY

- -Saying that it can only be done under the direction of a Judge in no way alters the character of the enactment, but merely gives it a plausible exterior. No one knows better than the honorable and learned senator who made the interjection that if this clause were to become law, and a creditor were to go to a Judge and say - " I require an order," the Judge in no case could refuse it, because no grounds could be brought forward to justify him in refusing it.

Senator Sir Josiah Symon

- It has been refused over and over again.

Senator HARNEY

- Where?

Senator Sir Josiah Symon

- In South Australia. It has only been sanctioned where a man has been believed to be making away with his property.

Senator HARNEY

- I am glad to hear that in South Australia, where alone this drastic provision prevails, the fair play and the manliness of the judiciary is a counter-, acting force to the meanness, the espionage, and the backhandedness of the provision. But every State may not be blessed with such a manly and fair-minded bench as we have in South Australia.

Senator Sir William Zeal

- That is too thin.

Senator HARNEY

- Thin or thick, it is only an argumentum ad hominem ; and I maintain that it should not be left in the power of any Judge to make an order which has the effect of putting the official assignee in the position of a spy in communications between two parties.

Senator Ewing

- It is putting him in the position of an owner of property, and that is what he is.

Senator HARNEY

- That is the theory.

Senator Playford

- It is a fact.

Senator HARNEY

- I may say that it is not a fact. When we say that the official assignee stands in the place of a bankrupt, we do not mean that he is the bankrupt. All that we mean is that, for the purpose of giving effect to the disposition of the bankrupt's affairs, the official is regarded as the bankrupt. We have never carried the representative character of the official assignee into the private personal surroundings of ' the bankrupt, and so long as we confine the duties of the official assignee to gathering in the assets I am content to

allow him to stand entirely for the bankrupt when once he is clothed with authority. Although theoretically the official receiver has not the authority, yet as a matter of fact he has: If he applies to a Judge and says - "I would wish the communications passing to a bankrupt to be stopped," I can see no reason why the Judge should refuse.

Senator Playford

- They often do re. fuse.

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Senator HARNEY

- They often do refuse in South Australia because the Judges themselves have rebelled against such a clause. I object to the clause simply in the spirit of what I think is fair play and manly usage. If a man becomes insolvent, and we are going to investigate his affairs, let us do it in an open spirit, do not let us take advantage of the fact that we know he has communications in the hands of a carrier, and then go to that carrier and say, "Open those communications in order that we may find out what is in them." It struck me as unfair and unworthy and underhand, but if the Senate is satisfied that this means is necessary to detect persons who are trying to do away with their property, I will not press my objection, because, as far as expediency is concerned, I think the clause is very useful. The expediency of it must commend itself to every one.

Clause agreed to.

Clause 53 -

Postal articles addressed to deceased persons may be delivered to the executors or administrators of such deceased person on production of the probate or letters of administration ; but in the event of there being no legal representative the Postmaster-General or a Deputy Postmaster-General may open or cause to be opened such postal articles and deliver the same to some near relative of the deceased person.

Senator WALKER

- The Chamber of Commerce in Sydney have asked me to draw attention to this clause. They think it unreasonable that the relatives of deceased persons pending the issue of probate or letters of administration should have to wait for correspondence in possession of the Postal department. In many cases if a person cannot get a letter except after a delay of months it may mean a serious inconvenience. My brother at home may send out a letter to me directing me to do certain things on his behalf. It may be some time before probate or letters of administration are taken out in the case, and owing to this clause that letter could not be opened. Could not some means be suggested by which the postal authorities could have permission to open the letters in the presence of the nearest relatives of the deceased ? Not being a legal man, I do not see my way to draft an amendment, but there is undoubtedly a grievance.

Senator DRAKE

- Of course there is every desire to deliver letters as quickly as possible to the persons entitled to receive them, and this clause is framed with that object. I do not see how it could be enlarged in any way without throwing an unfair responsibility on the Postal department. The honorable senator will see that it would involve the department in very great responsibility if it undertook to deliver letters to any particular relative. They might be delivered to certain relatives soon after intimation of death, and afterwards some other relative might obtain probate or letters of administration, and the department might be proved to have done wrong in handing those letters over. The provision of the clause is very clear. As soon as probate or letters of administration have been taken out, the executor or administrator receives the letters. In case there is no legal representative, there is power taken for the Postmaster-General or his deputy to open the letters in the presence of any near relative, and deliver to him.

Senator Sir Frederick Sargood

- What near relative *

Senator DRAKE

- There is the difficulty. In cases where there are no executors or administrators the Postmaster-General must exercise his discretion. I do not see how the Postal department could be called upon to deliver up letters to a relative without knowing whether letters of probate or administration had been taken out.

Senator Sir JOSIAH SYMON

- Probably the postman will go on delivering letters at the house of the deceased person for some time.

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Senator DRAKE

-He might do so, but as soon as it is known that a person is deceased no further letters are delivered until it is known that some person is authorized to receive them.

Clause agreed to.

Clause 54 -

The Postmaster-General if he has reason able ground to suppose that any person to be engaged either in the Commonwealth or elsewhere in receiving money or any valuable thing - as consideration for an assurance or agreement express or implied to pay or give or as consideration for securing that some other person shall pay or give any money or valuable thing on an event or contingency of or relating to any horse race or other race or any fight game sport or exercise ; or (>) for promoting or carrying out a scheme connected with any such assurance agreement or security or a lottery or scheme of chance not sanctioned by law or an unlawful game ; or under pretence of foretelling future events ; or (<) in connexion with a fraudulent obscene indecent or immoral business or undertaking ; may by order under his hand published in the Gazette direct that any postal article received at a post-office addressed to such person either by his own or fictitious or assumed name or to an address without a name shall not be registered or transmitted or delivered to such person. The order shall specify such name or address and shall upon publication be of full force and effect until cancelled b3' the Postmaster-General.

Senator CLEMONS

- Before we begin the serious discussion of this clause, will the Postmaster-General kindly consent to making the second line grammatical 1 He will have to eliminate the word " that."

Senator DRAKE

- Yes ; certainly this is necessary. I move -

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

Amendment agreed to.

Senator CLEMONS(Tasmania). - I do not desire to discuss the contents of this clause immediately, because I think that on a question of so great importance it is only fair that the Postmaster-General should open the discussion, and give us his reasons for introducing a clause which deals so directly with the legislation of another State.

Senator Higgs

- It deals with the legislation of all States.

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Senator DRAKE

- I have no objection to adding a few remarks to what I have already said with regard to this clause. It is a power that is given to the Postmaster-General in nearly every Postal Act - a power under certain circumstances to refuse to deliver letters. I should like to say, repeating what I said on the second reading, that the Postmaster-General, as Postmaster-General, has the duty cast upon him of delivering letters and other postal articles, and it is primarily his business to receive and deliver them. In that respect he is in the position of a carrier of postal articles, but the Legislature always lays down the general rules upon which he shall act. It states the limitations and restrictions and exceptions, and generally, I think it is what I may call the moral sense of the community that dictates to him the conditions under which he shall do his work. The Postmaster-General himself is never very anxious for restrictions of this kind, but they are restrictions put upon him by law, and he has to carry out the law. We have to consider under this Bill what are the conditions under which this work of receiving and delivering postal articles shall be carried out. This particular clause says that, under certain circumstances, letters of a particular character shall not be delivered. That is a power that is 'given to the Postmaster-General in almost every civilized community, where there is a post-office, and I cannot admit for one moment that the Legislature can in any way be cramped in its power of laying down exactly the rules that shall govern the power of the Postmaster-General with regard to this matter, nor can I admit that any State can by its legislation override the right of this Parliament to lay down the rules which the Postmaster-General must conform to. The reason why there is so much objection to this clause is of course perfectly open. It has been discussed in the open, and there is no need ' to pretend that we do not thoroughly understand what

is the cause of the trouble. It is that there has been in existence for some time almost an institution - a system of what were originally called consultations, and which are now called horse-racing sweeps. These have been established from time to time in various States- of the Commonwealth. They were established first of all in this State of Victoria. Then Victoria legislated against them, and the particular institution referred to removed to Sydney. New South Wales legislated against them, and it removed to Queensland. Queensland legislated against them, and other States I think also, and the establishment referred to now is in Tasmania. Tasmania has specially legislated against horse-racing and gambling in general, but has specifically excepted any persons who fulfilled certain conditions, and we know that there is one individual called " Tattersall," in Tasmania, who has complied with those 'conditions, and, therefore, is carrying on this business which is sanctioned by the law of Tasmania. In a petition which was ordered to be printed yesterday, it was pointed out that owing to the operation of this racing sweep in Tasmania a postal revenue of £20,000 is derived, and it was claimed also that the consolidated revenue of Tasmania benefited to the extent of £50,000 a year by the operations which are carried on under this sweep. But I would like the Senate to bear in mind that a large amount of this postal and State revenue is the result of this particular form of gambling having been suppressed in five of the States. That vast amount would dwindle away to next to nothing if similar racing sweeps were allowed in the other States. Probably, I should not be far wrong if I were to suggest that nineteentwentieths of the amount I have mentioned is the direct result of these consultations having been suppressed in the other States.

Senator Keating

- Although they suppressed them in the other States their legislation had no effect.

Senator DRAKE

- I will enlarge on that by-and-by, because I think it has had some effect, but I have no doubt that the reason why such a large amount of business is done by Tattersall is on account of that form of gambling having been suppressed in the other five States. The amount of revenue which is being derived in Tasmania is the direct result of the other States refusing to allow that kind of consultation to be established within their confines. If the law were uniform throughout the Commonwealth then Tattersall might be reestablished in all the other States. The amount of revenue which Tasmania would derive in that event from that particular form of gambling would be very small indeed. Therefore, all the trouble is due to the fact that Tasmania has been receiving a large amount of financial benefit in consequence of this particular form of gambling having been suppressed in the other States.

Senator Charleston

- Has Tasmania the power to legislate for herself in this particular matter 'I

Senator DRAKE

- I am not dealing with that now. From a financial point of view Tasmania would have very little cause of complaint if this particular form of gambling were re-established in all the States, because in that event her financial interest would be very small! ' It will thus be seen that Tasmania's complaint from that point of view is not so much that letters should be delivered in Tasmania as that letters should not be delivered in the other States. A plea is made in this petition for the sacred right of privacy of correspondence. I stand open to correction, but I believe that in Tasmania the same right to refuse to deliver letters has been exercised. In fact, I think it is not long since there was a refusal in that State to deliver letters to a business very similar to Tattersall's, but which was not sanctioned by law.

Senator Clemons

- I have not heard of the case.

Senator Keating

- It would not be under our postal regulations. We have stringent gambling regulations.

Senator DRAKE

- Unfortunately, I have not those regulations. I am aware that Tattersall is established in Tasmania by authority of a section of the Gambling Act, which provides that if a person complies with certain conditions laid down in the regulations he may be allowed to carry on that business. I am not aware what these regulations are, but I have been informed that only recently there was a refusal to deliver letters to another establishment in Tasmania which attempted to carry on the business of raising sweeps or consultations without having complied with the law. The point I wish to make clear at the present time is that the amount of revenue Tasmania has derived, and the reason why this question is so acute in that

State, is on account of the operations of Tattersall having been stopped in the other States.

Senator Clemons

- No.

Senator DRAKE

- Certainly. If the same law applied all the way round - if Tattersall were sanctioned in the other States - then the revenue derived by Tasmania from that source would shrink to one-twentieth of what it is.

Senator Clemons

- But there are questions other than financial to be considered.

Senator DRAKE

- The question of moral principles 1

Senator Clemons

- No; the constitutional question as to State rights.

Senator DRAKE

- Although as Postmaster-General I think my first duty is to transmit messages, still as a legislator and a representative of a State I am at liberty to hold an opinion - - -

Senator Harney

- But not to assert it as against the Commonwealth.

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Senator DRAKE

- As a representative of Queensland I would like to state the reason why it was found desirable to legislate in such a way as to cause Tattersall to be shifted from that State. The first attempt was made under the provisions of the Postal Act, which provided that by proclamation in the Government Gazette all letters addressed to any person - reasonably supposed to be letters connected with gambling - might be stopped. A notice was put in the Gazette to that effect, but a strong agitation arose in Parliament to have this proclamation rescinded. The result was that a resolution was brought in, in a rather thin House, and by a majority of 19 to 17, 'I think, an order was made against the Government that the proclamation should be rescinded. It was rescinded, but in the following year the feeling against this form of gambling grew very much stronger in Queensland. I will tell the Senate the reason for it. I cannot accept the challenge contained in .this petition as to being able to point to any . specific case in which the system has done injury, but there was a general feeling amongst a great many people in the community that a great deal of evil was resulting in consequence of Tattersall being established in Brisbane. It was not only Tattersall, the price of a share in which is, I understand, £1 or £1 ls., but there were other consultations for 2s. 6d. and down to as low as ls. per share in that city. The feeling grew among a great number of people that the opening of shops where those shilling and half-crown tickets could be obtained led to a good deal of petty speculation in offices ; that in many cases young fellows, previously honest, became dishonest in consequence of the temptation to put half-a-crown into one of these sweeps. There was also a feeling that money, which should have gone to pay the butcher and the baker, was put into these sweeps by people who hoped to make a profit in that way. Public opinion was so strong that an anti-gambling Bill was passed.- Under that Act the position of 'Tattersall in Queensland became untenable, and the institution was moved to Tasmania. It is very difficult to see how we can take from the post-office the right to control the delivery of letters without re-opening this question in all the States which have got rid of it.

Senator Harney

- Its business is to carry letters, but not to carry anything immoral or offensive. Nothing more.

Senator DRAKE

- Where does the honorable and learned senator draw the line?

Senator HARNEY

- I draw the line clearly between what is absolutely immoral and what is unlawful. ,

Senator DRAKE

- The honorable and learned senator may have one idea as to what is immoral, and other persons may have another idea. Since it is admitted that the Postmaster-General is to be controlled by Act of Parliament as to what letters he shall deliver, Parliament must be allowed the light of providing the rules under which the Postmaster-General shall act in these matters.

Senator Harney

- The honorable and learned gentleman could get hundreds of illustrations of .what is unlawful in one State but not in another.

Senator DRAKE

- The Postmaster-General has nothing to do with that. If- we admit that Parliament has the right to say that the Postmaster-General shall not deliver certain letters, then Parliament has a right to say what letters he shall deliver. The Postmaster-General is not asking for the power to refuse to deliver letters. He is simply the servant of the public and Parliament lays down for him exactly the rules that he shall follow. He must do his duty according to the Act of Parliament under which he is carrying on his operations. It is perfectly clear to me, seeing that the Constitution gives us power to make laws to carry on the postal service, that Parliament is competent to prescribe the exact manner in which the work of the Post and Telegraph Office shall be carried on.

Senator Charleston

- That argument is applicable to a separate country, but would it be applicable in a federation 1

Senator DRAKE

- Absolutely, I think. The Constitution clearly gives the power to make laws with regard to the postal service. The only restriction is that it says no undue preference shall be given by any law to one State as against another. Therefore it is clear to me that if the Postal Act states that under certain circumstances a letter shall not be delivered to a certain person, that provision applies equally throughout the Commonwealth. There can be no distinction between one State and another. If the law says that a letter must be delivered to the addressee that must apply equally to every part of the Commonwealth.

Senator MATHESON

- Where does the honorable and learned gentleman find that he cannot make any distinction ?

Senator DRAKE

- Clause 99 of the Constitution Act provides -

The Commonwealth shall not by any law or regulation of trade, commerce, or revenue give preference to one State or any part thereof over another State or any part thereof.

Senator Harney

- Suppose a State used the postal service to carry out functions other than postal - to give effect to some of its particular social legislation 1

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Senator DRAKE

- Perhaps Senator Harney, in following me, will state exactly what he means. I understand that he has admitted that in certain cases it is right that Parliament -should say that the Postmaster-General shall not deliver letters on moral grounds, but he draws a distinction between* that and the delivery of letters relating- to sweeps.

Senator Harney

- Exactly.

Senator DRAKE

- Well, that is not my business. I am not to inquire what reason Parliament may have in declaring that I shall not deliver letters. I must abide by its decision.

Senator Harney

- How does the honorable and learned gentleman happen to know that it is unlawful to keep lotteries if he has to confine his attention to postal business ?

Senator DRAKE

- Those who think it is wrong that letters should not be delivered on any particular ground have to convince Parliament of that. It has been suggested that the whole of this clause should be struck out. If that be done, we shall have no power to prevent the delivery of letters addressed to fortune-tellers, or to similar swindlers.

Senator Harney

- The clause could be altered.

Senator DRAKE

- It could be altered, and that makes stronger my case that it is for Parliament to say what letters shall or

shall, not be delivered. There must be some cases in which the Postmaster-General, must be ordered not to deliver. That being so, it is for Parliament to decide what class of letters should be subject to such embargo : and whatever Parliament decides the post-office will give effect to the law. I am asked if paragraph (6) safeguards art union lotteries. I am not sure whether it does or does not, except that I think the words "not sanctioned by law" were inserted in the Queensland Act to provide for the case of art union lotteries and trade union lotteries which were sanctioned by law.

