<url>https://www.historichansard.net/hofreps/1901/19011004_reps_1_5</url>
1901-10-04
House of Representatives.
Mr. Speakertook the chair at 10.30 a.m., and read prayers.
QUESTIONS
THE FEDERAL CAPITAL
Mr WILKS
- I should like to ask the
Minister for Home Affairs whether he has made any definite arrangements with a view to the selection of the Federal Capital site, and the erection of temporary buildings in time to permit of the Federal Parliament holding its second session in the Federal Capital?
Minister for Home Affairs
Sir WILLIAM LYNE
- I have made no definite arrangements, but I hope that it will be possible before the end of the session for members to visit some of the principal sites that are to be submitted for our consideration by the State of New South Wales.
THE ELECTORAL BILL
Mr PAGE
- I should like to know from the Minister for Home Affairs when we shall get a peep at the Electoral Bill ?
Sir WILLIAM LYNE
- I am pushing the matter on, and I know the Attorney General is also doing so. I had an interview with the draftsman yesterday, and another one this morning, and I hope that the Bill will be in type next week.
Mr PAGE
- Is it the intention of the. Government to push the Bill through this session 1
Sir WILLIAM LYNE
- That will depend entirely upon the state of public business, but as far as I can push it through I intend to do so.
PACIFIC ISLANDS LABOURERS BILL
<page>5641</page>
Mr WATSON
- I desire to ask the Attorney General whether he has seen the statement, appearing in the Age this morning in the form of a telegram from Brisbane - evidently on the strength of a communication from Melbourne to Brisbane, giving as the author the name of Mr. Paget, the member for Mackay, in the Queensland Legislative Assembly - that some of the labour members consider the Pacific Islands Labourers Bill too drastic. I can say distinctly that so far from that being the case, any feeling about the Bill amongst the labour members of this House .is rather in the contrary direction.
Attorney-General
Mr DEAKIN
- I have observed the statement, but I am .not' aware that there is any foundation for it. 1 do not think that there could be a better authority on that point than the honorable member himself.
RAILWAY PASSES FOR RIFLEMEN
Mr JOSEPH COOK
- T desire to ask the Minister for Defence if the Government have determined to refuse to issue any free gasses to the members of rifle clubs ?
Minister for Defence
Sir JOHN FORREST
- The Ministry have decided not to pay the State Governments for passes issued to members of rifle associations.
Mr JOSEPH COOK
- That is to say that if the State Governments will not grant free passes there will be none issued I
Sir JOHN FORREST
- Yes ; that is the natural inference. I have tried, both officially and personally, to induce the State Governments on this occasion at any rate - there are only two States, Victoria and New South Wales,

where rifle matches are pending - to do as they have hitherto done, hoping that before the next matches the whole question may be considered and put upon some satifactory basis. -However, the Premiers of both New South Wales and Victoria refused. I then submitted the matter to the Government, and we have come to the - conclusion that if 'the State Governments will not grant passes to their own people, we are not justified in doing so, seeing that Parliament has not considered the matter, and that there are no funds available for the purpose.

EXCISE BILL

In Committee(consideration of Senate's amendments resumed from 3rd October, vide page 5599) :

Clause-66-

The manufacturer shall mark upon every package pf manufactured tobacco cigars cigarettes or snuff his name and address a consecutive number the gross weight of the package and the net weight of the contents before it is removed from the factory. Penalty: £20.

Motion- proposed -

That the committee agree to the Senate's amendment, omitting the words " cigars cigarettes," line 2.

<page>5642</page>

Minister for Trade and Customs

Mr KINGSTON

- I have made further inquiry into this matter,. and I have come to the conclusion that we ought -not to oppose the amendment. I find that it was made in the other House at the instance of the Government, on a report obtained from the chief officer in control of the Excise department, Mr. Ferguson, who gives reasons for the advice which he tenders. This report is dated 27th September, and is as follows : -

It it has been pointed out that the provisions of clause 08 could not be carried out without serious inconvenience to the cigar and cigarette manufacturers, and without injuriously affecting those who sold in limited quantities.

I think if the words " cigars cigarettes," were omitted the wishes .of the trade would be met.

Another reason advanced for amendment is that the weight of cigars vary to such an extent that the weight in every single box could not, without incurring delay and trouble, be correctly determined, mid that cigars and cigarettes are sold by the hundred or thousand, not loy weight".

For the same reasons the same words in clause 65 are asked to be struck out.

This, of course, will require the reconsideration of our previous decision upon the' amendment of clause 65. The report proceeds : -

But another clause to the following effect must be added : - " The manufacturer shall, before removal from his factory, mark, brand, or stomp upon every package containing cigars or cigarettes the number of his factory, a number representing the State in which the cigars or cigarettes were manufactured, and the words ' made in the Commonwealth of Australia.' Penalty: £20."

This we have done. Mr. Ferguson advises that the words "made in the Commonwealth" should be inserted, but I do not think them necessary. He goes on to soy : -

Another clause following the above must be added. "The collector shall forward to each manufacfacturer the number of his factory, and a number representing the State."

Manufacturers in a small- way-say they have good, sale for their cigars to wholesale houses, but their own names being on .the boxes would prejudice such sale. Large houses sell cigars, but they do not wish their customers to know by whom they were made.

Manufacturers seem-to think that if the name of the State were to be branded on each package there would arise on the part of the , public a jealousy, and thus be the means of one State's production carrying, no sale - in the other States. Jealousy will arise when intercolonial trade is free, and at the commencement of the Commonwealth manufacturers think it is better to give each State a number, as is done in America and Canada

It appears, therefore, that the amendments we find here are really fully warranted by the suggestions of the officer. It may be that there ought to be stricter legislation with reference to trade marks, but I think we should deal with that question in a broad and comprehensive way at an early date, and not pass specially disabling legislation with regard to particular trades. The matter is one of the greatest importance, and the sooner we deal with it the better. I can assure honorable members that it is the policy of the Government to take it in hand at the earliest possible date.

An Honorable Member. - What is the objection to putting the name of the State on the package ?
Mr KINGSTON
- If we require that, it will cause some trouble, although perhaps to a lesser degree. I do not mind saying that the Government are considerably influenced in dealing with this matter at this particular moment, by the necessity for getting the Bill passed and in working order in time for such action as may be necessary under the proposals to be submitted to the House in the forthcoming week. The Government propose to accept the amendment, and trust they will have the support of the committee.
Mr. MAUGER(Melbourne Ports).Since last evening I have been communicated with by a number of the journeymen interested in the cigar industry, and I am exceedingly sorry that the distributing trade is in such a condition that there is a considerable degree of force in their contention that if the distributors knew where the cigars were made imported cigars would take the place of the local article. In view of what the Minister has stated as to the intentions of the Government with regard to the introduction of trade-mark legislation, and also having regard to the more telling fact that the passing of the Bill is a matter of urgency, perhaps the honorable member for Bland will take my view, that under the circumstances, matters should be allowed to stand as they are.
Mr WATSON
- I hold as strongly as ever the view I expressed last evening as to the desirability of encouraging our local manufacturers generally, and the necessity of having trade marks properly regulated, but there is some force in the statement of the M inister that we should not deal piecemeal with a matter of such undoubtedly large importance. Perhaps, therefore, it would be wiser to wait for the introduction of a measure dealing with the whole question of imported goods as well as those of local manufacture. It would certainly be hardly fair to subject cigar makers to conditions different from those under which other local producers are allowed to work. The whole question of labels and trade marks ought to engage the early attention of Parliament, because the present want of regulation is a prolific source of fraud upon the public. But I am impressed with the argument that we have no justification for singling out any particular industry, and I will, therefore, let the matter go for the present.
Mr TUDOR
- I am pleased that the Minister has agreed to the amendment. When I spoke last night I was anxious to see that no injustice was done to our local manufacturers. I believe that the question of trade marks and labels should be dealt with by this Parliament at an early date, in order to protect fair-deal king manufacturers against those who are using trade marks which they know to be false. I hope that the Senate's amendment will be agreed to.
Amendment agreed to.
Mr KINGSTON
- As it would be almost consequential that we should reconsider our disagreement with the similar amendment made by the Sens te in clause 65, I ask that that clause may be reconsidered with a view to our agreeing with it.
Senate's amendment reconsidered and agreed to.
Remaining amendments agreed to.
Reported that the committee had amended the proposed new clause to follow clause 23, and had agreed to the" remaining amendments of the Senate.
Report adopted.
PROPERTY ACQUISITION BILL
In Committee(consideration resumed from 3rd October, vide page 5607) :
<page>5643</page>
Sir WILLIAM LYNE
- I move -
That the following new clause be inserted to follow clause 16 : - .
Where the valuation of the land, or of the estate or interest of the claimant therein, together with the valuation of the damage, if any, in respect of which a claim is made, does not exceed
Two hundred and fifty pounds, the compensation shall, if the claimant so desires, he settled by arbitration. Unless the claimant and the Minister concur in the appointment of a single arbitrator, who shall be either a District or County Court Judge, or a Police, Stipendiary, or Special Magistrate, the compensation shall be