Senator CLEMONS(Tasmania) - Before I address myself mainly to this question, I think it is desirable, since paragraph (6) has been directly mentioned by the Postmaster-General, that we should come to some understanding with regard to the phrase "not sanctioned by law." The Senate will agree that we want to accept no legislation of a doubtful character, upon which we cannot ourselves place a clear and decisive interpretation. Therefore I say, with regard to paragraph (>), that the words "not sanctioned by law " are distinctly opposed to the continuance of the sweep we have been discussing, namely " Tattersall's," The words can only mean not sanctioned by the law of this Commonwealth ; and although " Tattersall's ".is sanctioned by the law of the State of Tasmania., I am of opinion that these words will not be considered in any court as enabling "Tattersall " to continue, although the sweep is sanctioned by the law of the State. The consideration of this clause should be approached with very great seriousness. I venture at the outset to appeal to senators to approach it in that spirit, and not to allow their prejudices on the question of gambling to interfere with their vote upon the question. From my point of view, the chief question raised immediately by the clause is the question of States' rights - whether this Federal Parliament has the right to interfere directly or indirectly with the legislation of one of the States. It will be admitted at once - and if it be not admitted I should prefer to hear the objection - that the Federal Parliament has no power under the Constitution to legislate directly against lotteries. I have heard incidentally that it is likely to be suggested by the representatives of the Government in the Senate that that contention is not necessarily good, and that it is possible for the Federal Parliament to legislate directly with regard to the question of gambling. If that be so, I shall -be very glad indeed to hear the argument, because I shall be ready at once to reply - "Let us legislate directly if we have the power." My chief objection to the insertion of this clause is that it is an attempt to legislate indirectly.

Senator Keating

- By implication.

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Senator CLEMONS

- -Yes. I should have no objection to facing the whole question of gambling and lotteries, but I maintain that we should face it by direct legislation. It is just because, as I think, we cannot legislate directly with regard to gambling and lotteries that I make a most earnest appeal to honorable senators even though they have the greatest moral repulsion to gambling and lotteries to consider whether they are justified, however pure their motives may be, in adopting a method that is certainly not direct. I admit the purity of the motives of honorable senators who wish to suppress gambling, but, though they are proud of the purity of their motives, they should be very careful about their methods. If those methods are not straightforward, but merely such as would be adopted by a man who wants to score a point off another man by taking him at a disadvantage, they should not be adopted. When indulging in social legislation of this character we should be extremely careful to* see that our methods are not unworthy, in spite of the purity of our motives. That is my objection to this clause. We are not attempting by direct means to stop Tattersall's from carrying on. It is recognised that we cannot do that. But we are attempting to hamper and hinder the lotteries. There is no force whatever in the argument that if we cannot succeed entirely in the accomplishment of an object, we should do our best by moving in that direction as far as we possibly can. That is a weak and objectionable argument. We must consider in serious legislation the chance of legislating effectively ; and no one in this Senate should be ready to adopt a hasty, slipshod form of legislation because of a conviction that it will partly succeed in attaining the object in view. Legislation of that sort is bad. If we cannot comprehensively cover the whole field, we ought to hesitate before we take the action that is now proposed, even from the stand-point of those who wish to stop gambling. The position of the Federal Parliament with regard to the sweeps in question is exactly the same as it would be if the lottery were carried on directly and entirely by the State of Tasmania as a State affair. The position is just as strong at the present moment as if Tattersall's were conducted entirely by the State.

Senator PLAYFORD

- We are supposed to know nothing about Tasmania in the matter.

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Senator CLEMONS

- We cannot shut our eyes to the facts of the case. We are now legislating in a serious way, and if the honorable senator who interjects does not know the facts I will tell him ; and I hope he will afford me a measure of belief when I explain the state of the case. If the position of things were that the State of Tasmania were conducting these lotteries, and the same doubt existed with regard to the powers of the Federal Parliament, we should hesitate before attempting by legislation of this indirect nature to seriously interfere with the operations of a State forming part of the Commonwealth. I say that the position here is just as strong when the lottery is being carried on by a man called Adams,' in Tasmania, under Tasmanian legislation, as if Tasmania were conducting the business. It is advisable, therefore, to point out that we are dealing with a lottery that is conducted in a State under those conditions. Tasmania has not failed to legislate with regard to gambling. That State has directly considered the question of gambling, and has legislated upon it. If Tasmania had ignored all legislation with regard to gambling there might be some strength in the opinion of those senators who want to interfere in that State. But the position is made stronger by the fact that the State has legislated with regard to gambling. I say frankly that if I had been a member of the State Legislative Assembly of Tasmania, I would have opposed the legislation with regard to gambling there. While saying that I am perfectly consistent in the position I now take up in the Senate - that we ought not to interfere with the -right of Tasmania to permit these sweeps - I do not ask a.ny senator to pay any regard to the financial aspect of the question so far as it affects Tasmania. I say at once that if I cannot succeed in making the Senate adopt my view with regard to this clause on logical and constitutional grounds, I shall refuse-" to put forward the unworthy plea that we should do so on financial grounds. Those grounds are too low for me to adopt, and I refuse to accept them ; but I am so anxious that this clause shall be amended that if that argument has any weight with any senators - it would not have much with me - I would simply point to the fact that it would mean a loss of revenue of from £15,000 to £30,000 a year to Tasmania. The only part of the argument that has weight with me is this - that when the' States of Australia federated, and the control of post and telegraphs was handed over to the Commonwealth, as a whole, all' those States had a right to expect that the post and telegraph services would be administered for their benefit if possible. That is the financial aspect of this case so far as it affects Tasmania. If the Federal Parliament decides -to stop the lotteries, Tasmania will lose by her willing and ready adherence to the inclusion of post and telegraph services amongst the thirty-nine other subjects committed to the Commonwealth, about £20,000 a year. But I am making no plea for pity on the part of Tasmania. If the Parliament chooses to legislate and impose that financial burden, Tasmania will have to bear it. My chief contention is that the clause concerns a matter about which it is doubtful whether under the Constitution we have any right to legislate, We must have the very gravest doubts as to our .constitutional position in this particular. I am .prepared to hear before the debate is finished a considerable number of precedents quoted. I am not prepared here to give many, but I would remind the Senate of- something which they probably know. Our Constitution .lias been based rather upon the American than upon the Canadian Constitution, and -senators know that under the American Constitution the individual States have reserved to themselves the entire right of -legislation with regard to subjects like .marriage and divorce. I ask every senator .who is honest in the desire to put- down gambling whether social legislation affecting marriage and divorce is not at least as important as social legislation affecting gambling and lotteries.

Senator O'CONNOR

- When they come to giving marriages by post in America the parallel will be nearer.

Senator CLEMONS

- I submit that the parallel which I am about to offer is a very fair one. The individual States of America are allowed under the American Constitution to legislate as they .like in regard to marriage and divorce, and the American Congress has never interfered with their rights in that respect.

Senator HIGGS

- But the United States authorities have refused to allow lottery tickets to pass through the post.

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Senator CLEMONS

- I thank the honorable senator for his interruption, and I will deal with that question presently. What I wish to say is this : That seeing that the Government of the United States has never interfered with the right of the individual States of the Union to legislate in regard to marriage and divorce, the Parliament of Federated Australia should hesitate to interfere with the similar right of the States of this Commonwealth to legislate as they like in regard to lotteries and gambling. The United States Government did not attempt to suppress lotteries by putting into a Post and -Telegraph Bill an underhand provision aiming at their suppression ; they faced the question fairly and squarely, and let us act in the same way. If there is any kind of legislation in regard to which it is desirable that we should be straightforward, determined, honest, and open in our efforts it is social legislation such as this. If Senator Higgs can induce the Government to deal with the question of lotteries and gambling, in the spirit in which it is -dealt with by the Government of the United

States, I shall be only too glad to assist him. My chief objection to the provision in this Bill is that it makes an unworthy and indirect attempt to interfere with the rights of the individual States. The Postmaster-General has pointed out that we have already passed a clause exempting him from the obligation to deliver letters of a certain class - letters coming under the denomination of indecent, profane, blasphemous and offensive ; and in doing that he thought that he had given a logical reason why he should be similarly exempted from the obligation to deliver letters addressed to Tattersall, in Tasmania. But there is so great, and obvious, a distinction between the two cases that I wonder the Postmaster-General did not see it, and did not refrain from drawing the comparison. In every case where a letter comes within the clause providing for the destruction of indecent, blasphemous, libellous, and offensive communications, there is what I may call an offence of origination. Something illegal has been done by the writer of such a letter, but in refusing to deliver letters to Tattersall, in Tasmania, we do not consider whether those letters are illegal in their origin. The Postmaster-General would have made a perfectly logical comparison if he had shown that it is illegal for persons to post letters to Tattersall. But he cannot do that.' No one would contend that a person posting such a letter commits an illegal act. On the other hand, a person who endeavours to send through the post blasphemous or indecent matter is committing an offence under the law. The Postmaster-General, however, wishes to create an illegality after the letter has been posted, where there is no offence of origin. He has contended that inasmuch as the Postmaster-General may stop a seditious, blasphemous, or obscene letter, he should also be able to stop a letter addressed to Tattersall, but while it is an offence to post letters of the first class, it is not illegal, unless you make it so by this Bill, to send letters to Tattersall. On the other hand, the rights of the addressee have to be considered. Every person who is carrying on a legal occupation has a right to receive the letters addressed to him ; but by this clause that right is especially taken away from certain people. I submit that the relation of Tasmania to the remaining States of the Commonwealth in regard to the receipt of letters is very much the same as that between England and Russia. The fact that the six States of Australia are federated does not take away their right to legislate for themselves on social questions. The English Government could not, without infringing the provisions of international law, interfere with the rights of Russia, and intercept letters which have been posted to Russia in England, and in the same way the Government of the Commonwealth has no right to interfere with the delivery of letters posted in Australia to addressees in Tasmania. The enumeration of 39 subjects of legislation in the Constitution excludes from the sphere of the Commonwealth Legislature all other matters of legislation. I ask honorable senators to credit me with sincerity in this matter, and not to let their prejudice - if I may use the word without offence - against gambling and lotteries, prevent them from paying due and proper regard to the Constitutional questions involved. I would join heartily in the desire of every honorable senator in an attempt to put down gambling throughout the Commonwealth ; but I ask that the methods employed may be pure and above reproach. Will not honorable senators be acting in a way which is utterly unworthy of the high principles by which they are actuated if they adopt methods like these to achieve their purpose ? I implore honorable senators not to do so, and I urge upon the Postmaster-General to consider whether it is desirable to legislate indirectly on this subject, upon which every one must acknowledge the Commonwealth Parliament has no right to legislate directly.

Senator HARNEY

- I entirely agree with the remarks of the last speaker. I am not going to repeat the arguments which I put

before the Senate when the second reading of the Bill was under discussion ; but I wish to answer many of the statements which have been made, when the question has been privately discussed since, to justify the retention of the clause in the Bill. I am of opinion that the clause is entirely inconsistent with the declaration of the Postmaster-General, that he intended to confine the operations of the post-office to postal business. I am certainly very puzzled to see how this matter arises however remotely or incidentally in the carrying on of postal services regarded as such. The Postmaster-General in his speech to-day took up an interjection of mine, and said that once I admit that his officers could exercise a discretion in not lending the post-office to the conveyance of immoral or obscene matter, I am bound to admit that he must regard that which has been put down as unlawful by the States as being in the same category. Now it seems to me that there is a clear distinction between things that are made unlawful by Act of Parliament and things that are crimes or that are objected to by the sense of all humanity. The Postmaster-General, the same as any other carrier, is exonerated by the common law, if there never existed a statute, from making himself, or those whom he employs, vehicles for conveying insulting or offensive language, or being in any way participants in a crime. But no law ever said that a carrier is to exercise his own discretion as to what is inexpedient and to say - " Because this thing is inexpedient I will not lend my services in any way in connexion with it." Lotteries are not morally wrong. They have never been proved to be morally wrong.

Senator Playford

- They have in England.

Senator HARNEY

- Lotteries have never been held to be morally wrong. So far back as the statute of William III., when they were first dealt with in England, we find that the legislation against them was not enacted because they were morally wrong, but because undue advantage was being taken of certain patents and charters granted to certain individuals for carrying on this business.

Senator Drake

- Will you read the preamble.

Senator HARNEY

- The preamble says-

Whereas several evil-disposed persons have by colour of several patents or grants under the great Seal of England, set up, &c.

It was because these patents and grants were abused that the lotteries were put down.

Senator Drake

- Read on.

Senator HARNEY

- I will not read the whole of the preamble.

Senator Drake

-It is very interesting.

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Senator HARNEY

- Well, it says-

Whereas several evil-disposed persons, for divers years last passed, have set up many mischievous and unlawful games, called lotteries, not only in the cities of London and Westminster, and in the suburbs thereof, and places adjoining, but in most of the eminent towns and places in England, and in the dominion of Wales, and have thereby most unjustly and fraudulently got to themselves great sums of money from the children and servants of several gentlemen traders and merchants and other unwary persons, to the utter ruin and impoverishment of many families, and to the reproach of the English laws and Government by colour of several patents or grants under the great Seal of England for the said lotteries, or some of them. " First of all that shows that there were certain patents and grants made to certain persons, and secondly that they were abused.

Senator EWING

- No ; they were productive of evil conditions.

Senator HARNEY

- They were proved to be productive of evil consequences by reason of their misuse by evilly-disposed

persons.

Senator Drake

- Have you not more than that to read 1

Senator HARNEY

- That is the whole of the preamble.

Senator Drake

- I have a much more interesting one.

Senator O'Connor

- What is the year of that?

Senator HARNEY

- 1 680. Senator Ewing. - That one is quite good enough.

Senator Drake

- Mine is 1699. It shows that the evil was growing.

Senator HARNEY

- Now, what I was attempting to do was to point out that it does not become part of the postal business to interfere in this matter simply because it is considered right not to lend the services of the department ' to an immoral purpose. Nobody will contend that there is anything immoral in my putting 5s. or 10s. into a third person's hands and saying, "You hold that as a stake abiding a certain event." The character of the act is. not altered because a thousand persons do the same thing, and yet .those thousand persons doing the same thing in a certain way make it a lottery. I am not now going so far as to say that lotteries are good in their consequences. I believe that they very often lead to bad results; but what I am saying is this : that lotteries are made unlawful in some States not because of their inherent vice, not because they involve moral turpitude in the persons who take part in them, but because in their consequences they are found to be bad for a particular State. They therefore are condemned not at all by reason of anything that makes them repugnant to men's sense of morality, but merely because they are admitted in certain States to be repugnant to the good of those States. Now, I maintain that the Federation distinctly and by the clearest expression reserved to each State tha*- . joined in the union the right of making by its own motion, unaffected by the Commonwealth, its social laws. Five of the States apparently have come to the conclusion that lotteries are bad. One of them has come to the conclusion that they are good. Now we, whose voice ought .not to be heard at all on this question of lotteries, take advantage of the carrying power passing through our hands, to graft upon our statute-book a law that it shall be in the discretion of the Postmaster-General to say whether lotteries shall be conducted or not. Although this clause does not repeal the Lottery Act in Tasmania directly, it does indirectly, because if it were passed lotteries could no longer be carried on there.

Senator Lt Col Neild

- Oh, yes, they could.

Senator HARNEY

- They could no longer be carried on there on the scale that they are at present.

Senator PLAYFORD

- Why should five States offer facilities for the carrying on of lotteries in one State ?

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Senator HARNEY

- Five States are not asked to offer facilities to the one State. Five States have come to the conclusion that they do not want lotteries. One State has come to the conclusion that it does. We, the Commonwealth, have the carrying of letters that pass between the five States, and we are taking advantage .of that fact to exercise our Commonwealth opinion as to whether the five States, or the one, are right. Now Senator Clemons has very properly answered the interjection of Senator Higgs. Senator Higgs says that in the United States they have passed a law authorizing the postal authorities to stop these circulars. Let me remind Senator Higgs that the extent of that law in America is by no means as far-reaching as the same law is with us. All they can do is to stop the issue of circulars inciting people to join in these lotteries. But what does our Bill do ? It says, " Show me a man who carries on a lottery or a betting house, and I claim the right, as Postmaster-General, to stop every letter coming to that; man." It may be a letter from his dearest friend. It may be a business letter of the most legitimate character, and

yet the Postmaster-General is entitled to retain it. Why ? Because the man carries on a lottery. That goes much further than the American law. Our Constitution is almost an exact copy of the American Constitution on this one point, namely, that all power is left with the State, except such as is delegated to "the central authority. The control of posts and telegraphs is especially subjected to central authority.

Senator Glassey

- "Not the telegraphs.