settled by two arbitrators, one to be appointed by the claimant and one by the Minister.
For the purpose of carrying this section into effect, the laws relating to arbitration in force in the State in which the land is situated shall be applied as nearly as practicable.
The costs of and incident to the arbitration as settled by the arbitrators shall be borne by the Minister, unless the sum awarded by the arbitrators is the same or a less sum than was offered by the Minister, in which case each party shall bear his own costs incidental to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions ; but if the sum awarded is one-third less than the amount claimed, the whole costs of and incidental to the arbitration and award shall be borne by the claimant.
This clause has been introduced to meet as far as possible the views expressed by certain honorable members when the measure was under consideration the night before last. The honorable member for Gippsland and the honorable member for Flinders upon that occasion raised the question of whether some power ought not to . be provided for the appointment of arbitrators before any case in which a dispute was involved concerning land which the Commonwealth had compulsorily resumed came before a Judge of the High Court. It was suggested at that time that there should be a limit placed upon the value of land which might form the subject of arbitration, and the new clause fixes that limit at £250.
Mr A McLEAN
- I hope that the Minister for Home Affairs will see his way clear to strike out this limit. When we talked about a limit the other evening it was not in connexion with the question of arbitration, but in connexion with the question of whether a property of small value - if its value was to be settled by a court at all - should be determined by the High Court, where the expense involved would necessarily be out of all proportion to its value, or should be settled by a lower tribunal such as the Police Court or the Count}' Court. "With regard to the principle of arbitration no limit should be imposed. Our contention was, that the claimant whose property was taken from him compulsorily should have the option either of taking his case to the court, or of referring it to arbitration. That, I think, is a fair principle to lay down. This question is a very serious one. In my opinion it is utterly impossible for a Judge who has never seen the particular land in dispute, and who cannot reasonably be expected to know its worth, to accurately appraise its value. In such a case any number of people could be secured to swear that in their opinion the land was worth so much. But the opinion of one practical conscientious man would be worth the testimony of a gross of such witnesses. It is not necessary that an arbitrator should be a professional valuer. Probably the claimant might know some person in the neighbourhood who was qualified to act, and whose decision he would be prepared to abide bj'. Very often a person is picked as an arbitrator, because he is a thorough judge of the matter in dispute. Probably he would give his services for nothing, as is frequently done in such cases. On the other hand, the Government would appoint their expert, and I am sure that if two men were secured who were thorough judges of laud, and they visited the property in dispute, and assessed its value carefully, there would not be much difference in their respective estimates. If they were both judges of the value of land their estimates would almost certainly be within a very narrow margin of each other.
Mr HigginS
- That is a great mistake. I have seen experts of the highest character differing tremendously.
<page>5644</page>
Mr A McLEAN
- I may tell my honorable and learned friend that I have had a great deal to do with the subdivision of large estates, and with putting a value upon each block, and I have rarely been more than a few shillings out in the price per acre. Possibly, in the case of land worth £25 an acre, I might be £1 an acre out. But I have always found that any expert in valuing land, who is acquainted with the district in which the land is situated, is rarely out more than a very small sum. I admit that in city or town properties the case is different, because one cannot then estimate the value of the land upon its income-earning capacity - as is the case with country land - and what it will bring is therefore a matter of opinion. But in country districts it is very easy for an expert in valuing land to know what he can make of the land, and, of course, the true value is the capitalization of its income. All values based upon the income-earning capacity of the land, if accurately assessed, are sure to be close to its true worth. It would be folly to bring such cases before a 0 'udge who has never seen the land in dispute, and who cannot reasonably be expected to pronounce an expert's opinion upon the value of such property, because he has not devoted his life to the business. In

Victoria, I am aware that there are one or two County Court J Judges who are experts in the value of land, and to whom I should \>e perfectly prepared to trust the valuation of any property of mine. But to trust to a Judge who was compelled to be guided solely by the evidence which comes before him would be a mistake. Why not give the parties interested the option of having their disputes settled either by arbitration or by the court? When the Commonwealth, for public purposes, takes away from a man the piece of land by which he lives, thereby depriving him of his means of livelihood, surely it is reasonable to allow him to have the value of that land assessed in the way in which he believes to be best. If he is willing to allow the matter to go to the Court by all means let it go there. But if he distrusts - as I would - the valuation likely to be placed upon his land by the court, why not allow him to have the matter decided by experts 1 I thoroughly approve of the manner in which the Minister has d if ted the Bill. Where two parties are content to agree to one arbitrator, I think that the arbitrator ought to be either a County Court Judge or a Police Magistrate, because it is possible to select men in that capacity who are experts, and who would be willing to visit the land in dispute. But I should not like to see the value of the property of any person left to the decision of a Judge who had never seen it, and who was guided by the irresponsible statements of persons who were prepared to say that in their opinion it was worth so much. I hope that the Minister will see his way clear to give the person whose land is compulsorily resumed, the option of having its value assessed by arbitration, or by a Supreme Court Judge. That is a fair and reasonable thing to do. 1 hope that the Government will be prepared to concede this principle to the citizens of the Commonwealth, and thus avoid litigation. We do not live by litigation. I have never heard of a nation that was made prosperous by litigation. Why then should we force it upon people in every possible direction ? I am perfectly sure that the Minister for Trade and Customs in his inner mind agrees with what I say. I am certain that he does not allow his professional views to bias his judgment. Many of ray best friends belong to the legal profession. But if the Minister wanted a wet-nurse he would not send for a Judge. There are many things which require to be done, and which a Judge is not the best person to do. There are some Judges, I admit, who arc exceptions. For example, there is Judge Chomley. I should be perfectly prepared to allow that gentleman to assess the value of any land of mine. This is a very important matter, because when we take away a man's property which perhaps forms his sole means of living, it is very hard to create heart-burning by compelling him to go to a tribunal in which he has no confidence. I hope that the Minister will reconsider this matter, and strike out the limit imposed. He admits that that principle is right in the case of small properties, and if so, surely it is also right in regard to large properties. The question which the committee have to decide is - "Which is the way in which we are most likely to get an accurate value of the land V 1 say that we ought to leave it to the judgment of the applicant himself. Let us give him the option of having any dispute which may arise settled either by arbitration or by the court. If there is any Government which should be careful not to err in the direction indicated, it is the present Government, which is composed chiefly of lawyers. If every Bill which we pass is calculated to provoke litigation, public attention will soon be directed to the fact. If the Government wish to do what is fair and just to every citizen of the community, let them give some evidence of it by showing that they do not wish to force people into the law courts whether they desire to go there or not.

Mr. HIGGINS(Northern Melbourne).I have to express my sympathy with the honorable member in his views. But I wish to point out that he is mistaken as to the effect of this clause. The Crown and the person whose land is resumed may agree upon arbitration, if they think fit. If the Crown resumes certain land, and cannot agree with the owner as to its value, the parties need not go to law. It is quite open to them to allow some person whose judgment is mutually acceptable to decide its value. People are sure to do that in small cases. It is perfectly competent for a claimant to say - "I will take the decision of so and so." But the whole meaning of this clause is to give to the claimant the right to go to arbitration against the wish of the Crown. The question for the committee to determine is whether it is advisable to enable the claimant to force the Crown to arbitration. I think that the dread of arbitration, and ignorance as to how long proceedings will occupy, are enough to make a Government hesitate, because we all recognise that the Government usually come out worst. . I agree with the honorable member for Gippsland as to the inexpediency of going to law if we can possibly help it, but people can always arrange amongst themselves as to whose opinion they will accept in order to arrive at an agreement. It is open to them to say - " We will take the opinion of so and so." In nine cases out of ten it will be found that the claimant is willing to accept some person's opinion. If the land in dispute is a small piece, he will be sure to adopt that

course. The question raised under the first subclause is, whether the Crown ought to be forced to go to arbitration if an agreement cannot be come to with the person from whom the land is taken. It happens sometimes that a claim for £1,000 is made for land which is really worth only £50, and there ought to be first an attempt to arrive at an agreement by leaving the matter to some impartial person. I do not want the Crown to be forced to go to arbitration in those unreasonable cases, because no one can tell how long an arbitration will last, and, while Judges are paid by the State, the parties have to pay the arbitrators.

Mr A McLEAN

- Not always.

Mr HIGGINS

- Ordinarily the parties have to pay the arbitrators. I have known cases, in which the arbitrators have been weak or unskilled, spun out for weeks over the question of. a small piece of land. The Crown, knowing that, submits to be fleeced rather than go to arbitration. I am speaking from a good deal of experience, and if it is thought that it is in the least in my interest to refer thus to settlement by arbitration, I shall say no more. I want people to get a fair price for their land, but I do not desire to see the Crown fleeced simply because it is possible to force the Crown into a corner. The proposal of the Minister goes too far in forcing arbitration.

Mr A McLEAN

- Going to -law is the living of lawyers

Mr HIGGINS

- The honorable member, in talking in that way, is doing an injustice to me, and to all the lawyers in the House. Outside the House he may use such arguments as much as he likes, but in the House I think it is recognised that lawyers are quite as anxious as is the honorable member himself to do what is just.

Mr A McLEAN

- I know that; but lawyers are accustomed to litigation, and advocate it as a means of settlement.

Mr HIGGINS

- I have intimated that I am anxious to help the honorable member for Gippsland to get optional arbitration, because there are cases in which that is the better course. The best way, in disputes of this kind, is to choose a fair man, by whose opinion the parties will be bound. If an agreement cannot be arrived at, there is still the option of appointing arbitrators ; and if, even then, there is not an agreement, there are cases in which it would be best to have the assistance of a skilled Judge. It is only in cases where experts differ that the assistance of the court will be called in - cases where experts on oath differ widely as to values. I have known experts say, on the one side, that land is worth £500, and experts on the other side say that it is worth only £50 ; and it is only in cases where there are such egregious differences that it is advisable to call in the assistance of the court. The only value of expert evidence in regard to land is where the witnesses or some of them cannot be believed, and the advantage of having the assistance of a Judge is that from long experience of witnesses he is able to differentiate between evidence that is of use and evidence that is of no use, and to come to a conclusion. No doubt the best mode is for the assessors to look at the land for themselves ; but the honorable member for Gippsland must have known cases in which the arbitrators were in . Melbourne or some other town where expert evidence is called from the whole countryside at a huge expense.

Mr Deakin

- And every expert contradicts the other.

<page>5646</page>

Mr A McLEAN

- That is so in town cases ; but it does not apply to country cases.

Mr HIGGINS

- I am speaking of country cases. The ideal way of assessing the value is to leave the matter to some men who are experts, and be bound by their decision ; but arbitration is not necessarily leaving the matter to experts in that way. Arbitration very often means calling a long list of witnesses, and then estimating the value of their evidence. If the Crown has to be forced to arbitration, it is reasonable to have the limit of £250. I would not, however, go so far as the Minister has gone, but would say that after the writ is issued, or after a claim is made, a Judge may have discretion to select assessors whose decision should bind the

parties, and those assessors may go and look at the land, or do whatever they think fit.
Sir WILLIAM MCMILLAN
- We all know that there are processes in law which are very long and harassing. We know the terror which a court, and the delays of a court, possess for some people. At the same time, as the honorable and learned member for Northern Melbourne has pointed out, arbitration is very often a much longer process than proceedings in the court, though it must be remembered that the arbitration suggested in the clause is not on a very complicated question. It is a matter of arriving at the value up to £250, and the arbitration, ought to be confined to matters of this kind. I have known cases in the resumption of land where small people have been practically ruined by the delays of the con rt.
Mr A McLEAN
- Why fix the limit at £250 I The matter is more serious in big cases.
Sir WILLIAM MCMILLAN
- It may be more serious in big cases, but a man in such cases is supposed to have something behind him and to be able to stand delay a little better than a small man. The owner of laud of small value may not be able to come to terms with the Minister - we know that Ministers are very arbitrary in some cases - and it would be a good thing to allow arbitration, which ought not to last more than a day : the moment the arbitration is completed the claimant ought to be able to get his money. Although not perhaps quite relevant to the question under discussion, I may express the hope that in the resumption of land by the Commonwealth prompt payment will be made.
Sir William Lyne
- Payment must be within a month, or interest paid.
Mr A McLEAN
- It would be a good thing to limit the fee to be paid to the arbitrator.
Sir WILLIAM McMILLAN
- The fee always depends on the character of the case and the amount involved ; and in a matter of only £250 a very big fee cannot bc allowed. It would be better to adopt the clause as it stands, because it gives a right and meets the sentiment of some people, who are absolute!}' in terror of going to the High Court, owing to the expense, which may be very great indeed.
<page>5647</page>
Mr A C GROOM
- There should be no limit to the amount. As to the cost of arbitration, and the statement that the amount is generally given against the Government, I would like to quote from this morning's Age the results of six or seven cases in connexion with the Lilydale and Warburton railway line. In one case, Messrs. C. W. and H. H. McLean claimed £364 lis., while the trust offered £95 16s. 3d., and the amount awarded by the arbitrators, for whom Judge Chomley was the umpire, was £50, or £40 less than the amount offered ; Messrs. J. C. and T. C. Wildman claimed £2,500, while the Government in the face of the enormous amount claimed, declined to make an offer, and the arbitrators awarded £50 ; Messrs. M. A. and E. A. Vernon claimed £387 10s., while the trust offered £50, and the arbitrators awarded £90 ; F. A. Sargent claimed £665, while the trust offered £1 16s., and the arbitrators awarded £50 ; J. R. Meikle asked for £600, while the trust offered, and the arbitrators warded, £75 ; Mr. W. J. Barnes claimed £463, while the trust offered, and the arbitrators awarded, £75 ; Mr. E. A. Janson claimed £3,000, while the trust offered £241 7s., and the arbitrators awarded £260. The total amount of the claims against the trust was £8,.994 18s. 6d., while the trust offered £538 19s. 3d., and the arbitrators awarded £682. These cases clearly show that, by going to arbitration, the Government benefited in every way, and the costs were much smaller than if there had been process at law. There could not be better evidence in favour of arbitration, as in the interests not only of the Government, but of the public generally. We desire to limit the cost, but there ought to be no limit at all of the amount in regard to which a person shall have the right of election between arbitration and the courts. In ordinary cases, tried every day, a person has the right to say whether he will have the cause tried by a judge or by a jury, and in this case we merely ask that he shall have' the right to say whether the question shall be tried by a court or by arbitration.
Mr GLYNN
- I see a few- difficulties in the application of the clause to which I will direct the attention of the Minister. This is a valuation not of land only, but also of the estate or interest of the claimant therein. In some cases

it may be merely the valuation of land, where there is only one person interested and only one person claiming ; but the scheme of the Bill also recognises separate interests in land, if they exist, so that there may be a claim by a life tenant or a tenant in remainder. That is clearly set forth in sub-clause (3) of clause 12; in fact, it is recognised in the first line of the new clause by the distinction between the "valuation of the land, or of the estate, or interest of the claimant therein." That appears in the new clause, in clause 1 2, and in several subsequent clauses. Is it safe to hand over to the special magistrate the valuation not of the land, but of the life interest, or interest in remainder ? The latter is an interest, not of the person at present in possession, but an interest of a person who is to come into possession at the extinction of the life interest.

Sir William McMillan

- Can the magistrate not get evidence on the subject?

Mr GLYNN

- It is a matter for actuarial calculation.

Sir William McMillan

- The magistrate can get that actuarial calculation.

Mr GLYNN

- If honorable members think the provision is safe, well and good ; but in relation to succession, it is difficult to ascertain what is the value of each interest when succession duty has to be paid. That is a matter of actuarial calculation.

Sir William McMillan

- Would an arbitrator not do exactly what a Judge would do, namely, get an actuarial calculation?

Mr GLYNN

- A Judge, of course, is a much bigger man than a magistrate.

Sir William McMillan

- But he could not get a better actuarial calculation.

Mr GLYNN

- He would have to call evidence.

Sir William Lyne

- It is a question whether a Judge is a much bigger man than a police magistrate in dealing with the value of land.

Mr GLYNN

- What I have pointed out shows the difficulty of the whole matter; and the difficulty will be ranch greater if we hand over the actuarial assessment, not to a Supreme Court Judge, but to special magistrates, whose jurisdiction in New South Wales is limited in many cases to £200. In South Australia these magistrates have a jurisdiction up to £495. At all events, I say that it is not safe, putting New South Wales aside, to leave this matter to special magistrates in some of the States, lt is not obligatory in some States to have lawyers as District Court J Judges.

Sir William Lyne

- Does the honorable and learned member say that in some of the States laymen are made District Court Judges 1

<page>5648</page>

Mr GLYNN

- That is so in South Australia, where the District Court Judge is sometimes a lawyer and sometimes a layman, and has jurisdiction up to £495. The question whether it is advisable to hand over to a special magistrate, who is a layman, and who may live perhaps 250 miles from Adelaide, the calculation of the value of interests in land which it would require an actuary to explain to the bench, is one which ought to receive a little consideration. In sub-clause (4) there is a provision as to costs, to the effect that they shall be borne by the Minister if the sum awarded is the same or a less sum than was offered by the Minister, in which case each party shall bear his own costs. I think that where the amount awarded is the same as was offered by the Minister, each party should bear his own costs, but where the amount is less, but not less by one-third than the amount claimed, it should be left to the discretion of the Court to award costs. Supposing for instance there is a claim for £9,000, and the Minister offers £8,000, and the award is given at £7,500. That would not be less by one-third than the total amount claimed. That is a case in which the

Judge ought to have the right to say whether one party ought to bear the whole of the costs. A provision of this sort, leaving it to the discretion of the Court to award costs, would prevent a good many bogus claims from being presented.

Mr PIESSE

- I think that the experience of the honorable member for Gippsland, with regard to arbitration, has been of a very favorable character, because most people have not found it a cheap and satisfactory method of settling disputes. Therefore I am not inclined to extend the power of resorting to arbitration in the way that he has urged. I wish to direct attention to the wording of sub-clause (2), which states that when the claimant and the Minister concur in the appointment of a single arbitrator, the compensation shall be settled by two arbitrators, one to be appointed by the claimant and one by the Minister. In most laws relating to arbitration, it is provided that the compensation shall be settled by two arbitrators, or by an umpire appointed by only two out of three arbitrators ; and therefore I think that it should be provided that, unless the claimant and the Minister concur in the appointment of a single arbitrator, reference shall be made to two arbitrators. I think that will bring the wording into accord with the form in which similar provisions exist in the State laws, and that it will probably obviate difficulty when these matters have to be dealt with. I move -

That the words "the compensation shall be settled by two arbitrators," in sub-clause (2), be omitted, with a view to insert in lieu thereof the words, " reference shall be marie to two arbitrators"

Mr. A.McLEAN (Gippsland). - I quite agree with the honorable member for Tasmania, and I think there must have been an oversight in the wording of this clause.