Senator HARNEY

- The post-office, at all events. The American authorities have never attempted to do what we are doing. They have never taken advantage of their Postal Act to do indirectly what they could not do directly. There was a strong agitation in America against these lotteries, and after a great deal of money was spent, a resolution was passed by Congress which had the effect of bringing the States into co-operation, and of clothing the Congressional Government with the power which enabled them to pass a comprehensive law dealing with this matter. They never attempted to do it in this indirect way.

Senator Higgs

- They even put down a State lottery.

Senator HARNEY

- Of course they might put down anything they wished if they did it in a proper way; but I say this, the Federal Government of the United States, clothed with exactly the same authority as we are "in reference to postal matters, never came to the conclusion that apparently we are coming to, that lotteries are bad. There was nothing easier for it than to put them down in the way we are doing it, but they never attempted to do it. Why? Because they saw it was unconstitutional. They saw that it was an encroachment on the exercise of rights that were specially left to the States, and they went to a great deal of expense in passing legislation through some of the States to give them the necessary power to pass a Federal Act dealing with lotteries. Now, I would like to deal with some arguments that apparently greatly impress senators certainly in their private discourse. It is said with a great deal of force, "You have given to the Commonwealth Government the power of dealing with postal services, and that must carry with it everything incidental to that power, and what better means can we have of ascertaining what is incidental than to turn our eyes over the time that has passed, and see what the States have done already?" That is how the argument has been put. All the States have assumed more or less the right to deal with the lottery question in their Postal Acts ; ergo, it appertains to postal business; ergo, when we have that business transferred to us we have the same power. Now, I say that is an entirely fallacious argument. The answer to it is this : Before federation each of the States had absolute power, under England, over the persons resident within its borders, and could take advantage of its postal legislation, or any other legislation, to do in .in indirect way what it had power to do directly. A State could say - " We have it in our power to pass a Bill to put down lotteries ; and we have it in our power to pass a Postal Bill. What is there to prevent us from using the Postal Bill to give effect to our intention in regard to lotteries ? " When those States by then delegates met together, however, and said - " We will appoint a central Government, and give to it rights over our posts and telegraphs," surely it was their intention to say. this - "You shall take over the postal services, not as carried on by us, but as purely postal services, divorced from the functions which they exercised under their own laws, and which are not included in the Federal Constitution."

Senator Charleston

- That sounds well.

Senator Drake

- The honorable senator thinks there is a fallacy underneath the sound.

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Senator HARNEY

- It may be my unfortunate Irish voice that suggests insincerity. I think, sir, that this is not unsound reasoning, and I will make it clear. Supposing the States had authority to exercise functions A, B, C, and D, there would " be nothing to prevent them, in a Bill relating to A, embodying legislation relative, to B, C, and D. But if these States say - " For the purposes of our federal bond we will delegate to a central authority function A," is it open to that central authority then to say - " It is incidental to the carrying out of function A that we should include functions B, C, and D, because they have been linked to A in the States

" They were only so linked in the States, however, because an independent and direct power existed there to deal with them. I think that is clear. Can it be said that because we have complete control of the carrying of business letters and articles through the post that we are entitled to take advantage of that control to give effect to ideas of ours on matters that we have no direct constitutional right to deal with? I take an illustration : We in this Commonwealth may say that we do not believe in card playing ; we may say that we do not believe in share dealing ; but I do not think any one will deny that, whatever may be our opinions on these matters, we have no jurisdiction officially to give effect to them. It is for the States to say whether they shall continue card playing or illegalize share dealing. Will any one contend then that under this Constitution we would be within our rights in embodying in the Postal Bill a clause which authorized the Postmaster-General to stop any pack of cards that passed through the post, or which authorized the Postmaster-General to destroy any of these bought and sold share notes ?

Senator Keating

- We might just as well use the Customs Act to legislate upon this matter.

Senator HARNEY

- Yes. There is and in this I think I shall have the accord of every one - absolutely no State function that we cannot indirectly usurp by the insertion of certain clauses in Bills that we are authorized to pass.

Senator Keating

- I hope we shall not do so.

Senator HARNEY

- If you are going to allow this thing to pass, it will become a precedent which will enable us to break down at once all the safeguards which maintain the independence of the States. . In our Customs Bill, in this our Postal Bill, and in some of the Railway Bills-

Senator McGregor

- And the Defence Bill.

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Senator HARNEY

- Yes, and in the Defence Bill, we might, by an ingenious mosaic of clauses, interfere in a manner which would altogether destroy certain functions that are specially reserved to the States. You cannot put it stronger or more solidly than in the words of Senator Clemons, who said - "No one will contend that we can directly interfere in these lotteries." Is it then to be held that we, recognising that our views are not to be expressed on this question at all, are to take advantage of our being carriers to do in an underhand and back-door way that which we cannot do consistently in broad daylight ? A great deal could be urged on the strict legal view of this question that- it is unconstitutional ; but whatever opinions honorable senators may have as to it in a strict legal aspect, I think none of them can have a doubt as to its being entirely contrary to the spirit of our union. What is federation at all? If I understand it aright, it is that each of the States retains its individual importance, its legislative competency in all social and immediate matters. It is only those larger affairs - which have to do with defence, with externals, with the ramifications of our trade and commerce, with the shaping of our destiny against the world as one island continent - that are reserved for the Federal Parliament, and we are not to put our finger in every little State pie of social affairs. Read all the debates of the Convention. What was the main consideration? Was it - not said - " We do not want unification to legislate for all Australia. All that we want is, first, to have a sufficient control over national affairs to enable us to guide the destiny of all Australia as against outsiders, and to leave each of the States its full political autonomy to do exactly what it conceives to be best for the welfare of the people." It is gross interference with the true spirit of our federal union for us now meanly to take advantage of a power that never would have been put in our hands if it was not that each of the States trusted that it would be used only for the purposes for which it was given, for the greater convenience, and economy, and beneficial working of the postal service, - and for nothing else. I have in my remarks so far dealt merely with what I call the constitutional and the business points. They are the real hinge upon which our decisions should turn. How is it that since this clause got into the Bill we have heard more discussion in the Senate, in the lobby, at the bar, and in this Legislative Hall upon lotteries than has been heard in any other State? Surely that in itself is an indication that in the clause we are proposing to do something that it is not within our power to do. Why should we be discussing lotteries at all ? Was it ever intended that we should have a vote as members of the Senate upon

lotteries, or give effect officially to our views' upon lotteries - that the pros and cons of lotteries should ever enter into the discussion of this Chamber ? It is thus that we' usurp functions never intended to be given to us. Since they have crept in

I desire to say that I - do not agree with Senator Clemons, and that I think these lotteries in themselves are not such bad things. As I said in my remarks on the second reading, their consequences may be injurious, but I maintain very strongly that the very worst way of removing those injurious consequences is by this grand motherly interfering style of legislation. All that we do by it is to remove the evil which meets the eye. We leave untouched the root. It will spring up again. That has been found to be the case scores of times since the 17th century, when this matter was first dealt with. It springs up not diminished in size or vigour, but in dark places, in obscure positions, where it thrives with equal vigour, and with the super added crimes of hypocrisy, deceit, and everything connected with doing things in the dark and without a single particle of regulation upon it. We have had laws meddling with lotteries since the 17th century. Can any one say that those lotteries have been carried on less in America, England or Australia since then? Senator Drake unconsciously made the admission - and these unconscious sparks betray the mind - that the reason that Tasmania is so adverse to lotteries is that it now gets money that the States hitherto received; ergo, say I, we have not lessened the evil, but we have located it in Tasmania. If we put it out of Tasmania, we locate it in Shanghai or Hong Kong.

Senator Drake

- Or Jerusalem.

Senator HARNEY

- Yes, in the city of divinity itself.

Senator Playford

- It would be illegal in Hong Kong.

Senator Sir Josiah Symon

- Try Timbuctoo.

Senator HARNEY

- I care not where it is tried. I know that the ingenuity of these sweep promoters will find some spot where their business is not illegal. All it wants is a place, and it will then flourish in spite of all our laws against it. The only effect of this interference will be to take the money out of the country, leaving the evil just as gross as it was before.

Senator Ewing

- We will stop the money going out of the country.

Senator HARNEY

- Many devices will be tried to carry out that object, but they will fail. Of course, it is not for us in the Senate to express an opinion. But one cannot help doing that when a debate has been introduced ; and one cannot be blind to the effect of the clause upon these lotteries as sweeps in the true sense of the word. By means of them loose shillings that in their isolated state may be comparatively useless, in their aggregate form' constitute a lump of capital that may be put to some useful purpose.

Senator Sir Frederick Sargood

- -There is a flight of imagination for you !

Senator HARNEY

- My honorable friend says that that is a flight of imagination. There is too much money about it to leave room for imagination. Where Mammon steps in the Muses fly out. I do not think the argument is at all far-fetched. A man in Western Australia, for instance, where these lotteries have been allowed, and where halfcrown and five-shilling sweeps have been frequent - I know of hundreds of cases, and have been one of . the delinquents, myself - walks along the street with 5s. in his pocket. He perhaps meets a friend, and is inclined to say, " Come to the club and have a drink." But if there is a 5s. sweep into which he can put the money, he probably says to himself, " I will put the 5s. into Tattersall's." By doing that the man - is better in health, he is no worse in pocket, and I venture to say that in the long run the community as a whole is benefited.

Senator O'Connor

- If he draws a winning horse, he has a good many drinks afterwards, has he not ?

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Senator HARNEY

- Sometimes. I seriously press upon the Senate that they should put out of mind as unworthy of the slightest consideration 'That these lotteries are socially, politically, or morally inexpedient. Let us simply consider the point : Are we not unjustified in indirectly trying to put a stop to these lotteries when, under the very federal bond by right of which we speak in this Chamber, we say to the States, " You keep in your hands the regulation of all those matters that you have not specifically given to the Federal Parliament?" We should not set up the position that one State - in this case poor Tasmania - has to say to us, " I have consented to allow the" Commonwealth Government to carry my mails, but I never did consent to allow the Government to exercise a control as to whether I should carry on sweeps or not." Is it fair to Tasmania to do that ? If it is unfair to her to-day a similar action may prove equally unfair to another State tomorrow. What is to prevent us in Western

Australia saying, " We believe in these sweeps 1" Nothing can prevent us. But under this Bill we should be prevented from doing what we may consider to be perfectly right 'by the action of the Commonwealth Government, a body which we naturally thought would have nothing to do with us except in regard to those few matters, which were specifically given into its control. If we are going to interfere with lotteries let us do it in an honest, straightforward way, as America did, and not take advantage of a Postal Bill or Customs Bill to do in a shifty, covert, and obscure manner what we have no right to do boldly and openly and in the full light of the powers conferred upon us by the Constitution Act.

Senator Lt Col CAMERON

- I should like to say a few words upon this clause 54. The whole position appears to me to lie within a very small compass. The question is whether what we are undertaking to 'do is a constitutional act or the reverse. As I read the Constitution we have no power to legislate directly on such a subject as gambling. That being so, I do not see how by indirect means we can under the broadest interpretation of the Constitution, and with a desire to do what is right, try to effect indirectly that which we cannot constitutionally effect directly. That is the crux of the whole question. If the Government can show us, or show to me, that Parliament is legally and constitutionally able to legislate directly in that way I shall be satisfied to allow the clause to stand as it is.

Senator Harney

- According to the spirit of the Constitution ; you do not mean technically.

Senator Lt Col CAMERON

.- I should like to look at the matter according to the broadest interpretation that can be put on the Constitution- Act. I do not wish in any way to confine the rights and powers of this Senate, but I hold that we require to see that in applying ourselves to their maintenance we do not injure the lights and privileges of the States who placed us in the position we now occupy. A great deal has been said about the moral aspect of the case. I do not wish to raise that question at the present moment. The moral aspect is a matter entirely for legislation of a direct character when it is clearly demonstrated that we have power to legislate in the direction desired. I would ask honorable senators and those from whom petitions have been received - the council of churches and other bodies representing the moral force and the good feeling of the country - to hesitate before they allow themselves to be made vehicles for stultifying to a great extent the terms of our union. The originators of these petitions are acting in all good faith. They should not, however, be led to believe that we have the power to legislate in this direction. I would ask honorable senators to hesitate before lending themselves to do an act which I will not call underhand, but which does by indirect means that which we have no power to carry out directly. I appeal to the Senate to give this matter consideration apart from its moral aspect. Its constitutional aspect deserves the very greatest consideration.

Senator Sir JOHN DOWNER

- I have listened to a great part of this debate and thought very seriously over the question, which I knew would inevitably be debated at length, and which immediately and prejudicial concerns one of the States of the union. We have had some remarkably able and eloquent speeches from two honorable senators opposite, Senator Clemons and Senator Harney. I am sure we all feel very proud to have gentlemen amongst us who can argue a matter of this kind with so much fairness and eloquence. I have felt impressed with what the honorable senator who has just sat down has said - that the constitutional point in question is that which it is most important to decide. I believe that in the underlying opinion of the

senators from Tasmania, we have a constitutional right to pass this clause. I say the " underlying " opinion, because they argued the question with such apparent fairness that one could see throughout the discussion that they were rather afraid that the words of the Constitution were broad enough to give the Commonwealth Parliament the jurisdiction that is now sought to be exercised.

Senator Glassey

- Senator Harney says emphatically they are not.

Senator Harney

- In spirit, I said.

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Senator Sir JOHN DOWNER

- Senator ' Harney was decidedly fair, lucid, and ingenious, but the general result of those speeches was that, although the honorable senators deeply regretted it, they had to come to the conclusion that unfortunately the Constitution did justify this Parliament in taking the course proposed. Notwithstanding that, they thought most undoubtedly that this course would be a very improper one for us to take.

Senator Harney

- That is right.

Senator Sir JOHN DOWNER

- The first question is - can we do it ? I do not think there can be any doubt about it. The Constitution says : -

The Parliament shall subject to this Constitution have power

To do what?

To make laws for the peace, order, and good government of the Commonwealth with respect to..... postal, telegraphic, telephonic, and other like services.

Those services are not merely instruments of trade. The Parliament is to make laws for the "peace, order, and good government" of the Commonwealth in respect to these things. " Peace, order, and good government " are the strongest words that have been inserted in any Constitution. They are words that, by the construction judicially placed upon them, and the acceptance of them by the Imperial authorities, confer upon the Commonwealth those powers of self government that the States have now. They are the words used in all our Constitution Acts.

Senator Clemons

- I think the honorable and learned senator will recognise that those words are also in the American Constitution.

Senator Sir JOHN DOWNER

- I have no doubt they are. I am dealing with what I am more familiar with. In the Constitution of every State the words of authority are those giving power to make laws "for the peace, order, and good government of the community." Those words cover everything. But in the Commonwealth Constitution they do not cover everything, because there are limitations. The words "peace, order, and good government" refer only to the specific authority granted by the States to the Central Government, but, within the ambit of the authority conferred, they give us as absolute a power as the States themselves had in regard to the matters concerned. I think it would be impossible to say that we take over the telegraphic and postal services of the States and the authority to make laws for their peace, order, and good government, without saying how these services are to be peaceably and orderly conducted, and, incidentally to that, without saying what sort of things we shall do and what terms we shall make. It is not a mere carrying business that has been handed over to the Commonwealth in connexion with the postal and telegraphic service ; the Commonwealth authorities are charged with the peace, order, and good government of the community in regard to that service ; so that incidentally they have authority to deal with seditious matters - matters which might disturb peace, order, and good government; with immoral matters - matters which might demoralize and. weaken peace, order, and good government. I am very much in sympathy with my honorable friends opposite.

Senator Harney

- If it were legally right but shabby, how would 'the honorable and learned gentleman vote ?

Senator Sir JOHN DOWNER

- My honorable friends will not think that I am unkind in taking this view, because it is the view which I am

forced to take, and which they will have to accept.

Senator McGREGOR

- The honorable and learned senator is like a sympathetic Judge who is just about to sentence a prisoner to be hanged.

Senator Lt Col Neild

- Will the honorable and learned senator say whether, in his view, the words in the clause would authorize the Commonwealth Government to refuse to deliver letters addressed to people in another country.

Senator Sir JOHN DOWNER

- I think that the Bill hands the physical control of all postal articles over to the Commonwealth Government, so that they can take them or refuse to take them as they like. It also hands over to them a moral control. It gives them absolute and unlimited control. They can say it is not for the peace, order, and good government of a community that we should carry this, that, or the other, and they can refuse to take anything they please. They have unlimited jurisdiction with regard to the postal and telegraphic business of the Commonwealth. That jurisdiction is absolutely within the ambit of the authority conferred upon them by the States.

Senator McGregor

- The honorable and learned member did not explain the Constitution in that way when he wanted the people to accept it.