Mr.Deakin. - The intention was the same, but the proposal of the honorable member for Tasmania more clearly expresses it.

<page>5649</page>

Mr A McLEAN

- I may explain, that when I stated that two persons who were judges of land would very rarely differ to any material extent regarding values, my statement did not apply to the damage clone by severance. That is very difficult to assess, and in some cases there may be a very considerable discrepancy in the views of two persons. lt is here that the greatest discrepancy appears between the amounts offered, and the amounts asked.It is quite possible that the owner of the land may think that the damage done by severance is a great deal more than it is considered to be by the person who takes the land ; in fact, according to my experience, there is just as much disposition on the part of persons taking land, to underestimate the damage done by severance, as there is on the part of those who suffer the damage to over-estimate it ; and I contend that it is only by submitting the matter to independent judges that these questions can be decided. I know of a case where a property was square in shape, and cut up into a large number of small paddocks, in order that it might be worked to the very best advantage. A railway was constructed through this property, coming in at one corner, running diagonally through the property, and going out at another corner. In that case, the damage done by severance was very great; because the shape of every paddock was changed, and it was a very difficult matter to plough the land without leaving a great deal of it lying waste, and going to great expense for extra labour. In that case the amount offered by the Railway Commissioners was considerably less than one-half the amount asked by the owners, and the question - although an intricate and difficult one - was settled in one day by arbitrators, without any expense at all to the owners, and only the expenses of one arbitrator for one day so far as the Railway Commissioners were concerned. I have seen many cases where, in connexion with the railways, the Railway Commissioners and the owners of the land could not agree, and the matter was left to arbitration. Every one of the cases that have come under my notice was, with one exception, settled without reference to an umpire. The umpire accompanied the arbitrators over the land, and discussed the question of damages with each of them, and thoroughly acquainted himself with the circumstances, but there was no necessity for reference to him, except in one case. In most of these instances some experienced farmer in the locality would act for the owner of the land, and probably without any fee. ] admit that where land is taken in a city, the circumstances are different, because it is very difficult to arrive at the true value in such a case. There it is just a matter of opinion, guided by considerations as to the revenue-producing character of the property. Even there, however, it is better to get two men who have devoted their lives to the property business, or who have passed the greater portion of their lives in the

particular locality, to act as judges or arbitrators. I move -
That nil the words down to and inclusive of the word "pounds," sub-clause (1), be omitted.
The effect of that will be to remove the limit that is now imposed, and to give the claimant the option of having his case dealt with by arbitration.
Sir William McMillan
- Why .not raise the limit?
Mr A McLEAN
- Because a question of justice cannot be circumscribed by an arbitrary limit. If the mode of settlement were better - if I believed the courts to afford a better mode of settlement - I should be inclined to keep the limit very low. But the experience of a life-time in matters connected with the land has shown me that reference to the courts is a very faulty method of settling disputes. I believe it is unfair to the man whose property is taken from him, and I am sorry that there should have been any opposition to giving him the option of having his case settled before arbitrators. The honorable member for Flinders has cited a large number of cases which have been settled during the last three weeks, and in which the decision of the arbitrators has been invariably given in favour of the Government.
Mr Kingston
- As a rule, whatever form the arbitration may take, the Government pays 30s. for £1.
Mr A McLEAN
- I do not think that is so. In one case, which came within my knowledge, I thought that the award of between £40 and £50 per acre for some land was excessive, because I knew its intrinsic worth to be only about £4 or £5 per acre, but when I saw the way in which it was cut up, and the way in which the paddocks were cut off from the water, I came to the conclusion that the compensation given was not too much. By considering only the intrinsic value of the soil, people are often misled to the conclusion that the compensation awarded is excessive, forgetting the damage that often results from severance. In many cases persons from whom land is taken would infinitely prefer that the land should be left alone. My own district is a very fertile one, and when the Government proposed to run a railway through the heart of it, a petition was unanimously signed by the farmers in the district asking that the line might be taken down the opposite side of the river, in order to avoid the cutting up of their farms. They knew that they would have received compensation, but they thought they would be better off with the land intact. The Government acceded to their request, and the farmers have now to cart their grain for distances of from 1 to 3 miles, because they preferred not to have their farms cut up. I saw a case the other day on the very line that has been mentioned, where the damage done was almost inconceivable, because the railway ran along the high-water mark, and cut off the high land from the low land. The intrinsic value of the land in that case was a mere bagatelle, but the damage done by severance was very great indeed. I do not often move amendments, because I always prefer to accept the proposals of the Government, unless I have very strong reasons to the contrary ; but I wish the Government would show some disposition to meet proposals made by honorable members, when they know that they are brought forward in the best interests of their Bills and of the public.
Sir WILLIAM LYNE
- The honorable member has no doubt put forward a very strong and fair case, but the arguments used by the honorable and learned member for Northern Melbourne raise the question as to whether this new clause is required at all. As Minister in control of the Works department of New South Wales, perhaps I have had as great an experience as any one in dealing with land resumptions, and I invariably agreed to arbitration unless there was something difficult and knotty about the case, or unless the amount involved was very large. Sometimes as much as £50,000 was involved in one resumption.
Mr A McLEAN
- It is in such cases that care has to be exercised to get a sound decision.
Sir WILLIAM LYNE
- The honorable member must not forget that he proposes to take away a very considerable right from the Crown.
Mr A McLEAN
- I propose to provide for the usual way of settling these matters. It is quite an innovation to compel people to go to a court.

<page>5650</page>
Sir WILLIAM LYNE
- I think the honorable member will find in most of our j State laws there was a discretionary power t reposed in the Minister with reference to | submitting matters to arbitration.
Mr.A. McLean. - Does not the New South Wales law make provision for arbitration?
Sir WILLIAM LYNE
- It does ; but it does not compel the Government to resort to arbitration. The honorable and learned member for Northern Melbourne has pointed out that if this clause were not inserted, there would still be power to resort to arbitration.
Mr A McLEAN
- The only provision in the Bill is for settlements before the law courts, and we wish people to have the option of going to arbitration.
Sir WILLIAM LYNE
- I think the honorable member will find that if this clause is not passed, the power to refer to arbitration will still exist.
Mr A McLEAN
- Then this clause will do no harm.
Sir WILLIAM LYNE
- Only in so far as it will compel the Government to go to arbitration.
Mr A McLEAN
- But it is proposed to give the option to the people who are principally concerned - whose living may be affected by the action of the Commonwealth.
Sir WILLIAM LYNE
- But surely the taxpayers of the Commonwealth are concerned and have a right to be studied? And it is not fair that the Government should be compelled to resort to arbitration.
Mr A McLEAN
- Why should the option remain with the Minister ? Surely the people have some rights, and yet those rights are ignored.
Sir WILLIAM LYNE
- But the Minister has some rights also. The aspect placed upon this matter by the honorable and learned member for Northern Melbourne has, I confess, somewhat changed my opinion. As I am not a lawyer, I did not know the exact legal position. If the honorable and learned member is correct, I do not think there is any necessity to pass this clause at all. But whether we pass it with a £250limit or with £ 1 , 000 limit - and I am quite agreeable to adopt the latter course - claimants can compel the Government to go to arbitration first.
Mr A McLEAN
- Will the Minister agree that up to the limit of £1,000 the claimant should have the option ?
Sir WILLIAM LYNE
- Yes. But I wish to point out that unless in the future the Commonwealth has something to do with railway construction, it is hardly likely that any resumptions of land by the Commonwealth will exceed £1,000 in value. I suggest, therefore, that the wishes of the honorable member for Gippsland will be met if we increase the limit to that amount. Beyond that, if the parties agree, they can go to arbitration as a matter of course. I, therefore, move -
That the words "two hundred and fifty," line 5, be omitted, with a view to insert in lieu thereof the words *' one thousand."
Mr KING O'MALLEY
- I wish to put a supposititious case. Let us assume that an amount of £50,000 is involved. Will the owner of the property, the value of which is in dispute, have the same right to arbitration as the man whose land is valued only at £1,000 ?
Sir William Lyne
- He would have the power, with the concurrence of the Government, but not the right.
Mr O'MALLEY
- It is just possible that he might not wish to go to law, because he might feel that it would be better for the