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Senator Sir JOHN DOWNER

- If the honorable senator can point to an instance in which I have been inconsistent, I shall be obliged to him. I have always said that these words were broad words, the meaning of which the States would have to find out ; and that they would discover that although they had only given certain powers to the Commonwealth Government, those powers were granted in broad words, mostly drawn from the American Constitution, to which the judgments of the American courts would probably be annexed, making them larger than the words by themselves would appear to the ordinary reader to convey. I have never said anything else, either in the Convention, in my own State, or anywhere else, and Senator Charleston, who was with me throughout the election campaign, knows that that is so. These words are, to my mind, broad enough to give the Commonwealth power to interfere; the question is, should we exercise the power? That is -quite another question. There are many powers given under our Constitution which might very well remain in abeyance, and only be used when there is great need of them. It does not follow that because we have .authority to do an immense 'number of things we should exercise our powers too .hurriedly and without due consideration ; and there can be no doubt that when the Constitution was under consideration it was never thought that the social laws of any one State would be overridden by the laws of another State.

Senator Drake

- By the laws of another State ?

Senator Sir JOHN DOWNER

- Yes. The Postmaster-General has taken this provision from the Queensland statute, which is the hardest statute in matters of this kind ever passed anywhere.

Senator Drake

- The New South Wales and Victorian statutes contain the same provision, almost word for word.

Senator Sir JOHN DOWNER

- As has been well said, we have no power to legislate directly in this subject; we can only legislate indirect'. It may be contended that we do not legislate indirectly when we legislate for the peace, order, and good government of the people in respect to postal and telegraphic matters. But the Commonwealth has no power to prevent gambling in Tasmania, or to prohibit lotteries or horseracing, or any other amusement that some people like and other people condemn because they do not like. The clause in the Bill prevents the people of Tasmania from doing what they want to do within their confines. Its effect is not restricted to the States which have already passed legislation of this kind; it extends to a State whose people have sanctioned and approved what we are trying to prevent. I think it was a pity that in limine we should interfere with the understanding on which we got the people to accept the Constitution ; because a law of this kind was not within the contemplation of those who drafted the Constitution.

Senator Harney

- That is the strength of our case.

Senator Drake

- Then the honorable and learned member withdraws the legal point ?

Senator Harney

- I did not press it.

Senator Drake

- It is a question of expediency now.

Senator Harney

- I said that the provision was contrary to the intentions of the framers of the Constitution.

Senator Sir JOHN DOWNER

- We have the right to pass this clause, but whether we should exercise that right is a matter which ought to be most thoughtfully considered with reference to the moral, financial, and social condition of every State which we are seeking to affect. We have no right to thrust upon a free State laws repugnant to it, and the carrying out of ' which would in no way affect us. I am going now to make a suggestion as to an alteration of the clause, which will prevent it from doing much harm. The clause provides that the Postmaster-General may direct that a letter shall not be delivered where he has reasonable grounds to suppose that money is being received for promoting or carrying out a scheme connected with a certain assurance in regard to any horse-race or - a lottery or scheme of chance not sanctioned by law, or an unlawful game.

If the words, " not sanctioned by law or an unlawful game " applied to the whole clause I think we could pass it as it stands. The Commonwealth has no power to declare that lotteries or schemes of chance are unlawful, or to say what is an unlawful game. Therefore the words can have relation only to a State law.

Senator Harney

- The honorable and learned senator would like the words he has read to qualify the whole clause.

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Senator Sir JOHN DOWNER

- Yes. I thought at first that they did so, but on further consideration I am of opinion that they do not. If we make them apply to the whole clause the position will be this : In Tasmania these sweeps or consultations are lawful, and senators shall not be able to pass a law interfering with them there ; but if the people of Tasmania send letters such as are provided for in the clause to Victoria, which is a highly moral country, and objects to these proceedings, or to South Australia, which is a still more moral country, and objects still further, the clause will providentially assist these States in upholding their own laws, and the letters which have been improperly and immorally addressed to them will be properly and morally refused delivery. That would leave us exactly where we are.

Senator Harney

- Put Tasmanian letters 'into the same position as they would be in if this clause was being passed by the State of Victoria.

Senator Sir JOHN DOWNER

- What I submit to the Senate is this : Although we have powers which we ought to exercise when some great necessity arises, still we ought to be careful not to be too liberal in their exercise where the result is . to interfere with existing States laws, where those State laws only affect the State, and have no influence on the other States, which are anxious for legislation in other directions. This Constitution is founded on the distinct understanding that only specific rights handed over shall be held by the Commonwealth and all the rest shall be left with the States, and we should be careful at the beginning not to extend our ultimate powers to their fullest extent. We should be cautious in our proceedings and not interfere with the financial or internal operations of any State unless some great public necessity requires it. I regret that at this early stage of the Commonwealth we have a Bill introduced which would have the effect of making the law of Queensland the law of all Australia - admitting- at the same time that the other States have laws a little less stringent, but very similar - and have the effect of interfering with the local government of Tasmania in a matter not specifically given away by Tasmania, but which only comes in by implication under the general power of dealing with posts and telegraphs, and which would also have the distinct effect of enabling the Commonwealth so to legislate as to interfere with a matter purely connected

with the domestic economy of Tasmania. Victoria has its laws dealing with this subject, South Australia has passed her own laws upon the subject, New South Wales has adopted a similar line of action, Queensland has legislated according to her lights, but I do not think at this early stage we should make a special domestic law, which, though it covers the views of a number of the States, does not cover the views of all the States, and interferes by that means with the financial position of a State equally as good, as far as I know, equally moral, as far as I have ever heard, and equally entitled to its own self government. Practically what we are saying by this Bill is that Tasmania shall assimilate- its laws on the betting question to those of the whole of the rest of Australia, and as she has not done it, we will do it for her under the general power we have of dealing with posts and telegraphs, although we have no specific delegation of power to deal with the matter. I think it will be a mistake in policy for us to attempt to do that. It will make the initiation of our Commonwealth uncomfortable to some of the States and make them wonder what fresh power will next be exercised which the States have not anticipated and "which will work in a way that they never for a moment dreamt of. I would point out that the draftsman of this Bill appears to have contemplated in drafting it, as far as one portion of it is concerned, that it was not intended to interfere with State laws. My suggestion is not to interfere with State laws. Let each State make its laws in this respect for itself, and then let the post-office administer them. Paragraph (6) says - For promoting or carrying out a scheme connected with any such assurance agreement or security or a lottery or scheme of chance not sanctioned by law or an unlawful game. There we find a distinct intimation that the State laws are to be recognised.

Senator Sir Josiah Symon

- Does that mean the law of the State or the law of the Commonwealth ?

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Senator Sir JOHN DOWNER

- I will just repeat my argument, as my honorable friend was not present. The Commonwealth has no authority to pass any legislation regarding matters of this kind. Therefore when the Bill speaks of a scheme not sanctioned by law or an unlawful game it must refer to the Governments that can make lawson the

Subject other than this Government, because it can make no law. Games are not lawful or unlawful because the Government resolve that they shall be, but they are unlawful because they are beyond the jurisdiction of the Government. What does this refer to 1 It must refer either to the common law of England or the State laws. Referring to the State laws would leave the matter in the position in which we might well leave it at present. I think it would be wise if we used words such as I have referred to as governing the whole clause. We shall give nothing away by that.

Senator CLEMONS

- Would the honorable senator have it explicitly stated " not sanctioned by the law of the State ?"

Senator Sir JOHN DOWNER

- I agree with my honorable friend. I think it would be much better to make it more explicit. I refer to this to show that the draftsman, and presumably the Government, understand thoroughly well that, as far as schemes connected with assurance, agreement, security, or lottery or games of chance are concerned, they are to be lawful, not according to the law as passed by the Commonwealth, but according to the laws of the particular States of which the Commonwealth is composed. I think the principle that was in the draftsman's mind and in the mind of the Government in introducing paragraph (b), was wise, and good, and judicious. I think it would be well if the Government would extend that to the whole of the clause So that at the beginning we shall understand that these laws of internal government shall remain with the States as they were before, and that the post-office authorities shall merely administer them. That certainly was what was in the mind of everybody at the time, and although we use words broad enough to give an immense jurisdiction, far beyond what a majority of the public understood, still at the same time it was also equally well understood by all that these extraordinary powers were not to be exercised unless in a case of emergency. Beginning this Commonwealth in goodwill, we should preserve to each State every power not specifically taken away from it until some great emergency compels us to exercise our full powers. So that I hope the Postmaster-General, or my honorable friend who is leading in this House, will, before this clause is put to the vote, place it in a form to state specifically that in these matters the laws of each State should govern, and that Tasmania or any other State that has chosen to make certain

special and domestic laws, which it entirely agrees with, is not to have the power- taken, away capriciously because three or four other States happen to have different laws and entertain different views on this subject. On this question of racing and matters of that kind there is an immense general variety of opinion. There is an immense amount of opinion expressed under , the pressure of public opinion that is really- not entertained. There are many who condemn these things who do not stop away from entertainments of this description, and who make up for the enjoyment of them by the condemnation of the practice in other people. As far as gambling is concerned, whatever, my other weaknesses are, I have always condemned anything of the kind when it became a public nuisance and scandal, considering, as I did, that in the words of the Constitution it was against the " peace, order, and good government of the State," but I also equally deprecate going into private houses and interfering with the right of every man to do what he thinks best for himself or what is right in his own judgment. This matter goes to the very root of the objection I have always had. This is tampering with communications passing through the post, enabling the Postmaster-General to open letters, to create penalties, and so on, and, under the heading of a Post and Telegraph Bill, to- settle a great social question on which there is an immense, conflict of opinion, to the prejudice of a State which has made up its mind in a direction contrary to that followed by the majority of' the States.

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Senator MCGREGOR

- I am not going to occupy much time at present, we are in committee and can speak as often as we like, but I want some definite issue to be put before us. There is something in this clause that has not been referred to yet, and I want the Postmaster-General or some other gentleman learned in the law to give an opinion on what I am going to refer to. In a very early part of the clause the words are used, "In the Commonwealth or elsewhere." Now, whatever powers we may have to legislate with respect to the Commonwealth and the States comprised in the Commonwealth, I want some definite understanding as to what power we have to deal with "elsewhere." Supposing this gentleman who has been so often referred to without being named, Mr. George Adams, was to flit from Tasmania to New Zealand, that is not in the Commonwealth. It is elsewhere. Supposing he was to flit to New Caledonia. That is elsewhere. Supposing he was to go to Germany. That is elsewhere. Has the Commonwealth power under our Constitution to interfere with those places ?

Senator Lt Col Neild

- The Commonwealth Postmaster-General is to be Mr. Turvy drop for all creation under this Bill.

Senator MCGREGOR

- I want the Postmaster-General and the Vice-President of the Executive Council and Senator Sir Josiah Symon and other gentlemen who understand international law to tell us something about this. The majority of senators know for a fact that sweeps or lotteries are carried on in different parts of the world, and I know there are thousands of pounds go not only from Tasmania but from Queensland, where this clause in the Post and Telegraph Bill was taken from, to other places. That money goes to Germany and different countries, and yet we have in this clause the word " elsewhere" associated with the Commonwealth. I want to know whether we are in a position to follow George Adams to the end of the earth, or to extend the post and telegraph department to Mars? Could we follow him there under this measure? That consideration might influence a great many honorable senators in determining how they should vote. Are we going to pass legislation here that may have the effect of interfering not only with the Commonwealth itself, but of interfering - I was going to say, with the relationship between this world and the next - at all events with all parts of the world. Are we, without thoroughly discussing it, going to pass such a clause as this ? I hope -we are not. I trust that this discussion will not be terminated until we understand what we are doing, and until the clause is in such a form that it will not give offence to any one of the six States, or to any part of the world.

Vice-President of the Executive Council

Senator O'CONNOR

. - I am sure the honorable senator who has just spoken will understand that it is in no spirit of discourtesy to him that I am about to answer his question, instead of the Postmaster-General. My honorable and learned colleague, the Postmaster-General, will have an opportunity afterwards, and perhaps he will be able to give a more authoritative exposition on these matters of postal law and practice than I could

possibly hope to do. My object in speaking thus early in the debate is that I may state my views, first of all as to the constitutional aspect of the question, and secondly as to the matters of policy which have been so ably dealt with by honorable senators who have already spoken. It has appeared to me that in the admirable speeches delivered ' by Senator Clemons and Senator Harney, ° those honorable and learned senators confused, if I may say so, the question of whether it is constitutional and lawful on the part of the Commonwealth Parliament to pass such a law with the question of whether it is wise and expedient to pass such a law. They are two distinct questions, and I wish to separate them in the views I put to the Senate. In the first place I quite assent to what my honorable and learned friend, Senator John Downer, has said that there is no doubt whatever but that the power to legislate, as we do legislate here, is vested in the Parliament of the Commonwealth.

Senator MCGREGOR

- I am not a lawyer, but I doubt it.

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Senator O'CONNOR

- Of course, we have all got our own opinions, and I do not wish to force my own views on any honorable senator. Still, I have no doubt whatever about it, and I hope I will satisfy my honorable friend who has just interjected - and who I know is fair-minded and open to be convinced - -that there is no doubt that this power is possessed by the Commonwealth Parliament. What is the power? It is the power to carry mails throughout the whole Commonwealth, for the benefit of the whole Commonwealth, in order to enable the business transactions, and the social and commercial intercourse of the Commonwealth to go on free and uninterrupted from trammels of every kind. That duty is placed in the hands of the Commonwealth - the strong central authority. To enable it to carry out that duty with due regard to the interests of every portion of the Commonwealth, that power must be unfettered and untrammelled by obligations to any State. The only limit there is upon its right to carry out that duty in any way it thinks fit is the obligation to treat every State fairly and equally. It cannot make differential charges. It cannot give one State an advantage over another. It must treat all States alike, but subject to that limitation it does appear to me to be entitled to perform its duty of taking charge of the mails and carrying them, and transacting the business of the Commonwealth in any way it thinks fit. It will be admitted I think that in the carrying of these mails, one of the first things it has to look at is the question of whether it is bound to lend itself to the distribution of matter which is generally admitted to be a public disgrace and a public scandal, and contrary to well recognised principles of morality.

Senator Harney

- -No.

Senator Clemons

- We agree with all that.

Senator O'CONNOR

- I have asked the question for the purpose of putting an argument to it. Of course, honorable senators all agree with that, but where does the Commonwealth get that power from 1 Why has it the right to stop an envelope which contains obscene writings.

Senator Sir William Zeal

- Or seditious matter.

Senator O'CONNOR

- Yes, or matter which is offensive to another person.

Senator Clemons

- It has the right under the common law.

Senator O'CONNOR

- With all respect to my honorable and learned friend, I say that is not an answer. We are dealing with the rights of the Commonwealth under the Constitution, and the rights of the States under the Constitution. If the right of the Commonwealth is only a right to carry mails, and it has no concern whatever with what we may call the moral aspect of the business of the post-office, then by what right can the department claim to open packages such as are spoken of in clause 41, or to destroy envelopes that bear on the face of them offensive matter? With all respect I say that these well-worn phrases do not settle the matter. We must go back to the principle from which this power is obtained, and the principle is this - as Senator Sir

John Downer has said - that we have power to make laws for the peace, order, and good government of the Commonwealth. In considering the peace, order, and good government of the Commonwealth, we have power to refuse to be made a vehicle for carrying offensive, libellous, or seditious matter, or to be made the vehicle of doing something which is abhorrent to the moral sense of the whole of the Commonwealth. That is the principle, and we may extend the principle. Let me deal - before I go to the extension of the principle - with the argument which was put with a great deal of ingenuity by my honorable and learned friend, Senator Clemons. The honorable and learned senator says, " If you are going to make the people of the Commonwealth moral, according to your particular views, and you have no power to do it directly, you should not do it indirectly." I tell him that precisely the same argument could be applied in dealing with those matters to which I have referred. It is true it is no part of the business of the Commonwealth to make people moral by preventing the distribution of indecent photographs or pictures. We have nothing to do with that. The Commonwealth Parliament has no more power to legislate upon that subject than it has upon a thousand and one subjects within the scope of the legislation of the States. But it does it, and the honorable and learned senator may just as well say, " Although you have no power to legislate directly on this matter, YOU are legislating indirectly by stopping these obscene writings and pictures." My answer is that, apart from the principle which enables you to do this, you are enabled also to consider the moral aspect of the matter which you carry in your mails; and if you are entitled to refuse to carry indecent photographs, or that which is a libel on the face of it, or an outrage to common decency, or seditious, you are entitled also to judge, whether you are to allow yourself to be made the vehicle for carrying matter which the greater part of Australia considers is inimical to the moral welfare of the Commonwealth.

Senator Harney

- Surely every power carries with it the right of the person to carry on business in accordance with public decency. What I mean is-

Senator Sir William Zeal

- Would it not be better to allow Senator O'Connor to finish his speech ?

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Senator O'CONNOR

- I do not mind an interruption that is to the point. My answer to the honorable and learned senator is this : I assent to the proposition, but the interruption does not explain why it is that we get the right to stop libellous, offensive, and seditious matter. I do not want to dwell any more than is necessary on that argument. Other honorable senators have yet to speak. If I have made my position clear I do not think it is necessary to labour it at any length.

Senator Glassey

- Is there any similarity between the two matters.