Government to confiscate his property than to allow the lawyers to absorb the whole of it in costs. I have known of cases in America in which litigants have had to pay money to the lawyers after the latter had swallowed up the whole of their estates in legal expenses. The position in Australia is very little different. If one gets the real screecher - the big eagle lawyer of this country - he can chew-up as much costs as can any lawyer in America. Are we going to protect the big man? I am the champion of the rich man upon this occasion. We must retain the rich man in order to pay the taxes to keep the Government going. I ask the Minister whether, in case of a dispute arising, the big man will under this provision have the right to go to arbitration equally with the man whose property is valued at under £1,000?
Mr Deakin
- The man whose property is worth less than £1,000 can force the Government to arbitration whether they like it or not.
Mr O'MALLEY
- Perhaps we ought not to interfere with the lawyers on this question.
Amendment agreed to.
<page>5651</page>
Sir WILLIAM LYNE
- I move-
That the word "compensation" line 5, para graph 1, be omitted with a view to insert in lieu thereof the word "reference;" also that the words "settled by" be omitted with a view to insert in lieu thereof the words " made to."
Mr, A.McLEAN (Gippsland).- Will this Minister have another look at the Bill and satisfy himself that if the amount involved is above £1,000 and both parties are agreed, they can refer the matter in the first instance to arbitration?
Sir WILLIAM LYNE
- The clause will be printed, and it will be ten days or a fortnight before it is finally dealt with. Before that time expires I will consult the Attorney-General on the matter, and if the clause is not absolutely clear, I will recommit the Bill and insert what I have promised the honorable member.
Mr POYNTON
- I wish to point out that clause 16, when read in conjunction with this amendment, makes it compulsory, where amounts over £1,000 are involved, that the parties to the dispute shall go to the High Court. I think that the provision in question will have to be altered.
Sir William Lyne
- But clause 16 is a postponed clause.
Amendment agreed to.
Clause, as amended, agreed to.
Progress reported.
DISTILLATION BILL
Mr. SPEAKERreported the receipt of a message from the Senate informing the House that the Senate insisted upon amendments Nos. 8, 19, and 20 of the Distillation Bill with which the House of Representatives had disagreed.
Resolved(on motion by Mr. Kingston) -
That the message of the Senate be considered forthwith.
In Committee :
Clause 58 -
No Australian wine shall be fortified under this
Act so as to contain more than 35 per centum of proof Spirit. Penalty : £20.
Motion proposed -
That the committee agree to the amendment of the Senate, inserting after the word " spirit," the words " of a strength of at least 30 degrees above proof.1'
Mr KINGSTON
- This is our old friend the 30 per cent. business, which it is proposed to add as the qualification of wine spirit. We fought this matter out pretty well I think, and the time has now arrived when we must reach finality. Expedition is requisite and I do not propose, therefore, to further resist the amendment.

Amendment agreed to.
Regulation 59 -
Every case must have branded or painted thereon the name of the distiller, or the name of the distillery, and the place where the spirits were distilled, and any number or letter which the collector shall direct, and, if so prescribed, the materials of which the spirits have been made.
Motion proposed -
That the committee agree with the amendment of the Senate in the third schedule, regulation No. 59, omitting after the word "direct," the remainder of the regulation.
Mr KINGSTON
- This amendment has reference to specifying the materials of which the liquors are composed. The Government originally resisted this requirement. It was, however, carried by the committee, though it was afterwards modified by a declaration that it was not to come into force unless so prescribed. The Senate has decided to strike out the whole of that provision, leaving the matter to be dealt with by a more general Act. Though I should have preferred to see the clause retained in its original form, I do not think there is sufficient ground for further delaying the passage of the Bill, which it is highly necessary should not be impeded.
Sir JOHN QUICK
- This is a matter of considerable importance, and a number of honorable members who took an active interest in it are now absent. think it would be a mistake to allow the Bill to go through at the present moment. Yesterday we insisted upon the regulation being retained in the form in which it left this House, and now the Minister proposes to give away what was decided upon after long and exhaustive debate. It seems to me that we are caving in to the Senate on most important amendments.
Mr KINGSTON
- As to the point upon which this House has given way, I merely desire to mention that the honorable and learned member was very distinctly in favour of the course which we now propose to assent to. We insisted upon our position last night, but finality must be reached, and today.
Amendment agreed to.
Amendment No. 20 agreed to.
Reported that the committee had agreed to the amendments of the Senate.
Report adopted.
EXCISE ON BEER BILL
<page>5652</page>
Mr. SPEAKERreported the receipt of a message from the Senate informing the
House that the Senate insisted upon amendment No. 15, to which the House of Representatives had disagreed.
Resolved(on motion by Mr. Kingston) -
That the message be considered forthwith.
In Committee :
Clause 46 (Access to brewery and books).
Motion proposed -
That the committee agree to the amendment of the Senate, omitting the words "and the making of beer."
Mr KINGSTON
- This is a provision as to the powers of officers with reference to the inspection of what is going on in a brewery. The Senate objected to the insertion of the words "the making of beer." Last night we insisted upon their retention. The disagreement continues, and though I should have preferred to have the clause in the form we proposed, I do not think that the matter is of sufficient importance to justify the delay of the measure under the special circumstances which exist.
Amendment agreed to.
Reported that the committee had agreed to the amendment insisted upon by the Senate.
Report adopted.
PROPERTY ACQUISITION BILL
In Committee:
Sir WILLIAM LYNE

- I move-
That the following new clause be inserted to follow clause 58 : - "Until the establishment of the High Court, all proceedings authorized by this Act to be taken in the High Court may be taken in the Supreme Court of a State, and all powers vested by this Act in the High Court or a Justice thereof shall be deemed to be vested in the Supreme Courts of the several States and the Judges thereof, and references in this Act to the High Court or a Justice or officer thereof shall be deemed to be references to such Supreme Courts and the Judges and officers thereof."
This clause has been drafted to meet the case suggested by the honorable and learned member for Northern Melbourne, who desired that the State Courts should have the power to deal with cases until the establishment of the High Court.
Mr GLYNN
- I wish that the Minister would again consider the question of whether we should not allow the Supreme Court of a State to have jurisdiction even after the High Court is established. To destroy the jurisdiction of the Supreme Court of a State in matters of valuation is a very big matter. In some of the States there are six Judges on the bench, and in all of them there is a minimum of three. Apparently the Minister thinks that the Supreme Court Judges of the States will be so biased in favour of a claimant that he will not allow them to have jurisdiction in determining valuations under this Bill. I should have divided the House upon this matter the other night, if I had thought there was a sufficient number of honorable members present to carry an amendment but unfortunately they were not here. I now venture, even at this late stage, to protest against the attempt, on the creation of the High Court, to deny to the State courts jurisdiction which legitimately ought to belong to them, and which they are quite as capable of honestly discharging as any High Court we like to establish. I do not want to impugn the High Court of the Commonwealth when it is established, for I have no doubt that tip-top men will be appointed to the bench. At the same time, we have quite as honest material in the Supreme Courts of the States, ill connexion with which there is as little fear of prejudice in favour of individuals as we are likely to have in the High Court. I cannot see on what grounds the Minister seeks to take away from the State courts matters which ought to be decided locally. A sum of only £2,000 may be involved, and yet the case has to be shifted to some place in the centre of New South Wales for adjudication.
Sir William McMillan
- Can this question not be dealt with when the Judiciary Bill is before us ?
Mr GLYNN
- I prefer to deal with these matters as we go along ; if we allow this to be done now the chances are the same course will be subsequently followed. There seems to be an attempt, whether deliberately or not I do not say, to centre all jurisdiction in the High Court, and apparently to create a statutory necessity which otherwise would not exist for its establishment. In order to settle the matter I move -
That the words " until the establishment of the, High Court," be omitted.
Sir WILLIAM LYNE
- I am surprised at the honorable and learned member taking this step at this stage, because we discussed the matter, and a division was taken the other night.
<page>5653</page>
Mr Glynn
- No ; there was not.
Sir WILLIAM LYNE
- At any rate there was an agreement, and, as an amendment has been inserted in a previous clause to the same effect, we ought to deal with the question exactly in the same way in the clause under discussion. I make the proposal only with a view of preventing the alteration of a large number of clauses, and I regard it as merely a consequential alteration. I would rather drop the clause than accept the amendment proposed.
Sir William McMillan
- The Minister will recommit' the Bill 1
Sir WILLIAM LYNE
- Certainly. The honorable and learned member for South Australia, Mr. Glynn, seems to forget that the High Court should be the. High Court of Australia actually as well as in name. I do not for a moment

desire to say one word against the Judges of the State Courts. I know and highly respect nearly all the Judges, but in a matter of principle like this, it is proper to have a High Court to deal with cases, which concern the whole of Australia. When land is resumed in one particular State, the whole of Australia has to pay for it, and the proposal of the honorable and learned member is to place in the hands of the State Court that which will affect the whole Commonwealth.
Mr Glynn
- -Why should we not ?
Sir WILLIAM LYNE
- Because I regard that as an absurd position.
Mr Glynn
- The State is affected the other way.
Sir WILLIAM LYNE
- The State is not affected any more, indeed, not so much, as the whole of Australia. The amendment will give one State the power to say, over the head of the High Court, how matters shall be dealt with which affect the pockets of every taxpayer in the Commonwealth. I shall strenuously oppose the amendment ; in fact, I think it is a matter so serious and of such importance that I shall drop the clause rather than accept the proposal. The honorable and learned member may, if lie desires, bring the matter up on recommittal.
Mr Glynn
- I am quite willing, if the Minister will allow the question to be tested in a full -House.
Sir WILLIAM LYNE
- I do not promise that I will recommit the Bill ; but the honorable and learned member will have an opportunity to submit his proposal on a motion to recommit.
Mr E SOLOMON
- The contention of the honorable and learned member for South Australia, Mr. Glynn, is a very fair one, as will be seen when we consider, for instance, the isolated position of Western Australia.
Sir William Lyne
- I think the honorable member for Fremantle was told, when he previously referred to this point the other night, that in the Bill which will be passed before the High Court is established, there will be a special provision in regard to Western Australia.
Mr E SOLOMON
- All I want is that isolated places such as Western Australia shall be protected. '
Mr. GLYNN(South Australia).- As I do not wish a catch vote to be taken, I ask leave to withdraw my amendment for the present.
Amendment, by leave, withdrawn.
Clause agreed to.
Postponed clause 16 (Costs).
Minister for Home Affairs
Mr LYNE
- A very stong argument was used by the honorable and learned member for Parkes the other night in reference to the payment of costs. "That honorable and learned member quoted some of the State Acts, which provide that unless a verdict is obtained amounting to five sixths of the claim, the costs are to be paid by the claimant. There is no such provision in this Bill, and I move -
That the following new sub-clause be inserted after sub-clause 1: - " If the judgment or award is for a sum one-third less than the amount of the valuation, the claimant shall pay the costs of the action."
This amendment will carry out an object which had escaped my notice, and will afford protection to the taxpayer. I have had experience of cases where 'the claim has been for ten times the amount of the subsequent verdict, the object of such claims being to get something to which the claimant is not entitled.
Amendment agreed to.
Progress reported.
INTER-STATE COMMISSION BILL
Second Reading
<page>5654</page>
Debate resumed from 17th July (vide page 2690), on motion by Sir William Lyne -