Senator O'CONNOR

- The principle is precisely the same, and I will show the honorable senator the reason why it may be fairly and reasonably extended until it can be applied to the case of these letters which the committee are considering now. I am referring to these matters in order to point out that the principle must be admitted that the Commonwealth has the right - and must have the right, if it is to serve the whole of the people of Australia - to exercise its discretion as to what it will carry and what it will not carry, and that it is justified in exercising that discretion upon considerations based upon the moral aspect of what it is asked to carry. That proposition is not only unanswerable but it is a principle derived from our Constitution, and it is a principle which has been followed in the United States of America to which reference has been made. I think all honorable senators who have studied this question will admit that there is very great similarity between our Constitution and that of the United States in many particulars. Very fortunately there is such a similarity in the position and relation, of the United States republic to the individual States, and in our relation as a Commonwealth to our several States, that the decisions of the great jurists of America have been brought to bear, and I hope for many years will continue to throw a light upon many perplexing problems with which we will have to deal. Let it not be supposed as Senator Sir John Downer seems to have suggested that these questions will arise only in regard to great and important matters. These questions, immensely important in themselves, will always be arising. They may occur in matters involving important and serious financial interests of a State, or they may occur in cases which involve

most trivial interests. When they do arise, if they are decided at all they must be decided on some broad general principle, and the broad general principle on which they must be settled is that which I have already enunciated. Dealing with the American position find that in a well-known book Black's Constitutional Law, the law is stated on page 341 in the following terms : -

Every one of such laws is strictly and properly speaking an exercise of the police power. Furthermore, Congress, under the Constitution, possesses exclusive jurisdiction over certain subjects. And in its legislation upon these subjects, an act is not to be declared invalid merely because it has a purpose and design which ranks it as a police regulation.

For instance, Congress has no authority to legislate directly for the suppression of lotteries. But having exclusive control over the postal system, it has the power to prohibit the use of the mails for the transmission of lottery advertisements.

That is what these great Constitutional lawyers in America say. And they have been face to face with this question year after year. They have built up their system by the elaboration of this principle; and that is the principle on which many cases have been decided when the States of the union and republic have come into conflict. I have another illustration, and in this case fortunately I have the Act itself to refer to. The measure is the Postal Act of America, passed in 1890. The reference to it, which I shall first quote, is by a high authority, Tucker on the Constitution of the United States. In his work I find the following passage -

By section 3894 of the Revised Statutes of the - United States, a penalty was inflicted upon any person who shall knowingly deposit in the mail any letter or circular concerning lotteries, &c. The case of ex parte Jackson, brought up for adjudication the question whether this was not an abridgment of the liberty of the press. The Supreme Court held that Congress could determine what it would carry in the mails, and what it would exclude therefrom ; that, in this case, as in the case of obscene literature, which was prohibited access to the mails, it would not furnish the vehicles for carrying such literature.

The Act itself provides by section 3894 -

No letter, postal card, or circular concerning; any lottery, so called gift concert, or other similar enterprise offering prizes depending on lot or chance or concerning schemes devised for the purpose of obtaining money or property under false pretences, and no list of the drawings at any lottery or similar scheme, and no lottery ticket, or part thereof, and no check, draft, bill, money, postal note, or money order, for the purchase of any ticket, tickets, or part thereof or of any share or any chance in any such lottery or gift enterprise, shall be carried in the mail or delivered at or through any post-office or branch thereof or by any letter carrier.

Not only that, but a punishment may be inflicted for an infringement of that law.

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Senator Clemons

- Do you say that is in a Postal Act?

Senator O'CONNOR

- Yes. I think the honorable and learned senator who interjects was slightly in error in referring to that as direct legislation by the consent of the States. As a matter of fact, so far as I am aware, there is no power under the Constitution of the United States to legislate upon matters outside of the Constitution by agreement, as there is under our Constitution. At all events, in that particular case which I have quoted, there is no doubt that it was admitted that the United States Government had no right whatever to legislate upon the question of lotteries, and yet that Government carried out what we are seeking to carry out here, by the simple process of refusing to carry or convey by means of its postal conveyances or vehicles matter which it thought or believed to be inimicable to the moral interests of the community.

Senator Harney

- Was that in express defiance to some contrary wish on the part of one of the States?

Senator O'CONNOR

.- If the honorable and learned senator will pardon me for saying so, I think he is - confusing different questions, which must be separated if we are to decide this motion clearly. I quite agree as to the importance of the question we have to decide. We shall have such points continually cropping up for discussion; and unless we adopt some broad general principle to guide us it will be a very difficult matter to preserve intact the power which has been intrusted to us for the benefit of all Australia, and at the

same time conserve those rights which the Constitution has intended should remain with the different States. It is only on broad general principles that you can arrive at a fair conclusion. Now I come to the particular matter with which we have to deal. I may say at once, and have no hesitation in saying, that I am not one of those who think that men can be made moral by Act of Parliament I have not very much belief in the efficacy of those laws which place obstacles in the way of gambling. I- would undoubtedly place obstacles in the way of gambling by young people, and would do my utmost to make the law so stringent as to be effective. But in regard to the elder people, considering that there are so many various ways in which gambling takes place, it is of very little value to legislate in regard to four or five instances out of a thousand.

Senator Glassey

- So long as the elders carry on gambling you may expect the young people to follow suit.

Senator O'CONNOR

- No doubt: Let me place another consideration before the Senate. I am very much afraid we are apt to be guided in our consideration of what is just and right to the Commonwealth in this matter by the -fact that this- law, if passed, may make a serious financial difference to Tasmania. I hope I may say, without offence' to that State, that her entrance into this union must necessarily involve sacrifices on her part. I am quite certain that it is the desire of every member of the Commonwealth Parliament that those sacrifices shall be made as light and as easy to bear as possible. But to what extent is Tattersall's business a matter of such importance to Tasmania ? While Tattersall was able to canyon his business in five other States I do not suppose that the revenue Tasmania derived from the sweeps would have been a matter of very much concern. It is because Tattersall was driven out of every State- and finally concentrated in Tasmania that it has become such a matter of financial interest to that State. That reason is the justification for the legislative action that the Government now asks the Commonwealth Parliament to take.

Senator Keating

- Does not that prove the inefficacy of the legislation of the other States-?

Senator O'CONNOR

- It may be that it shows the inefficacy of trying to suppress gambling by legislation, but that does not affect the position we are dealing with now, which is quite another thing. Let me put it to the Senate- and it is necessary to look at this point in order to come to a just conclusion - that before the- accomplishment of federation every one of the States, except Tasmania, exercising its own right as to what it thought; good' for the moral welfare of its people, decided that Tattersall was to be banished. In so far as concerned any operations of Tattersall conducted within their own boundaries, they had effectually got rid of him.

Senator Charleston

- Then they should have suppressed -his letters.

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Senator O'CONNOR

- So far as concerned dealing with his business in their own boundaries, they got rid of him. He was driven from one State to another, until he finally found refuge in Tasmania. No doubt it was within the power of New South Wales, Victoria-, or any of the other States, not only to stop letters received from Tattersall, but to stop the despatch of letters to Tattersall. But there we are, face to face with another consideration, which I am sure honorable senators recognise. I come now to answer the question- that was put by Senator McGregor a little while ago, when he referred to the very general words of clause 54, " the Commonwealth or elsewhere." I think there is no doubt whatever about those words. I shall be supported by senators having legal knowledge from every State when I say that a State has a right to refuse to transmit' letters outside its boundaries.

Senator CLEMONS

- By clause 54 that right is not in the slightest degree impeached. Clause 54 deals with receiving money, and not with sending it. That is my point. "Senator O'CONNOR. - I am dealing with Senator McGregor's point just now. Every one will admit that there is a perfect right in the Commonwealth to refuse to transmit letters to any place outside -its borders. If the Commonwealth thought fit, it might refuse to transmit letters to New Zealand, to Noumea, or any other place outside its boundaries. The reason why it does not refuse

to transmit such letters is that it is a general law or understanding of what is called the comity of nations that agreements are -made by which the mail matter directed to a country is transmitted and delivered without interference and without inquiry.

Senator Sir Josiah Symon

- Do you think the Commonwealth could refuse to deliver letters from abroad, after the union by which the whole of the States handed over their power of transmitting mails to the Commonwealth 1 By means of the union, the States handed over their postal affairs to the Commonwealth, but- a condition of that monopoly was that the Commonwealth should do the same work as they had previously done.

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Senator O'CONNOR

- I am coming to that in a moment. All I am saying now is that it is within the power of the Commonwealth to refuse to transmit letters to any place outside the Commonwealth if it thinks fit ; and it is only because there are postal agreements between the various countries and the Commonwealth that mail matter to places abroad is allowed to go without let or hindrance. But it is within the power of the Commonwealth to deal with anything it thinks fit. Therefore my answer to Senator McGregor is that the Commonwealth can carry this out subject to the violation of any agreement which may exist with Noumea, New Zealand, or any other country. I state that position with a view to coming to the matter referred to by Senator Sir Josiah Symon, which is this : In all the States of Australia there was the power - and it was exercised - to prevent letters connected with Tattersall's sweeps from being received, but there was not the power to prevent them from being transmitted, because the States had entered into postal conventions, and treated each other on postal matters as foreign communities. It was solely because of the existence of these conventions that New South Wales, Queensland, Victoria, and the other States could not refuse to transmit matter going beyond their borders, although they might know very well that that matter was concerned with gambling transactions prohibited by their laws. But when the State boundaries were swept away, and the duty of carrying postal matter all over Australia was given to one authority, surely that State of thing⁸ came to an end. The States no longer treat each other as foreign countries ; the whole Commonwealth is- for postal purposes - one community. That being so, the five States of Australia have a right to say - "We have enacted that the carrying of certain postal matter is against our principles, because we think that it is not for- the good of our people that the post-office should be the vehicle for such a business. Now that the postal business of the whole Commonwealth has been transferred to one authority, that authority is clothed with the duty of seeing that the moral sense of the greater part of Australia, in regard to this matter, is attended to, and that matter which infringes the laws which we have passed, and which we work under, shall no longer be carried in the mails and postal vehicles of the Commonwealth any more than libellous, indecent, and other objectional matter, which it is admitted the post-office has a right to refuse, shall be carried." When the control of the post-office was transferred to the Commonwealth Government, they had to ask themselves this question - "Are we to carry out the wishes of the five States of Australia which have already determined upon a certain policy, and in the eyes of whose people a certain thing is as pernicious as libellous and seditious matter ; or are we to give them the go-by, and, because in one corner of Australia particular business is not treated as pernicious, allow postal matter from that part of the Commonwealth to be disseminated all over Australia, setting at naught the legislation under which the State Governments have been working for years past."

Senator Sir Josiah Symon

- The clause does not prohibit the dissemination of postal matter from Tasmania all over Australia ; it merely prohibits Adams from receiving the money sent to him.

Senator Harney

- If the Commonwealth Government consider that he is receiving money or any valuable thing for a certain purpose, they may stop all letters of whatsoever kind from being delivered to him.

Senator O'CONNOR

- The best authority for what the clause says is the wording of the clause itself. The clause provides that - The Postmaster-General if he has reasonable grounds to suppose that any person to be engaged either in the Commonwealth or elsewhere in receiving money or any valuable thing may by order under his hand published in the Gazette direct that : 111 V postal article received at a post-office addressed to such person either by his own or fictitious or assumed name, or to an address without a name, shall not be

registered or transmitted or delivered to such person.

Senator Harney

- Any letter whatsoever ?

Senator O'CONNOR

- Yes ; and the clause covers both the receipt and the transmission. The Commonwealth Government found that in all the Australian States laws were in existence preventing the transmission of this matter ; and were they to put those States in a worse position than they were in before, and to violate what their peoples believed to be for their best moral interest, in-order to allow a certain business to be continued in Tasmania? It is quite clear that it is perfectly easy to prohibit the receiving of letters from Tattersall in the various States, even if we cannot prevent the transmission to Tattersall of letters from those States. But would it not be the merest farce to wink at the transmission of letters to Tattersall from all parts of Australia, and to let the money get into the hands of Tattersall, and then to refuse to deliver the answers that were sent back? Is it not perfectly clear that by allowing money to be transmitted to Tattersall we should be offending the moral sense of the community as much as by allowing the answers sent by Tattersall to be returned. I ask the Senate to remember, in connexion with what has been said about the rightfulness and reasonableness, or otherwise, of exercising the power which it is admitted that we have to legislate in this way, the circumstances in which Australia is placed. No doubt the union of the States, while it brings immeasurable advantages, must bring inconveniences and losses. We wish to make those losses as light as possible, and to minimize the friction which must occur as much as we can ; but we cannot entirely avoid it, and when we must make a change, let us base it upon broad general principles of fairness. If we apply those principles to the present position, we must remember that it is only one State which is so strenuously and eloquently contending against the passing of this law, and, although the clause may, to a certain extent, injure the financial condition of Tasmania,, it will benefit the remaining five States of the union. I have taken up more time in explaining the position of the Government with regard to this matter than, perhaps, I should have occupied, but I have spoken at length because I agree with what has been said by several speakers as to the importance of arriving at some broad general principle in dealing with this question. I hope that the Senate will adopt the principle which I have enunciated. It is a principle which, I believe, will be found to apply, not only to the matter with which we are now dealing, but to future questions of conflict between the rights of the Commonwealth and of the States with which we shall have to deal.

Senator Sir Josiah Symon

- Do the Government accept the amendment ?

Senator O'CONNOR

- No.

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Senator O'KEEFE

- I do not know if I shall be in order in -referring to clause 25, because I read in one of the leading journals of to-day that it was passed by the Senate last night ; but, as so many honorable senators have spoken upon it this afternoon, I presume that I shall be in order. I hope that the very eloquent - too eloquent, if I may say so - speech of Senator Harney in defence of gambling will not have the effect of changing the opinions of senators whose minds are still open on this question.

I would rather that they viewed it in the light in which Senator Clemons viewed it. I believe that if they do that they will vote, if not for the omission of the clause, for its amendment. The question whether gambling is moral or immoral, is too large a subject to be debated to-night, in connexion with this measure. I intend simply to take up the stand which I adopted on the second reading of the measure, and to say that I think we ought not to pass in a purely machinery Bill a clause which we all acknowledge deals drastically with social legislation. If the contention of Senator Sir John Downer is correct, and the retention of the words "unless sanctioned by law " will allow Tattersall's to be conducted as before, I think that the sooner we strike out those words the better ; because there is a considerable difference of opinion as to their effect, and whatever we may think as to the wisdom or unwisdom of legislating in the way proposed, we all of us want to pass a clause in regard to the meaning of which there will be a clear and definite understanding.

Senator Glassey

- There should be no vagueness.

Senator O'KEEFE

- No. An aspect of the question which has been dilated upon at considerable length by many honorable senators, is that the Postmaster-General should not be placed in the position of a despot, in being given the power to prevent letters from going to any particular individual. I am rather surprised that he is anxious to place himself in that position, because, when speaking in the Queensland Parliament in 1891 upon a similar Bill, he said :

It would generally act fairly enough ; but there have been cases - perhaps the Postmaster-General is aware of them - in which in order to get control of the wires and to prevent anybody else from using them, matter has been sent of a totally irrelevant character. One well-known case is that of a war correspondent who started transmitting the Bible and flooded the wires with Genesis until he got his proper message in order. That is not provided for.

The Postmaster-General. - It will be prevented here.

Senator DRAKE

- That is all right. With regard to the clause giving the Postmaster-General authority to refuse to deliver letters connected with gambling, consultations, and so on, I think the same objection would apply to that as I made to the 23rd section - that is that it leaves the Postmaster-General in the position of a despot, to decide whether those letters are objectionable or not.

Senator McGregor

- That is too bad !

Senator O'KEEFE

- I am rather surprised that a gentleman so conscientious as the Postmaster-General undoubtedly is, and as he is held to be by all senators here, should have changed his opinions in nine years.

Senator O'Connor

- There ought to be a statute of limitations with regard to quotations from Hansard. No quotations should be allowed after six years.

Senator O'KEEFE

- The statute of limitations does not apply to a question of principle like this. I am surprised that the honorable gentleman should have changed his opinion on the question of the desirableness of placing, in the hands of the Postmaster-General or his deputy the despotic power which is given him, not only in clause 54, but I am sorry to say, in other clauses which, having been passed, I am precluded from referring to.

Senator Drake

- I do not want to be a despot. I said that to-night.

Senator O'KEEFE

- I must confess I was considerably influenced in my judgment on this question by the views expressed by the Premier of Tasmania. I think he is acknowledged to be a very sound constitutional lawyer, who has a thorough grasp of the contents of the Constitution, and can judge whether the Constitution gives power to what clause 54 says shall be done.

Senator Staniforth Smith

- Did you not promise at your election to support Tattersall?

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Senator O'KEEFE

- Yes. I was at one meeting asked whether I was in favour of suppressing Tattersall, and to the best of my recollection I said that, as I held the opinion that gambling could not be put down by act of Parliament, it would be better to hedge it round with safeguards, and bring it under government supervision, rather than attempt to suppress Tattersall. My opinion has been influenced as to the constitutional aspect of the question by the telegrams sent by the Premier of Tasmania, but I must candidly admit - after what I have heard this afternoon from the many able lawyers who grace this Senate, and who are ornaments to the Senate, and who, whatever their views may be, are only striving to get at the truth, and do the best for Australia - that I have come to the conclusion that the Commonwealth Government really has power legally to pass clause 54. But I go beyond the bare legal question. To repeat the words used by Senator O'Connor, I - say we should look at a question like this - a question which is universally acknowledged to be so important, at this early stage of our career as a united' nation - in the' broadest manner we can. We

should not try and stick too closely to the strict legal meaning of the Constitution. We should not narrow it down to the question of whether the Commonwealth Parliament was legally intended to take over this power. I make bold to say that the people of Tasmania consider, it a power vested in the States, and not in the Commonwealth. We are not justified in only looking at the question from a legal aspect, but we should apply to it some of those broad principles about which we have heard so much. If we do that we have to come to the conclusion that in the State of Tasmania there is a widespread feeling that even if the Commonwealth Parliament has this legal power it will by exercising it be doing something which that State never thought it would do, and will be taking from the State a right which it thought would not be taken from it.

Senator Pearce

- Why did the electors ask you that question ?

Senator O'KEEFE

- The fact that the electors asked the question does not imply that they thought the power would not be left in their hands.

Senator Playford

- They would never have asked the question otherwise.

Senator O'KEEFE

- I utterly refuse to accept the argument that the fact of their asking the question proved that they thought the Commonwealth Parliament was going to take this action. The fact that they asked the question proves that they had studied the matter, and I again say that a majority of the people of that State thought that the Commonwealth Parliament would not take from the State a right which they regarded as resting with the State. If we look at it in the broad aspect, I think it is indeed a pity that at this early stage of our career as a nation any act of the Commonwealth Parliament should be such as to give the people of any State the idea that the Commonwealth Parliament is asking for powers which it never- led the States to understand it was going to ask for. That is one of the views that I hope senators whose minds are still open on the question will take into consideration. As to the question of the petitions that have been presented in this and another place, praying that so able a handmaiden of the Commonwealth as the-postrofB.ee should not be allowed to encourage gambling, a great deal may be said on both sides, but I am quite satisfied that the petition which is already in this Chamber, praying that this clause 54 may be struck out, is more numerous than are all the other petitions to the contrary. I go further, and say that in spite of the fact that three out of the six States have moved this person Tattersall on until he has found a resting place in Tasmania, yet if a vote were taken to-morrow of the electors of the Commonwealth throughout Australia as to whether Tattersall should be suppressed or not, the vote would be two to one in favour of striking out the clause.

Senator Staniforth Smith

- Nonsense.

Senator O'KEEFE

- I have very little more to say, except that I felt I would not be justified in giving a silent vote. The honorable Senator O'Connor has said a great deal about the moral sense of the people of the Commonwealth being studied in our legislation, but I say it is a very open question whether the moral sense of the majority of the people will be flouted in the smallest possible degree if Tattersall is allowed to remain where he is.

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Senator FERGUSON

- I have not said a word on this question yet, and I have listened to the debate on the constitutional aspect of it until I am quite satisfied the Government have the power to legislate in the way proposed. I am very pleased to see that the Government are going to stand firm by their Bill and not allow any single State to dictate the policy of the Commonwealth on a matter of such importance. I happened to be in Queensland when a measure was brought before the Parliament dealing with this question, and I supported it. I did so because I saw the evil effect of gambling on the people of the colony, and especially on the young people. It is the young people particularly that we have to consider in connexion with a question of this kind. I have seen boys of ten or twelve years of age going in. pairs to Tattersall's office and applying for consultation tickets. I have been stopped in the streets of Brisbane by girls of not more than ten or twelve

years of age for shillings with which to buy tickets in Tattersall's sweep. I have known the father of a family coming home on Saturday night with his week's wages and taking a ticket in Tattersall for each member of the family, thus spending the whole of his week's wages. The butcher and the baker had to wait for their money, and perhaps never got it at all. As I say, we have to consider the effect of this upon the young people. Those who have grown to maturity we need not bother about. The question is whether we shall protect the rising generation of the Commonwealth against such an influence as we see exercised in the different States where this form of gambling is allowed. It has been said by several senators that Tasmania is much purer than, and her general laws are far ahead of those of, the other States. If that is the case, the greater reason there is for stopping this form of gambling. I will say no more upon the question, but merely express my great pleasure that the Government intend to stand firmly to the Bill, and see that the clause is passed without any alteration whatever.

Senator GLASSEY

- I should be glad if the Postmaster-General or the Vice-President of the Executive Council could see their way to modify this clause with regard to the very extensive and drastic powers placed in the hands of the Postmaster-General. With regard to opening of letters, I observe that even the American statute which was quoted by Senator O'Connor contains no such power as that given to the Postmaster-General here.

Senator Drake

- We must open the letters in order to send them back.

Senator GLASSEY

- But it is a very drastic power to allow the Postmaster-General to open letters of whatever character or description. If the Postmaster-General knew that the contents of such letters related solely to gambling, there might be something said in favour of his opening them; but I object to such enormous powers being placed in his hands simply because the letters are addressed to Mr. Adams or any other person conducting a business of this nature. Surely we should modify such a condition!

Senator Drake

- Supposing we do not deliver the letters, how would you have them dealt with?

Senator GLASSEY

- Is there no means by which letters of this character can be registered and known, instead of private letters of a most secret description being opened by the authority of the Postmaster-General or any one else?

Senator Drake

- We cannot find out how to send them back.

Senator GLASSEY

- That is the difficulty which I see. I heartily supported the suppression of gambling in Queensland. That, however, is another matter. I do ask the two honorable and learned senators to whom I have alluded to consider these provisions, and to consider whether it would not be wise to postpone them, so that we may have an opportunity of modifying this particular matter.

Senator Drake

- There is no provision in this clause for the opening of letters.

Senator GLASSEY

- But there is a provision for retaining them. Why does the post-office retain them?

Senator Sir Frederick Sargood

- To prevent delivery.

Senator GLASSEY

- I think it is rather a serious matter.

Senator Drake

- Of course, letters must be opened in order that they may be returned, or else they must be destroyed.

Senator GLASSEY

- Then, I say, that this is a very grave matter, and that the committee should pause before adopting it. I would again urge the Postmaster-General to postpone the provision for another day, and let us go on with some of the other clauses, rather than run the risk of providing for communications being opened in this way.

Senator Sir Frederick Sargood

- Letters are opened every day.

Senator Ewing

- That is nothing new.

Senator Harney

- But they are opened, not merely because they are addressed to a certain person.

Senator GLASSEY

- Under what authority are they opened?

Senator Sir Frederick Sargood

- Under the Postal Act.

Senator GLASSEY

- Of course, I understand that where the addressee cannot be found -a letter is returned to the deadletter office and opened. These letters we are referring to, however, would be addressed to George Adams, and under this clause they could be opened irrespective of whether they related to gambling or not.

Senator Harney

- There is no middle course.

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Senator GLASSEY

- It certainly deserves consideration. I conscientiously object to giving such extraordinary power to the Postmaster-General, or any Deputy PostmasterGeneral.

Senator Charleston

- How would the honorable senator amend the clause?

Senator GLASSEY

- That is a matter which might be left to the representatives of the Government in the Senate. If the clause were postponed until to-morrow those honorable and learned gentlemen would be able to bring up some amendment to meet our views.

Senator Sir JOSIAH SYMON

- I think we shall all agree that Senator Clemons, in the very admirable speech with which he introduced this subject and stated the position of Tasmania, did not in any way over estimate the gravity and importance of the question that is now under the consideration of the Senate, and which is involved in the passing or rejection of this clause. I hope, however, that if the clause is to be dealt with by the Senate, it will not be hampered by any such amendment as that which has been indicated, and which I am glad to think the representatives of the Government will not accept. My reason for that view is, that if we are to have legislation of this kind, it seems absolutely essential that it should be uniform. I do not think that any of us in cold blood, so to speak, would care to 'introduce into it a provision of this kind, an exception in favour of Tasmania. I doubt very much myself whether senators from Tasmania, who naturally take a very strong view of this question, would care to see their State pilloried, so to speak, in the eyes of those who, rightly or wrongly, think this institution immoral, or of vicious tendencies, by preserving it in their midst. I do not think that they would care to see it placed in a position at which the finger of those who take that view might be pointed. Uniformity is the essence of the Constitution under which we are proceeding, and if we are to legislate upon this matter at all, undoubtedly it ought' to be in such a way as not to discriminate between the different States in regard to legislation that is intended to be for the benefit of the people of the Commonwealth. There is also an ambiguity, which has been pointed out, in the clause ; that is to say, in the expression " not sanctioned by law " contained in paragraph (b). The interpretation of those words, it seems to me, is open to very considerable doubt. The question would be whether they mean " not sanctioned by the law " of the State or " not sanctioned by the law "" of the Commonwealth. It is open to doubt as to what is the true construction of those words.

Senator Harney

- It must be the State law.

Senator Sir JOSIAH SYMON

- Whatever view the honorable and learned senator puts forward is always' entitled to very great weight. At this moment, however, I do not know whether I could assent to that interpretation or not, If the honorable and learned senator's views is correct, then our friends from Tasmania are unnecessarily

alarmed, because if the term refers to " State law " then in all probability the introduction of these words would save Tasmania and prevent

Senator Sir John DOWNER

- I do not think it would save paragraph (a). This provision is in paragraph (6).

Senator Sir JOSIAH SYMON

- Yes, . but we are not talking about paragraph (ft). Paragraph (6) refers to a lottery. I take my education on this subject from Senator Harney who is much more familiar with institutions of this kind than I am, and he tells me that Tattersall is in fact a lottery. If it is a lottery then it is not quite clear that the words " not sanctioned by law " do apply to it. I do not want to trouble the Senate by any discussion from that point of view, however because it seems to me that, as far as we are concerned as a House of Legislature, it would be better to deal with the question from the stand-point already adopted ; not on the technical construction of these words, but as to what we ought to legislate.

Senator Charleston

- Then we ought to make the meaning of these words clear.

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Senator Sir JOSIAH SYMON

- That is for the Senate to say. If this institution is a lottery, and if these words refer to a State law, then so far as the practical convenience and wishes of Tasmania are concerned, the senators from that State are unnecessarily susceptible, and their lottery will not be interfered with if it is already sanctioned by the law of the State. To come to the main question. First of all as to the clause itself, and the power which is necessary to have it enacted. I entertain very grave doubts as to whether this enactment is within the scope of the Commonwealth's powers of legislation. It seems to me that the point is not, as Senator O'Connor put it in his exceedingly interesting and eloquent address, as to a similarity in any respect to the principle by which we are guided in legislating in regard to blasphemous, indecent, offensive, or other postal matters of that kind. Nor do I quite agree - although with a great deal of what my honorable and learned friend said I do agree - that the Commonwealth, as he put it, has the power, unfettered and untrammelled by the law of any State to legislate in regard to this postal business. If that were carried to its logical conclusion it would enable the Commonwealth Parliament, if it so thought fit, to interfere with the business in the States to a degree which would not be tolerated.

Senator DRAKE

- The practice must be uniform.

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Senator Sir JOSIAH SYMON

- I agree with that. The practice and the law must be uniform. I will give an illustration presently of what I mean. It seems to me, when we lay down the principle that the powers and relations of the postal service have been handed over to the Commonwealth, and that the Parliament of the Commonwealth can say what postal matters should and should not be done, that that must be taken subject to certain limitations. For instance, when we have a unified State like any of the separate States before the union was established the Parliament of that State could do exactly what it chose. The Parliament in a unified State has power to do exactly as it will. In relation to postal matters it has the right absolutely to say what shall pass through its post-office, what shall be delivered by its postmasters, and what shall, not be posted or delivered. If it chose, to say that it would not deliver letters to people carrying on » the trade of a butcher it would have perfect power to do so. The Parliament of the Commonwealth, however, cannot do anything of the kind, because its power is derivative and subject to grave limitations. The question is whether there are no limitations which affect this particular matter. I venture to think the point is not, as Senator O'Connor put it, that we have to consider the moral aspect of the correspondence which passes through the post-office. If that were the case the Commonwealth Parliament would be entitled to legislate either directly or indirectly in regard to the morals of the community. It has no such power. With every wish to amplify and extend the powers of the Commonwealth, so that we may become a great nation, as near unification as we can get, I would yet be the very first to resist an attempt at any power of that kind. If we admit this power as to Tattersall - the power of the Commonwealth- Parliament to legislate so as to refuse to transmit and deliver letters . addressed to Tattersall - then we must concede the power to refuse that transmission and that delivery to

every other business carried on in any of the other States. The question then is - and Senator O'Connor has put it with great power from the more limited point of view - can we legislate to make impossible the carrying on of a lawful business ? That must mean, lawful in the State in which the business is carried on. That is the point to which we must apply our minds. The question is not whether these things are morally indefensible, whether the perpetuation of an institution like Tattersall's is a moral blemish, or anything of the kind. The point is that the institution has been legalized in Tasmania. Although we are not supposed to know anything of the legislation of the different States, still we have as a concrete illustration and a solid fact in this connexion - the establishment of the institution in Tasmania. Tasmania having made the carrying on of this business lawful; just as she can make other businesses lawful, can the Commonwealth Parliament in this Post and Telegraph Bill say, "We will not deliver letters to persons carrying on this institution " ? That is the view which I venture to submit. I am not going into the question of the morals of gambling, or whether the morals of Tasmania are to be kept pure even against her own wish. All I am concerned about in the present discussion is whether this clause involves any interference with the rights of a State. If it does, I contend that we should pause, because we are not entitled to interfere with State rights. The great distinction which impresses my mind, is whether Tasmania having made this business lawful, it can, through the post-office, be directly interfered with by the Commonwealth Parliament? Let me give an illustration ; because there is no need to discuss this question with any heat or partisanship. It is not a party question in any sense of the word. We are sent here to preserve State rights. We are all interested in maintaining those rights, ' because other matters may arise which may have a bearing upon the rights of other States.- What is Tasmania's case to-day may be em's to-morrow. Suppose that every State in the Commonwealth except Tasmania prohibited the breeding of racehorses. Would it be competent for the Commonwealth Parliament, upon any sentimental grounds, to legislate that no letters sent to a person in Tasmania carrying on the business of race-horse breeding should be delivered to him ? What difference is there? The two cases are absolutely the same.

Senator Higgs

- A very absurd illustration.

Senator Sir JOSIAH SYMON

- Why ? Of course I take the honorable senator's interjection in good part. I suppose there is no one who is more completely good natured than I am. But it is very easy to say absurd. It is very easy to say, as I was tempted to do the other day, " Nonsense." I withdrew the remark at once.

Senator HIGGS

- And I withdraw mine at once.

Senator Sir JOSIAH SYMON

- I hope the honorable senator will not, because I want to comment upon it. The use of such words as " absurd " and " nonsense " are not argument. But I will put another case which is an excellent illustration. Not many years ago - perhaps they were barbarous times then - trades unions or combinations of workmen, to raise wages, were looked upon as conspiracies, and the persons connected with them were subjected to trial as criminals. This is all remedied now by legislation of a more beneficent description. I admit that it is extravagant to suppose that such laws could be revived in Australia; but suppose, for the sake of argument, that the Commonwealth Parliament decided that trades unions should still be regarded as unlawful combinations, and that in order to put a Stop to anything of the kind the Parliament were to say, " we will not deliver any letters addressed to the secretary of any trades union or workmen's combination," do senators think that the Commonwealth Parliament would be at liberty to legislate to that effect whilst such combinations were still legal under the State laws ? Surely not.

Senator Pearce

- "Under this Bill the Government can stop a letter addressed to a republican organ on the ground of sedition.

Senator Sir JOSIAH SYMON

- That is a different thing. We all admit that the post-office has a right to stop, and ought to stop, in the public interest, on grounds of public policy, the transmission of letters for purposes of crime or sedition.

Senator PLAYFORD

- For gambling too.

Senator Sir JOSIAH SYMON

- I recollect an old colleague of my honorable friend, Senator Playford, saying that the honorable senator was saturated with prejudice.

Senator Playford

- That is better than being saturated with whisky.

Senator McGregor

- You can get rid of the whisky easier than the prejudice.