That this Bill be now read a second time. sir William Mcmillan (Went worth). - I should like to be allowed to say that it is scarcely fair to bring on the discussion' of this Bill at this stage. We have had a very hard week's work, and though I do not often propose any relaxation, but attend the House as well as most members, I think it would be well to adjourn now. This is one of the most important Bills that we shall have to consider, and it is not fair to ask honorable members, at the fag end of this week, to make second-reading speeches. Certainly I am not prepared to go on with the debate.
Mr Glynn
- To go on with the debate now .is not fair to the speakers.
Sir WILLIAM McMILLAN
- To resume the debate now is only forcing honorable members to speak who do not desire to do so. One cannot, on the second reading of a Bill of this kind, be prepared with notes when half-a-dozen other Bills have had to be gone through carefully in committee. There is only a very short time left at our disposal to-day, and as we have had a pretty heavy week, and everything has been done to facilitate business in regard to Bills requiring the closest possible attention, I think it unreasonable to press on this matter now. It would be a fair thing to adjourn for the day.
Sir WILLIAM LYNE
- (Hume - Minister for Home Affairs). - I am sorry I cannot agree with the honorable member for Wentworth. This Bill has been in abeyance for a very considerable time, owing to force of circumstances, and lam very anxious that the debate should be continued. Up to the present there has been only the introductory speech, and I know that one or two honorable members are prepared to speak this afternoon. There is no desire whatever to snatch a division on the second reading, and it would be hardly fair after the measure has been delayed so long, owing to so much other business, not to take the opportunity of proceeding with the debate.
Sir William McMillan
- That means that if nobody is willing to go on a division will not be forced.
Attorney-General
Mr DEAKIN
. - I might add that it is absolutely necessary we should not rise .now, because more business has to be received from another place, and will require attention. {House counted.')
Sir JOHN QUICK
- I rereceived only very short notice of the 16 s 2 intention of the Government to resume the second-reading debate On this very important Bill. But I have always taken a very great interest in the development of this branch of our Constitution, and I readily respond to the demand to resume the second reading debate. I presume that now we are on the eve and very threshold of freetrade between the various States of Australia, we may accept the determination of the Government to resume the second reading debate on this Bill as an evidence of a resolution on their part to leave no stone unturned, and to neglect no constitutional power available that may be necessary for the execution and maintenance of the principle of Inter-State free-trade. I must admit, however, that the best friends of this Bill will feel some degree of regret at the isolated and detached manner in which it has been advanced in this House. ' It was certainly worthy of more continuous discussion, involving, as it does, many complicated considerations, and many very serious arguments that may be advanced both one way and another. First we had the opening of the debate many months ago by the Minister in charge, who gave a very clear and comprehensive exposition of the measure. Then came a long interval which was broken by a speech delivered by the right honorable the leader of the Opposition; and since then there has been no discussion of the Bill whatever. In the meantime, the unfortunate measure has been pelted and assailed and misrepresented throughout Australia, and has even been misrepresented, I believe, to the Imperial authorities.
Sir William Lyne
- Hear, hear !
<page>5655</page>
Sir JOHN QUICK
- I do not remember any Bill in this Parliament that has received such unceremonious treatment, and, I may say, to a certain extent, unfair treatment on the part of many of its critics. A great deal of the

misrepresentation indulged in, and the unfair treatment which it has received, might have been prevented if the debate on the Bill had been permitted by the exigences of parliamentary business to proceed continuously from beginning to end. Had that been the case I venture to say that a thorough discussion and a development of the principles of this Bill in this House would have resulted in an elucidation and in a vindication which would render the measure acceptable to the people of this country. We have had a large number of petitions presented to the House, conveying the views of very important interests, such as the shipping interests of Australia and the shipping interests of other parts of the Empire. I have no doubt that those petitions and the representations therein will receive the fairest consideration at the hands of this House. There is not the slightest danger of any important interests, either Australian or Imperial, being unfairly treated in the Federal Parliament of Australia, and, therefore, I for one regret the attitude of some of the opponents of this Bill, who have not been content to protest and to petition within the Commonwealth, but have thought fit to go to the Imperial authorities.

Sir Malcolm McEacharn

- No Australians have done that.

Sir JOHN QUICK

- I believe, at any rate, that the action has been instigated by people in Australia.

Sir Malcolm Mceacharn

- No, it has not; the mail companies have acted of their own volition.

Sir JOHN QUICK

- Then I think that if the mail companies have seen fit to apply to the Imperial authoritities regarding Australian legislation, they certainly have not shown much confidence in or respect for the Australian Parliament.

Sir Malcolm McEacharn

- I do not think many people have confidence in it.

Sir JOHN QUICK

- That is an insult to this Parliament that I did riot expect from the honorable member. Before I proceed to speak of some of the principles of this Bill, I should like to refer to two sections of our Constitution, which deal with this matter, and which certainly justify and warrant the establishment of an Inter-State commission, if they do not demand it. Section 92 contains one of the basic principles relating to commerce contained in our Constitution. It enacts that upon the imposition of uniform duties of customs and excise, trade, commerce, and intercourse between the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. I invite the attention, of honorable members to that mandate of the Constitution, because it is, as I take it, mainly for the purpose of giving effect to that mandate that the Inter-State Commission is proposed to be constituted, and the framers of the Constitution, when they went further than the bald declaration in favour of Australian free-trade, on the occurrence of a certain event, considered the whole of the surroundings of these Australian States. They considered the antecedent history and conditions of each of the States, and found it necessary not merely to put in a declaration to the effect of section 92, but to go further and provide the necessary machinery for giving effect to that declaration.

Mr Glynn

- It is a question as to what is necessary.

<page>5656</page>

Sir JOHN QUICK

- Looking into the future the framers of the Constitution saw that probably there would be attempts on the part of some of the States to resort to the tricks and artifices that have been resorted to in the past, with a view to the prevention of freedom of trade and equality between the various States. The framers of the Constitution saw that trade and commerce and intercourse between the various States was carried, on, not only by means of internal carriage, that is, by railways or any other means of land carriage, but by means of ocean navigation, and it was conceived that if it were possible for obstacles to the complete establishment of Inter-State free-trade to exist in connexion with internal carriage, it would also be possible, though not perhaps probable, to resort to artifices and expedients in connexion with ocean navigation by which the equality of Inter-State free-trade might be interfered with. That is the reason why these words were put into the Constitution, contemplating the establishment of Inter-State free-trade not

merely by internal carriage, but by ocean navigation, and, looking forward to the possibilities of the future, power was taken to interfere in case necessity might arise, or in case resort might be had to unfair expedients in connexion with ocean navigation. Of course, it was never contemplated that there should be any unnecessary interference ; that there should be unjustifiable tinkering or tampering with ocean navigation, or that there should be any prying into the conditions of ocean navigation unless the occasion should arise, and I think that if a number of the petitioners who have addressed this House, as well as those who have complained elsewhere, had understood that it was not intended to interfere with the processes or conditions of ocean navigation unless ocean navigators interfered with Inter-State free-trade, we should not have had the great outcry that has been raised throughout Australia.

Mr Glynn

- We can judge only by the provisions of the Bill.

Sir JOHN QUICK

- Consequently the framers of the Constitution provide by section 101 that there shall be an Inter-State commission with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance within the Commonwealth of the provisions of the Constitution relating to trade and commerce, and all laws made thereunder. I invite intention to the words of section 101 - There shall be an Inter-State Commission charged with the execution and maintenance within the Commonwealth - not beyond the Commonwealth. of the provisions of this Constitution relating to trade and commerce -

There we find a mandatory requirement within the Constitution, not that there may be but that there shall be an Inter-State commission, for the purpose of executing and maintaining the law of the Constitution, and the laws thereunder relating to trade and commerce, and the intercourse by railways and navigation, so far as these matters relate to Inter-State and foreign trade. Now, I think that special regard ought to be paid to the introductory words of section 101 of the Constitution. We have heard it contended, by gentlemen whose opinions are certainly entitled to every respect, that it is entirely optional on the part of the Federal Government to organize the proposed Inter-State Commission - that the commission is not a necessary adjunct to the Constitution. In reply to that, I would like to point out and emphasize strongly the words providing that "there shall be" an Inter-State Commission, and in the face of these words the question may be well raised as to whether there is any other means or any other machinery known to the Constitution, besides the InterState Commission, which could discharge the important duty of executing and maintaining the provisions of the Constitution relating to trade and commerce including, of course, Inter-State free-trade. lt has been suggested, and I do not say without force of argument, that the provisions of the Constitution might be enforced by a private individual, supposing he were harassed or obstructed by any railway rate or State law antagonistic to the principle of Inter-State free-trade. Whilst there may be argument in support of this suggestion, on the other hand we cannot disregard the mandate of the Constitution. Supposing any private individual could be found in Australia having sufficient courage and means to fight one of the States on a great constitutional question, he might find himself confronted in the High Court with the contention that the provisions of the Constitution relating to trade and commerce, and particularly Inter-State free-trade, could be enforced, executed, and maintained only by the authority contemplated by the Constitution.