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Senator Sir JOSIAH SYMON

- But though we say that such can be done on grounds of public policy, we are treading on totally different soil, so to speak, when we come to deal with these lotteries. The post-office has been set up as a great monopoly. The Commonwealth got this monopoly from the States. Upon what consideration is every monopoly supposed to rest ? It is supposed to rest upon the condition of great public advantage. That is all. The postal service was handed over to the Commonwealth on the condition that it should be maintained, to a great extent, on the same footing and according to the same principles as the State post-offices were maintained, and that all letters committed to the post-office under the federal regime by any citizen, postage paid, should be carried, transmitted, and delivered to their destination, unless those letters were for purposes of crime, or were intended to endanger the State, or came under the categories which have not been made lawful in any State. That is the ground upon which we must consider this subject. We have not to consider whether these lotteries are immoral or not. I hold a strong view which I am quite free to express upon the subject. I altogether disapprove of Tattersall's. I am not looking with any favorable eye on the institution. I take the 'same view as other senators who have spoken, that an institution of this kind is to a certain extent a kind of moral cancer. But I am having regard to the extreme question whether this clause involves any interference with the right of Tasmania. That seems to me to rest upon whether Tattersall's is a lawful business lawfully carried on under Tasmanian law. Are we entitled to refuse to carry letters intended for the person carrying on that business lawfully, and are we to refuse to deliver letters from him? It is admitted on all hands that we have no power to legislate for the purpose of putting down lotteries. But if that be so, why should we do the same thing indirectly ? The purpose of this clause is to put down lotteries in Tasmania. That is admitted.

Senator Fraser

- If Tasmania had passed a similar law to the laws of the other States, I presume that we should have passed this clause.

Senator Playford

- We should pass it whether Tasmania has passed a similar Act or not. The argument is that as five States have legislated, and the moral sense of five States is against Tattersall's sweeps, therefore, we should not tolerate the institution in Tasmania.

Senator Drake

- Four States have similar sections in their local Acts.

Senator Sir JOSIAH SYMON

- But the difficulty is that Tasmania has a perfect right to legislate in favour of the delivery of the letters of an institution of this kind. There are two things involved in that consideration. One is the primary right of Tasmania to put down lotteries ; and secondly, her right to provide that an instrument such as the post-office shall be used as a means of carrying out that policy. But when the post-office business of the States was handed over to the Commonwealth, we only got one of those powers, the secondary power, which is to regulate the post-office. We did not get the primary power of putting down lotteries. The passage that my honorable and learned friend, Senator O'Connor, quoted from that excellent book, Black On the American Constitution. He admits that the United States Congress has no power to put down lotteries.

Senator Playford

- Indirectly America does it through her post-office.

Senator Sir JOSIAH SYMON

- I am coming to that in a minute. The American Government has no power directly to put down lotteries; and it seems to me utterly inconceivable how the conclusion can be arrived at that where there is no direct power in the Commonwealth to put down lotteries, we can do the thing indirectly.

Senator Playford

- There is no direct power in America-

Senator Sir JOSIAH SYMON

- I will come to that in a minute. We have here a clause which is taken from the Queensland Act.

Queensland is a unified State, which in its own sphere is supreme. The Parliament of Queensland can do what it likes in putting down lotteries, and can legislate to make use of the post-office as an instrument for carrying out its policy. But we have no such power. We have the power of dealing with the post-office, but we have no power to put down lotteries. That seems to me the difficulty which stares us in the face. The question is, "If we have the power to interfere with Tattersall's - an institution legalized in Tasmania, and made as honest a business in the eye of the law as that of a shoemaker - have we not the power which Senator O'Connor contends for of legislating in connexion with postal matters unfettered and untrammelled by the law of any of the States? Are we, who represent the States, prepared to accept such a proposition? Are we prepared to admit that the Commonwealth may carry on its business, to quote my honorable and learned friend's words, "in any way it thinks fit"?

Senator O'Connor

- Those words must be quoted only in application to the matter with which we are dealing.

Senator Sir JOSIAH SYMON

- We have handed over this monopoly to the Commonwealth for the advantage of the public, and if the Commonwealth can carry out the duties which devolve upon it in this respect in any way it thinks fit, the Commonwealth Parliament may, if it chooses, enact that no letters shall be delivered in any State - to use my illustration again - to a breeder of race-horses.

Senator Fraser

- That would not come under the term "peace, order, and good government."

Senator Sir JOSIAH SYMON

- Why not? The very origin and root of this evil is the breeding of race-horses. We have heard it said over and over again in another State that the enormous profits derived from the totalizator have enabled larger stakes to be offered and bigger prizes to be run for, with the result that the breeding of racehorses has been stimulated and race meetings have been multiplied to an almost amazing degree.

Senator Fraser

- There is a race meeting "every week in Victoria.

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Senator Sir JOSIAH SYMON

- There are almost as many in South Australia, and the root of the mischief may be taken to lie in the breeding of race-horses. We are dealing now with the power of the Commonwealth, not with the question whether that power should be exercised, which is a question of expediency, and quite another matter. If the Commonwealth has power to legislate to indirectly hamper, impede, or prevent the carrying on of one lawful business, it has the same power in regard to another lawful business. The view to which I have been calling the attention of honorable senators is that which concerns the question of State rights, and I venture to say that the words "peace, order, and good government," which occur in the Constitution, do not carry the matter any further. They are merely an introductory phrase, meaning that we have power to legislate to that end, but only in regard to the subjects mentioned in what have been called the 39 articles of the Constitution. If those 39 articles had not been embodied in the Constitution, and the words had stood by themselves, we could have legislated upon any subject we chose; but the words are restricted by those articles, which fix the sphere within which our legislative powers may be exercised. I have expressed my views as they have occurred to me in regard to this very serious and important subject rather fully, because it is really the first time that we have been brought face to face with a concrete instance of what we may be called upon to consider an infringement of State rights.

Senator Best

- Clause 16 has a similar effect.

Senator Sir JOSIAH SYMON

- This is the first time that we have been brought up standing, so to speak, on the question, and therefore I am sure that we feel that any light which can be thrown upon the subject by any honorable senator will be welcome. And being not a judicial tribunal but a legislative body, we should endeavour to arrive at the

very best solution we can. Our decision will not be final, because there is an ultimate safeguard, but we are not to shrink from our responsibility by any consideration of what may be done by some other tribunal. If the matter had stood upon the mere interpretation of the Constitution and of the proposed clause, the view which I have ventured to humbly and respectfully submit to. the Senate is that which I should have been inclined to entertain. When the matter was discussed on the second reading, I was inclined to form a strong opinion the other way, and to rest upon the principle that the Commonwealth Parliament, having control of the post-office, had the right to say absolutely what postal matter should be carried and what should not. I feel, however, that that opinion, for the reasons I have already given, should be modified. But, apart from the construction of the Constitution, we are confronted with what, has happened in America. Undoubtedly, the authorities to which Senator O'Connor referred create a very great difficulty. They do not appear to me to solve it, although my honorable and learned friend thinks they do.

Senator O'CONNOR

- Hear, hear.

Senator Sir JOSIAH SYMON

- In the first place, we have not before us the exact language of the decisions summarized in the pages of these books, and we do not know the circumstances. All we know is that we have a statement of the proposition that Congress has no authority to legislate directly for the suppression of lotteries. Then follows the sentence, "but, having exclusive control over the postal system, it has the power to prohibit the use of the mails for the transmission of lottery advertisements."

Senator GLASSEY

- And by statute it does so !

Senator Sir JOSIAH SYMON

- That is a. summary of the language of the decision of eminent Judges - as all the Judges who have seats in the Supreme Court of the United States are.

Senator O'Connor

- And it is a summary made by a high authority.

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Senator Sir JOSIAH SYMON

- A high and a reliable authority on constitutional, law. But let me point out that it appears neither from that authority, nor from any other that is available to us, that there was. any law in the State concerned which expressly legalized lotteries, and placed them. ' in the position of ordinary businesses. It does not appear that the question of State* laws was involved at all, and therefore we are not able- to see to what extent the decision governs us, and should affect the language with which we are dealing. It does, not show that the particular difficulty which we are endeavouring to solve arose in America. I do not question it. J accept it implicitly, with all the weight and authority which the emphatic words of the "Vice President of the Executive Council gave it ; but it does not decide the question upon which we are now engaged, and which involves an interference with a legislative right which has actually been exercised by the State of Tasmania.

Senator Drake

- No.

Senator Sir JOSIAH SYMON

- Is not the design and intention of the clause to put an end to the existence of Tattersall's in Tasmania 1

Senator Drake

- -No. The object of the clause is to prevent the post-office from being used in certain improper ways. The existence of Tattersall's may or may not be involved, but that is only incidental.

Senator Sir JOSIAH SYMON

- If the object is to put a stop to the post-office being used in improper 'ways, that means that we must first of all decide whether Tattersall's is an improper institution.

Senator Higgs

- We will stop it so far as we can.

Senator Sir JOSIAH SYMON

-That is the moral aspect of the question, with which, as I am not a moral philosopher, shall not deal. The effect of this legislation is to put a stop to Tattersall's, not only in Tasmania, bub in all the States.

Senator Drake

- - -It will also put a stop to fortune-telling.

Senator Higgs

- And the distribution of obscene publications.

Senator Sir JOSIAH SYMON

- I give way upon both those points, but it seems to me the debate would have been a wasted one unless we deal with the concrete existence of Tattersall's.

Senator McGregor

- Tattersall's is the only legalized institution which the Bill will affect.

Senator Drake

- That is why the clause was objected to, but it was not to especially affect Tattersall's that the clause was drafted.

Senator Sir JOSIAH SYMON

- In the face of the difficulty which the American authorities create, and the grave doubt that exists, the question is what ought we to do ? That brings us to the practical issue. If there were none of these American dicta, I should vote against the clause, or, at any rate, against that part of it which seems to me to interfere with the right of Tasmania to legislate upon social or business matters upon which she is competent to legislate. But the American authorities having raised a doubt, the whole question remains in a state of great uncertainty, and it seems to me that it will be safer to pass the clause,- because if it infringes State rights our decision will not be final. But if we eliminate the clause we assume to decide upon a very doubtful question, and it seems to me safer, therefore, to pass the clause, leaving it to Tasmania if she, on consideration, feels aggrieved, to appeal against it, than, by striking it out, to prevent it from being decided by the ultimate tribunal for the decision of all these constitutional matters. If it is struck out we cannot raise the question at all. If it is left in, Tasmania can. raise the question. On the whole it seems safer to leave it in. I say so reluctantly, because I dislike anything that seem to be suspicious, or to have the colour of interfering with the rights of the States whose autonomy we are pledged to preserve. I would rather solve the difficulty in favour of the rights of the States than against them. But after putting all small questions aside, looking at the matter from the constitutional point which many of us advocate, then I say we shall best consult the high purpose for which we were sent here and the advancement of the business of legislation by -passing the clause, and leaving Tasmania if she feels aggrieved, to exercise her privileges in having the matter determined by the tribunal constituted for such purposes.

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Senator KEATING

- I should hope that senators will not be guided in their conduct in regard to this clause by the considerations that actuate Senator Symon. I think that senators will agree with me that there was more force in his previous utterance when he stated that we were meeting here as a legislative body, and should determine as far as we possibly could what was the actual scope of our power, and exercise our power without any attempt to shunt the responsibility on to another tribunal. I hope honorable senators will agree with me that it would be a very undesirable thing seeing that there is a possibility from indications that have already been shown, that the High Court of Australia, which we have power to establish, may not be established for some considerable time, to leave this matter, which is one of such supreme importance not merely to Tasmania, but to the whole of the Commonwealth, to be determined only after some years. So far as Tasmanians are concerned in the matter, they are put in a different position. Tasmania's legislation which is at present in operation, and by virtue of which a lottery is being conducted, may be rendered absolutely nugatory, by the exercise by the Postmaster-General of the powers sought to be conferred upon him. The lottery that is in existence might be abolished. The position of Tasmania from a financial point of view might be seriously affected, and it might .really be years before it could be determined whether her own legislation that has been passed, and which has been in force for years, was rendered nugatory by the legislation we adopt in connexion with a machinery Bill of this character. I intend to submit to the Senate an amendment in the clause. We have been discussing for a considerable time the principal involved in the clause, and we have applied most of our arguments to the existence of this one particular lottery. There seems to be a disposition on the part of some honorable

senators to regard the matter, as far as it at present stands, as enabling a lottery to be conducted in Tasmania, but not to be conducted so far as investors outside of that State are concerned. Now in order to test the opinion of honorable senators on this matter, I beg to move as an amendment. That after the word "engaged" in lino 9, there be inserted the words "contrary to the law of any State in the Commonwealth."

I may point out to some honorable senators who perhaps may feel disposed to invest the Postmaster-General with this power simply by consideration of the fact that a lottery of this character allows a private individual to hold the whole of the profits for his personal advantage, and who would, perhaps, be prepared to pass a clause of this character if a State lottery were in existence, that by an amendment such as I have moved it would be quite competent for any State in the future, if it saw fit so to do, to establish a State lottery. But if we pass the clause as it at present stands, and if in passing the clause we are exercising powers that we do really hold, and the Postmaster-General can exercise the power that the Bill confers upon him, it would be absolutely impossible, unless by special legislation, that the State of Tasmania or any State in the Commonwealth hereafter could establish a lottery. Now, a great deal of discussion has centred round the question as to State rights, and the leader of the Senate, Senator O'Connor, has addressed himself very lucidly and very eloquently to the position so far as -the several States are concerned, where their rights are likely to be involved by Commonwealth legislation. But I should like to point out to the honorable and learned gentleman that he addressed his arguments for the greater part to what we might call the technical or legal power of this Legislature to legislate in this particular way. I think that the honorable and learned gentleman who so ably opened this discussion, Senator Clemons, purposely refrained from discussing at any length that particular aspect of the case. He was followed by Senator Harney, and there was really at that particular stage no question raised as to the legal power of the Commonwealth to legislate in this direction.

Senator O'CONNOR

- It had been raised by some senators. That is why I thought it necessary to express my views about it.

Senator KEATING

- I think that Senator O'Connor's remarks would have been more to the point if he had addressed himself with more force to the question of expediency and the question of the spirit of the union - the understanding upon which the States entered the union. If we look at the Constitution Act we find that section 197 says: -

Every power of the Parliament of a colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the parliament of the Commonwealth or withdrawn from the parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

Now the power must be taken from the State Parliament expressly, or it must be conferred exclusively on the Commonwealth Parliament. Otherwise the power is still reposed in the State Parliament.

Senator Staniforth Smith

- How did - the United States do. Did they do something illegal ?

Senator HARNEY

- They did not do what we are doing.

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Senator KEATING

- There is nothing before the Senate, so far as I know, to show us that the Constitution of the United States, as far as this clause is concerned, is the same as ours. I have not the United States Constitution Act to quote from, but I have our Constitution Act, and that provides that unless the State Parliament's power is absolutely and expressly withdrawn, or unless the power that has heretofore been exercised by the State Parliament is exclusively vested in the Commonwealth Parliament, the power remains with the State Parliament. Now, the power of legislating, directly or indirectly, with regard to lotteries has not been expressly withdrawn from the State Parliament. The power to legislate, directly or indirectly, with regard to lotteries has not been exclusively vested in the Commonwealth Parliament. Therefore that power remains just as full as ever it was in the State Parliament of Tasmania. Here we are brought to this position. The State Parliament of Tasmania has the full power of legislating, directly or indirectly, for the suppression of gambling, and this Commonwealth Parliament has also, according to the contention of those who wish us

to pass this clause as it stands, co-ordinately with that State Legislature, this particular power that we are now trying to exercise. I think honorable senators will agree with me that if even there were any doubt as to legal power or technical power of the Commonwealth Legislature to legislate in this direction, yet by doing it we should be acting in violation of the spirit of our union - in violation of that common understanding that prevailed throughout the whole of the States when they entered into the union. We are here legislating for what ? Legislating to put on a uniform basis, and to make more efficient, the several postal and telegraphic services of the Commonwealth. That is the primary purpose of the Bill - the real purpose of the Bill - and we are going to attempt by implication, by the inclusion of a clause like this, to legislate on a matter the power in connexion with which has not been exclusively vested in us and has not been taken from the States. I think honorable senators must have seen great force in the argument that was so well advanced by the honorable senator who opened this discussion, that if we had the power to legislate with regard to these matters it would be far better for us to do it straight out and openly and not avail ourselves of the accidental position of having this machinery measure before us. The leader of the Government dwelt at great length upon the fact that there seemed to be perfect unanimity of opinion as to our possession of the power to stop in passing through the post-office and to destroy seditious, obscene, and blasphemous matter. Now we have exercised that power so far as we could by legislating in that direction, but are these not matters upon which there is a common understanding throughout the whole of the world, and are they to be placed in the same position as a matter of this kind, which is at least exceedingly debatable ? We need not now enter into the consideration of the moral aspect of gambling, but it must be conceded that it is a very debatable question whether a legislator acts best when he endeavours to suppress or endeavours to regulate gambling. When the matter is of such a debatable character surely Senator O'Connor will not say that because we are going to prevent obscene, seditious, and blasphemous communications going through the post we should equally exercise the power of stopping communications which relate to lotteries going through the post.

Senator O'Connor

- The power rests upon precisely the same principle.

Senator KEATING

- Assume that it does. We are legislating in accordance with our consideration of expediency and the advantage to the different portions of the union. If we apply that principle we might say - on precisely the same ground upon which the Postmaster-General rests his contention that we can and should exercise this power of stopping these communications - that we could stop communications going to any particular class that we might single out.