Mr Glynn

- Is not that only as far as Parliament may legislate under section 102?

Sir JOHN QUICK

- I say that is an argument - not that it is right. I merely put it as a possible contention that might be sustained - because on these constitutional questions it would be a very great mistake on the part of any one to assume any dogmatic attitude, the possibilities of constitutional argument being so open.

Mr Higgins

- I notice that the honorable and learned member carefully abstained from giving it as. his opinion.

<page>5657</page>

Sir JOHN QUICK

- Why should I be called upon to pronounce an opinion at this stage? It might be regarded as premature for any lawyer to take up any distinct attitude as to the possibilities of legal developments in connexion with the Constitution. I am directing attention to what would probably be argued, if we could find a citizen

with sufficient temerity to rush into a great constitutional conflict with a State. Therefore, this Parliament, in the face of the mandate of the Constitution, cannot lightly disregard its requirements, and ought not to lightly set them aside. Now that we are on the eve of the attainment of Inter-State free-trade, according to the declaration of the Constitution, it is advisable that the Federal Government should take ever}' step contemplated by the Constitution for the removal of all the artificial obstructions and impediments which have grown up during many years past, and which will, unless removed absolutely, interfere with the accomplishment of that Inter-State free-trade to which we all aspire. What is the use of closing the border Custom houses and ceasing to collect duties of customs between the States if the conflict is to be removed to the railway stations ? We shall have free-trade merely in name if the obstacles that at present exist to prevent freedom of intercourse and trade between the various States are allowed to continue.
Sir William McMillan
- No one objects to the provision regarding the railways.
Sir JOHN QUICK
- I think it is necessary to say something on behalf of this Bill, because it has been pulled and kicked about and abused on every hand.
Sir William McMillan
- Very properly so, too.
Sir JOHN QUICK
- I think I can fairly invite honorable members to disregard the misrepresentations of detractors of the Bill, and proceed to consider it from an Australian stand-point. I ask them to take a broad outlook over the whole of the Australian States, and to consider whether such a Bill should not be passed into law. I think this discussion can be carried on without any irritation or any unpleasantness on the part of the representatives of any of the States, or on the part of those who may be particularly interested in certain objections that have been taken. This Bill may be regarded rather as a healing measure than as one calculated to promote any antagonism between the States. It aims at the establishment of a great arbitration tribunal for the settlement of disputes which undoubtedly will require to be adjusted, unless they are previously settled amicably - a great friendly tribunal of arbitration which will regard the interests and the views and the arguments of all the States. This Bill cannot, I submit, be properly understood unless we take into consideration some of the antecedents of these Australian States, because the necessity for the Bill arises from the relationship which has arisen between the various States mainly in consequence of their territorial positions and the distribution of the territory in our early history. At the back of this Bill there lies the long history of intercolonial controversy and conflict which it is now determined to settle.
Sir William McMillan
- It is a pity it ever started.
<page>5658</page>
Sir JOHN QUICK
- If we look at the map of Australia it will be observed that nature has carved out indelibly the main outlines of the States of Australia. We see, at any rate, the capital sites indicated by great gateways which have been scooped out by the agencies of nature in times past - Port Jackson, Port Phillip, Moreton Bay, Port Adelaide, and Perth. There we see that nature herself determined the sites of the capitals. Nature indicated the future lines of development of New South Wales, Victoria, Queensland, South Australia, and Western Australia. There we have physical conditions determining the centres of the future States, but it was geographical conditions that determined the course of separation, and if, when the time for the separation of these States arrived, the leaders of the Government in New South Wales had had the foresight to lay down fair boundary lines for some of them, and particularly for the State of Victoria, a large number of the conflicts between them, that have been a source of irritation and antagonism for 40 or 50 years past, would not have arisen. I do not wish, in saying that, to reflect on any particular State, or upon the public men of the States. I am merely drawing attention to some of the mistakes which were made in times past - mistakes which have led to the necessity for a Bill such as this. In 1840 when the first land regulations were brought into operation in Port Phillip, the boundary of the district of Port Phillip was fixed as being from the 141st meridian along the course of the Murray,- up the Murrumbidgee, and thence along the southern boundaries of the counties of Murray and Vincent to the

sea. That was the original boundary of Port Phillip, the future colony of Victoria. If that boundary had been maintained it would undoubtedly have given Victoria a fair slice of Australian territory and a fair share in the distribution of many of the natural features of this continent. But the time came a few years later when the rulers of New South Wales complained that the Port Phillip district had received too much river country, and it was therefore decided to alter the boundary from the Murrumbidgee' to a line drawn from Cape Howe to the nearest source of the Murray, thence along that river to the South Australian border. At the time when the boundaries of Port Phillip extended to the Murrumbidgee, the district was an important centre of colonization and enterprise. From Melbourne bands of pioneers were sent forth into Riverina, which was then recognised as the legitimate hinterland of Port Phillip. The district was settled and peopled from Melbourne, because it was nearest in point of distance to that centre, and this city became the natural port and outlet for the trade and commerce of its hinterland. When the boundary was reduced southward to the Murray, although the alteration was made in point of constitutional law, the settlers of the Riverina maintained their connexion and their business relationship with the port of Melbourne, from which they had migrated. I mention this fact to show that the Riverina country, which is now a part of New South Wales by constitutional law, was for upwards of 30 or 40 years, on account of its historical relationship to Melbourne and Victoria considered almost a part of Victorian territory. - Trade and commerce were allowed to proceed for many years regardless of the alteration of the boundary. So identified were the people of Victoria with the Riverina district that in 1862 that State proceeded to establish lines of railways from Melbourne to tap the Murray at various points for the purpose of facilitating and retaining the trade and commerce which its people naturally regarded as belonging to their own territory. Those railways were found to be a very great advantage and convenience to the people of Riverina. They eagerly availed themselves of the advantage. The first line was constructed to Echuca in 1862. I well remember that railway being pushed along through Bendigo, and I know with what celerity, energy, and determination the Victorian Government prosecuted its construction for the purpose of tapping the Murray, and giving facilities for trade and commerce to the people of Riverina. That line was followed by the establishment of other railways tapping the Murray at Wodonga, Swan Hill, Yarrawonga, and Wahgunyah. Eventually upwards of six railways were established along the Murray, giving the people of Riverina convenient communication with the great port of Melbourne. Up to 1880 the Government of New South Wales - although the Riverina district was a part of that great and important colony - took no action whatever for the establishment of railway communication with it, apparently acquiesceing in the action of the Victorian Government in providing all these facilities. It was not till 1880 that action was taken by the New South Wales Government for the establishment of railway communication even between S37dney and Melbourne. About 1.881 or 18S2 the railway was extended to Albury. This was followed by a request on the part of the enterprising Victorian settlers in Riverina, that the railway should be extended from Junee to Hay. These settlers thought it would be conducive to their own interests to have two strings to their bow in the shape of two systems of railway communication, one leading to Sydney and the other keeping them in regular touch with Melbourne. It may have been somewhat selfish on the part of these settlers to ask for two systems of communication, but they did so, and the Government of New South Wales in the exercise of its undoubted legal and constitutional right, constructed a railway from Junee and Narrandera to Hay. That was about the year 1882. I wish to draw attention to the fact that up to 1882 the Government of Victoria, through their railways, had a monopoly of the Riverina trade. They conducted that trade and carried the goods to and fro at ordinary rates. There were no discriminating rates up till that period. The Victorian Government charged the people of Riverina the fair ordinary rates, and it was not till 1882, when the line from Junee to Hay was constructed, that the deadly system of cutthroat railway rates commenced. I find that the railway was extended on the New South Wales side to Albury in 1S81, to Narrandera in the same year, to Hay in 1882, and to Jerilderie in 1884. Prior to that, of course there were the numerous lines on the Victorian side, to which I have already referred. The importance of fixing these dates is to show that it was only when the railway was built to Hay, and got into touch with the Riverina territory, that the fight for traffic began. Before- 1S82, only ordinary rates were charged on the Victorian railways. I make this statement on the authority of the Victorian Railways Commissioners, that there were no conflicting rates prior to 1883. In that year, however, the New South Wales railway authorities, so soon as the line was open to Hay, offered to carry traffic at differentia] rates. The consequence was that Victoria was forced to resort to preferential rates in