Senator Clemons

- We could stop newspapers that contain betting lists.

Senator O'Connor

- As was done in America.

Senator Clemons

- Why is it not done here ?

Senator Harney

- We could, as Senator Sir Josiah Symon has pointed out, stop letters addressed to a butcher.

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Senator KEATING

- Let us take an instance in point. We all know that in some parts of Australasia, outside the Commonwealth, and in parts of America, there has existed at times a very strong feeling in 'favour of the imposition of prohibition laws. In some parts they have adopted prohibition laws. Assuming, for the sake of argument, that we had in the Commonwealth Parliament an absolute majority of members who believed in the principles of prohibition, and the advisableness of applying that principle throughout the Commonwealth, then in defiance of the fact that they were not vested with the right to give effect to their sentiments in Legislative form, they could take advantage of the fact that they had a machinery Bill to deal with, and legislate by implication indirectly in that way. Would that be in consonance with the spirit of the union ? I think honorable senators will agree with me that it would not. Yet that is precisely analogous to that which we are now attempting to work - to legislate by implication upon a matter over which we have no practical control. Some honorable senators have referred to the fact that in Tasmania there has

been a certain amount of money gained year by year from the existence of this lottery. Both the honorable and learned senators who represent the Government here have emphasized the opinion that that circumstance is due not to the investments that are coming in from Tasmania, but to the investments that go there from every part of Australia. They have asserted that possibly nineteen-twentieths of the investments in Tattersall's come from outside Tasmania. That statement clearly indicates that no matter how repressive may have been the legislation in several of the mainland States in regard to this matter, it has proved absolutely ineffective. Are we, after such an experience, going to attempt even- by implication to legislate in a way that we know will be absolutely ineffective ?

Senator Glassey

- Not absolutely.

Senator KEATING

- Not absolutely, but practically so. If a lottery did not exist in Tasmania does the honorable senator assume that lotteries would not exist elsewhere ? Has he not received through the post-office communications inviting him to invest in lotteries in Germany? People with speculative propensities will indulge those propensities in lotteries; if not in Tasmania, in Germany, or, perhaps in America itself, where, notwithstanding that they have rigid legislation against lotteries, gambling is rife in many parts.

Senator Harney

- This Bill allows people to send money to lotteries outside the Commonwealth, but does not allow it to come in.

Senator KEATING

- According to the Postmaster-General, the international agreement would absolutely prevent the Postal department from stopping communications passing to a lottery in New Zealand, America, Germany, or anywhere else outside the Commonwealth.

Senator Harney

- The Bill only affects money coming in, not money going out, so that it would not affect lotteries in Shanghai

Senator KEATING

- Or in New Zealand. According to the international agreement, money can be sent out of the Commonwealth to lotteries in other parts. If we legislate in this indirect way, no matter what may be our moral sentiments, we must all recognise that our legislation to a great extent will be ineffective. When we have ineffective and inoperative legislation, we simply open the door to law breaking. Once that is done then is generated in the community a spirit of distrust and disregard of the laws. It is for this reason, and so that the Senate's opinion upon this matter may be exactly tested, that I move my amendment. Honorable senators will notice that if the clause is passed as it at present stands we shall be attempting, according to the Postmaster-General, to make uniform throughout the Commonwealth a provision which has existed in some of the State Acts. The provision is taken from the Queensland Act, which, I believe, is the most stringent of the lot. Without achieving any good results at all we shall have five of the States of the mainland practically giving to Tasmania legislation upon a matter in connexion with which Tasmania claims - and I think rightly claims - that she herself has exercised her Legislative power. In her opinion she has exercised that power with a far greater degree of efficiency, and far more reasonably, and with far more effect than any of the five mainland provinces. It is for these reasons that I ask honorable senators to agree with me in inserting in the clause a provision that the person engaged in a business, and whose correspondence is to be stopped, must be engaged in it contrary to the laws of a State in the Commonwealth .

Senator DRAKE

- I desire, before this amendment is put, - to point out to Senator Keating that it does not give effect to what he intends. In fact, it has quite the contrary effect. The clause will now read -

The Postmaster-General, if he has reasonable ground to suppose any person to be engaged contrary to the law of any State of the Commonwealth -

And so on. . What Senator Keating clearly means is that if the person is engaged in a business that is sanctioned by any one State, his letters shall not be stopped. Tattersall's is not only .contrary to the law of one State of the Commonwealth, but contrary to the law of five States of the Commonwealth .

Senator Harney

- Yes, that is so.

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Senator DRAKE

- Senator Keating, by his amendment, seems to admit that he attaches some importance to the legislation of States other than Tasmania, and that is the position we have taken up all along. We say that the legislation and the views of other States should be taken into consideration.

Senator Harney

- The amendment can be modified ?

Senator DRAKE

- It cannot be modified. The thing is utterly wrong.

Senator EWING(Western Australia).Before a vote is taken, I would like to say that I entirely agree with the leader of the Government in this matter. After reading section 51 of the Constitution Act, which was referred to by Senator Sir John Downer, we go on to section 52, which says -

The Parliament shall, subject to this Constitution, have exclusive power to make laws.

Amongst other things upon matters relating to any department of the public service, the control of which is by this Constitution transferred to the Executive Government of the Commonwealth. " Exclusive powers to make laws ! " What can that mean but that the Commonwealth Parliament has power to make laws in connexion with the Postal department, such as seem to it fit? The word "exclusive" is put in there surely with some object in view. I think it is quite clear from the constitutional point of view that, in the words of an honorable and learned senator, the Federal Parliament is absolutely unfettered in this matter. We are given absolute control. If we have not got control, who then has it ? The power is entirely taken away from the local Parliament. In this section we find that we have the exclusive power which Senator Keating contended we should possess before we take the action now proposed. Senator Harney based his argument on the proposition that gambling was not inherently wrong : that gambling was not at common law an offence ; that it was only created an offence by the statutes of the various States. I heard a certain legal gentleman, in the Supreme Court at Perth, conduct a very able argument--

Senator Harney

- I was on the other side then.

Senator EWING

- In the Full Court of Western Australia - where there is no legislation upon this question, and where the legality or illegality of a lottery depends solely upon the common law, upon its inherent legality - I heard' my honorable and learned friend most ably arguing the case for the Crown for several days-

Senator Harney

- I was paid for that.

Senator EWING

- But, unfortunately for my honorable and learned friend's argument here, the Full Court of Western Australia agreed with him and decided that gambling was inherently wrong. In the face of that argument, how can my honorable and learned friend - when he knows that he has been the means, in Western Australia, of drawing from the Full Court of that State a decision which says that gambling is inherently wrong - come here and say it is not inherently wrong? .Admitting that the Full Court of Western Australia is right - and it was only assisted in following the decision of other States and countries by the learned arguments of Senator Harney - admitting that a lottery is inherently wrong and wrong at common law, Tasmania has made lawful that which in itself is unlawful. Might I carry this argument to its logical conclusion. Gambling is just as unlawful at common law as--

Senator Clemons

- As drink is, and no more.

Senator EWING

- It is just as illegal at common law as theft.

Senator Sir Josiah Symon

- Not gambling.

Senator EWING

- No. I should have said lotteries

Senator Sir Josiah Symon

- Not lotteries either.

Senator EWING

- Well, then my honorable and learned friend is at variance with the opinion of the Full Court of Western Australia. In the case of John De Baun, in which Senator Harney was the counsel for the Crown, the defendant was sentenced by the Supreme Court of Western Australia for conducting a lottery, and yet there was not a scrap of State legislation on the subject.

Senator Harney

- I was doing my duty " as an advocate then.

Senator EWING

- My honorable and learned friend always does his duty, but he must not try to undermine the precedent which the Full Court of Western Australia has created with his assistance.

Senator Clemons

- The honorable and learned senator made the assertion that gambling is illegal.

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Senator EWING

- I am now referring to lotteries. Every one knows what I mean. Lotteries are illegal, and that has been supplemented in four of the States by legislation. Tasmania has simply made that legal which is in itself illegal. It is just as unlawful to conduct a lottery as to steal. If the Legislature of Tasmania were to make theft lawful, does any one think that the Federal Parliament would have much sympathy with them? Consequently, there is no parallel at all in the illustrations drawn by Senator Sir Josiah Symon. The honorable and learned senator has said that the Federal Parliament might decide that a butcher should not carry on his business. There is, however, no parallel at all in that. Senator Harney has based, his argument on the idea that a lottery is legal. But it is not ; a lottery is illegal. It is admitted that we should govern by majorities. If we take the various States as electorates, the result of the poll is that five of the States are opposed to Tattersall's and only one State is in favour of it. When we are considering the rights of the various States, we as the State House must consider the opinions and interests of the majority of those States. As we have a majority of five to one, can there be any hesitation as to the direction in which our legislation should proceed ? If we adopted the course suggested by some senators we should be making the Postmaster-General an accessory to the commission of an offence. He would be aiding and abetting the commission of an offence. The offence, moreover, is one which, so far as this Senate is concerned, the majority of the States consider ought to be suppressed. Therefore, I hold that the Senate should assist the Postmaster-General in doing that which is lawful.

Senator Sir RICHARD BAKER

- I propose to exercise my right of voting on this question, and I may therefore take advantage of the opportunity to state shortly the reasons for the vote I am about to give. I have not the slightest doubt as to the power of the Commonwealth Parliament to pass this clause. Two points have been raised - first as to the ethics or morality of the law which now exists in Tasmania with regard to lotteries ; and secondly, as to whether it is wise to interfere with State rights and interests in one of the first Bills the Commonwealth Parliament will pass. With respect to the ethics or morality of lotteries, I intend to express no opinion. But having taken a very strong - some people may perhaps think an extreme - view concerning State rights and interests, I wish to observe that in my opinion we ought not, although we have the power, by indirect legislation to interfere with matters concerning the State of Tasmania which have not been directly handed over to us. By the passing of this clause we should be in effect preventing the successful working out of an institution which the State of Tasmania has declared to be legal. I do not think it is wise and prudent to take that course ; therefore I shall give my vote in opposition to the clause.

Senator Lt Col NEILD

- I should not like this clause to go to a vote without saying one or two words upon it. I wish to draw attention to the arguments which have been advanced by the two Ministers and by my honorable and learned friend, Senator Ewing, to the effect that as five States of the Commonwealth have decided against Tattersall's lotteries it is the duty of the Commonwealth to assist the majority of the States by terminating lotteries in Tasmania. But my honorable friend the Postmaster-General in bringing in his Bill seems to have overlooked the fact that while five States have absolutely stopped the transmission of postal matters connected with lotteries within their own territories, they have never attempted to stop the

postage of matters in connexion with lotteries in Tasmania, as this Bill affects to do. We have had one-half of the proposal put before us all the evening, and honorable and learned senators have urged that five of the States have been against lotteries, and that therefore the Commonwealth Government should put them down ; but they have not said that there has never been an attempt in the States to stop the carrying of postal matter to and from Tasmania. I find myself in the position that I regard this proposal as an interference with State rights ; but, on the other hand, I am as emphatically opposed to the system of public lotteries as my honorable and learned friend Senator Ewing. I think the clause under discussion is wrong from the constitutional point of view, but I do not think that lotteries are advisable in the interests of public morality. The other night the committee passed without a division a proposal which gives the Government the right to absolutely " boss " every train that is run in the Commonwealth in connexion with the carrying of mails.

Senator FRASER

- Not to " boss " them.

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Senator Lt Col NEILD

- The honorable senator need not shake his head with such splendid vigour. I say the Commonwealth Government have taken this power in the interest of the carriage of the mails. That is a point that will have to be settled by the High Court, supposing it finds its way to the statute-book. Perhaps it will be also convenient for this other constitutional point in connexion with lotteries to be decided by the High Court at the same time. As my personal feelings and beliefs are that it is equitable that lotteries should be suppressed, whilst at the same time I think that State rights should not be invaded, my desire is that the question shall be settled by the High Court rather than by a vote that, however intelligently given, must lack the authority that will attach to a decision of the Supreme Court of the Commonwealth. Therefore, though my vote will be given in favour of the clause, I have some doubts about the matter. My argument may seem somewhat inconsistent. But I find my strong leanings going in two absolutely opposite directions. The High Court is a convenient safety valve for the settlement of the matter. The majority of senators, being laymen, do not feel themselves positively authorized to decide so difficult a question. This clause can be worked in all sorts of ways. One senator has said that it might be used to interfere with the trade of butchering. I think that trade might be interfered with in this way. Suppose my honorable friend, the Postmaster-General, or his successor in office, were a violent vegetarian, and wholly opposed to the consumption of animal food. What is there to prevent him getting a regulation passed under this clause to prohibit the delivery of butchers' bills through the post-office, as being a means to the end of inaugurating a career of vegetarianism for the Commonwealth ? This is a reductio ad absurdum, I admit, but sometimes an argument of that character is not without its use.

Senator Pearce

- The Postmaster-General would first have to get the consent of Parliament to that regulation.

Senator Lt.-Col. NEILD ____ For these reasons I shall vote in favour of the clause. By its acceptance an interesting constitutional problem will be enabled to be settled by a higher constitutional body even than this august Senate.

Senator DE LARGIE

- I should not have spoken upon this question except that I find there is an important point to which attention has not been directed. It is that at the postal conference of 1891, at which Tasmania had two representatives, a motion was carried in the following terms : -

That in the opinion of this conference it is advisable that the system of dealing with letters relating to sweeps should be uniform throughout Australia.

I find that the Tasmanian representatives at the conference voted for the resolution. If the Tasmanian Government had acted honestly and squarely by the other colonies, there would be no need for the Senate to be discussing this clause. It is simply because Tasmania has taken advantage of the other States by not carrying out her obligations that the question now crops up. Before federation was brought about there was practically a federal union of the post offices of Australia. Therefore I hold that in dealing with this question in this Bill we are simply compelling Tasmania to carry out the obligation by which she was previously morally bound.

Senator CHARLESTON

- I do not claim to have the legal knowledge that many honorable senators have, but I have listened very attentively to the debate, and I have been forced to the conclusion - a different conclusion from that at which I first arrived - that it is within the power of the Commonwealth Parliament to legislate as this Bill attempts to do. I agree with Senator Sir John Downer' and with the President that it would be extremely unwise to give effect to this power at the present juncture, because I feel that it . would be practically a violation of the compact which we have entered into with Tasmania, as by exercising it we shall nullify an Act which was passed by that State within the execution of its own rights of legislation.

Senator WALKER(New South Wales).There is just one point which has not been alluded to to-night, and to which I should like to refer. It is this : If we ask Tasmania to do as the other States have done, and thereby call upon her to forego an income of £14,000 or £15,000 a year, we must not forget that section 96 of the Constitution gives us power to grant her financial assistance on such terms and conditions as we may think fit.

Senator Cameron

- We do not want charity ; we want our rights.

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Senator WALKER

- I maintain . that it is our duty, if the finances of a State are inconvenienced by a concession made- by that .

State for the good of the Commonwealth to see that she does not suffer. With regard to the main question, X feel that I must vote for the clause. Sections 51 and 52 of the Constitution both give the Commonwealth Parliament power to legislate for the " peace, order, and good government " of the Commonwealth, and that end would not be attained if we had differing postal systems in the different States. The lawyers seem to disagree upon this clause, but we laymen are the jury, and as common-sense men must take a common-sense view of the question.

The CHAIRMAN

- The honorable Senator Keating has desired me to substitute for his original amendment the following amendment -

That after the word "engaged" - the following words be inserted - "without thesanotion of the law of a State."

Senator DRAKE

- I wish to point out that that is not a slight alteration of the original amendment, but a complete reversal of it. The amendment originally moved meant that the clause would operate except where Tattersall's sweeps were being conducted with the sanction of the laws of the State ; but I pointed out that, as it was being conducted contrary to the law of five of the States, the amendment would be inoperative. The amendment which the honorable and learned member has now moved means that the legislation of the five Australian States is to be overridden by that of Tasmania.

Senator Keating

- My amendment is to keep things as they are.

Senator DRAKE

- If it is carried, we should have enacted that, because Tattersall's is legalized in one State, the Postmaster-General must act as though it were legalized in all the States.

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

Ayes 9

Noes..... .. 17

Majority 8

Question so resolved in the negative.

Senator CLEMONS

- I do not wish to prolong the discussion, but I should not allow the clause to pass without pointing out that by allowing the words " not sanctioned by law " to remain in paragraph (6), we are passing legislation of a doubtful character, and putting upon the shoulders of the High Court work we ought to do ourselves.

There are scarcely two men in the Chamber who would agree as to the interpretation of those words.

Why do not honorable senators face the position, and either make the paragraph read "sanctioned by the law of the. Commonwealth," or make it read "sanctioned by the law of a State'.' 1

Senator DRAKE

- I think that it is clear that the paragraph refers to the law of a State, because the Commonwealth could not make a law upon the subject.

Clause, as amended, agreed to.

Progress reported.

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22:28:00

Senate adjourned at 10.28 p.m.