order to retain her trade. She could only retain that trade, that is the trade which she had succeeded in developing, and which she considered a part of her territorial rights, by offering
I to carry goods at special rates. The New
South Wales railway authorities at once said - " You should carry at ordinary local rates between Echuca and Melbourne. You . have. no right to this business, because it originates in our territory." They emphasized the fact that New South Wales had incurred serious financial responsibility in the building of this railway through the representations of the settlers of Riverina, and they contended, therefore, that the Victorian authorities, though first in the -field with railway communication, had no right whatever to resort to the same means of retaining business as the New South Wales -authorities had resorted to in order to gain new business. At this stage it is necessary to draw attention to another and a powerful factor which was operating in reference to railway communication and to the interests -and policy of the people of Victoria. The question involved was not whether Victoria should make a rate in order to encounter the competition of New South Wales alone. It became a question then as to whether Victoria was to hold her position in competition with the natural highway - namely, the River Murray. Here, as a matter of historical interest and importance, I should mention the fact that the Darling River trade was in the main originally developed from the State of South Australia. It was the pioneers of South Australia who worked their way up the Murray, and then up the Darling, and who facilitated the navigation of those rivers by establishing trade and intercourse between the outlying districts and Adelaide. It was not till 1870 that Victoria came into (Competition with the Government of South Australia for the Darling trade. Justice and candour alike demand that I should State that in the year mentioned the Government of Victoria, through its railway policy, -determined to make a strong bid for the Darling River trade. It did so by offering a bonus of 6d. per bale on every 10,000 bales of wool introduced into the colony of Victoria vid the Darling River. The consequence was that carrying firms and steam-ship firms sprang up in order to earn this bonus, and Victoria made a deep cut into the South Australian trade. When Victoria caine into conflict with the New South Wales railway authorities, the question at issue was not merely as to whether the former should retain ner trade with Riverina, but whether that State should maintain its position in competition with the traffic on the Rivers Murray and Darling, which was going towards South Australia. The river, as the natural highway, is undoubtedly one of the greatest and most important factors in connexion with this question of trade and commerce between the States. Each of the three States of Victoria, New South Wales, and South Australia may be said to have a special claim in favour of her own position. Victoria claims predominance on account of her geographical position. Melbourne claims to be the natural centre and outlet of the Riverina trade. From Hay, which is the pivot town of Riverina, to Melbourne, there is a distance of only about 270 miles by land. On the other hand, from Hay to Sydney is a distance of 455 miles by land. From Hay to Adelaide, partly by river and partly by railway, the distance ranges from 1,000 miles to 1,100 miles. So far as the geographical position is concerned, Melbourne has the predominant advantage. Therefore, Victoria claims that she ought to have a fair share of the Riverina trade. Of course, New South Wales has the advantage of the territorial right - the constitutional, and the legal right. That is her strong position. Then, again, South Australia has the great advantage of having a natural highway in the Rivers Darling and Murray, which allows commerce and trade to gravitate from the competing area, so to speak, towards Adelaide. I take it that the object of the proposed Inter-State Commission is to endeavour to reconcile and harmonize all these various competing forces - the legal and constitutional right of New South Wales, the geographical position of Victoria, and the undoubted advantage of South Australia as represented by the river trade. Of these three forces probably the river is the strongest. The river undoubtedly represents a natural law which it would be very difficult indeed to interfere with, or to modify in any way.

Mr Glynn

- A continental advantage.

<page>5660</page>

Sir JOHN QUICK

- Undoubtedly it is a continental advantage, and the river traffic and the navigability of the river have to a large extent assisted in regulating and modifying, if not in absolutely, determining, the railway rates which have had to be imposed by Victoria in order to retain her trade. I mention. that to show that the conflict has not altogether been one between New South Wales and Victoria alone. There is this further powerful

factor, the river traffic, which has been to a large extent influencing and determining the railway rates, so far as Victoria is concerned. We cannot fail to recognise the existence of this conflict which has been going on for the last 30 or 40 years between these three States. It is in existence at the present time, and will undoubtedly continue unless the Federal Parliament makes some provision for the settlement of these disputes. As an illustration, I may remind honorable members of the various forms in which these railway conflicts have been pursued. First, we have the special rates charged on the Victorian railways from the Murray to Melbourne for the carriage of Riverina wool. It must be admitted that special rates, lower than the local rates, have been so imposed as part of this all-round system of cut-throat competition. From Melbourne to the Murray special rates have been charged on merchandise destined for Riverina stations and known as " back-loading." Much lower rates have been charged for merchandise intended for the Riverina than for that destined for the Victorian side of the river. Special rates have been charged for the carriage of Riverina wool along the South Australian Railways, from Morgan to Adelaide, and from the Murray Bridge to Adelaide. Then, dealing with freights from Adelaide to the Murray, we find that special rates, of a differential character, have been charged for merchandise destined to the river stations - back-loading, as it is called - on the same lines as those which have been imposed within Victoria. Between Serviceton and Dimboola the Victorian Government have imposed what is known as the blocking rate in order to prevent or minimize the introduction of merchandise from South Australia into Victoria as part of the same system. Turning to the rates from Riverina to Sydney we find that special differential or preferential charges have been imposed on the New South Wales railways from Hay and Jerilderie, and the New South Wales border towns, for the carriage of wool and grain to Sydney, in order to attract to the capital of the mother State that wool and grain which, if left alone, would, with other trade and commerce flow, in the natural order of events, towards the port of Melbourne. Wool to Albury - a blocking rate, almost equal to 50 per cent, of the ordinary rate, has been put on between stations such as J Junee and Wagga to prevent the flow of wool from New South Wales towards the Victorian border. This has been imposed just as the rate between Serviceton and Dimboola has been put on. It has been done under the same short-sighted policy which we are now bound to take into consideration, and we must decide once and for all whether this wretched miserable policy is to continue any longer. Another example of these differential rates is the charge for the carriage of merchandise from Albury into the interior of New South Wales. A blocking rate has been imposed in regard to this traffic similar to that charged on lines from the Victorian border. I need not go into the figures which are somewhat confusing, but the specification of these varying forms of differential or preferential rates will be a sufficient illustration of the contention I am now submitting to the consideration of the House. This conflict has not been confined solely to the three States which I have mentioned. It has existed also - at times in an acute form - between New South Wales and the great State of Queensland. So acute did the struggle for border trade become between these two neighbouring States that in 1893 the Parliament of Queensland was called upon to pass an Act known as the Railway Border Tax. Act. That Act was assented to on the 21st Jul}', 1893. The preamble contains an interesting summary of the grievances suffered by the Government and the people of Queensland on account of what they contended was the unfair competition of the railway system of New South Wales, in its desire to grasp the border trade which should have been allowed to flow towards Brisbane. The preamble to the Act recites that large sums of money have been expended by the Queensland Government in extending and maintaining railway communication with the southern and western districts of the State, for the purpose of promoting agricultural and pastoral settlement in those districts. It further recites that large sums of money have at various times been expended by the Government in harbour and river improvements for the purpose of increasing the shipping facilities of the State ; that a large sum of money has been and is being annually paid by the Government in subsidizing direct steam communication with Europe, primarily with the object of facilitating the speeding and direct shipment of goods and produce therefrom and thereto.

And whereas it has been ascertained that differential rates on the railway lines of the neighbour! ng colonies have been promulgated and otherwise arranged for which have had, and are continuing to have, the effect of diverting the traffic, which ought legitimately to be conveyed over the railway lines of this colony, thereby entailing a considerable loss iu railway revenue : And whereas it is considered desirable to prevent as far us practicable this diversion of traffic.....

It goes on to enact this law by which a tax is imposed upon the transportation of goods, wares, and

merchandise across the border from Queensland into New South Wales contrary to the intention of the Act. This measure is a particularly interesting and useful illustration of the nature of the conflict, a conflict that has been extended all over the four colonies for so many years past. It is a conflict which I venture to say became so acute that it furnished one of the strongest arguments in favour of Australian federation, that under a federal system of Government, the Federal Parliament would have the authority, and would have imposed upon it the duty, to take steps to put an end to this ruinous warfare between the various States. That is why we find special provision made in the Constitution for the creation of an Inter-State commission for the purpose of executing and maintaining the laws of the Commonwealth, with reference to trade and commerce. I think that the enumeration of these various grievances, furnishes the very strongest possible ground that could be urged in support of the acceptance of the leading features of this Bill by the House.

Mr Glynn

- The honorable and learned member is only proving the existence of the evil j not the adequacy of the remedy.

Sir JOHN QUICK

- In times past, efforts have been made by various Governments to suppress this evil. The honorable member for South Australia, Mr." Glynn, knows that conferences have been held from time to time by the representatives of the Government, and by the railway authorities, at which strenuous efforts have been made to arrive at a modus vivendi in reference to this question.

Mr Poynton

- But they have failed.

<page>5662</page>

Mr Glynn

- Only by the non-adoption of the agreement of 1895.

Mr Glynn

- The Victorian Government was the only one which stood out.

Sir JOHN QUICK

- The Victorian Government, I believe, were led to form the opinion that this agreement was prejudicial to the interests of Victoria ; in other words, that Victoria gave more than she received as a consideration.

Mr Glynn

- The real reason was that the South Australian commissioner did not mention the Broken Hill rate ; he suppressed it really.

Sir JOHN QUICK

- I do not know that that was the real reason.

Mr Glynn

- I heard that it was.

Sir JOHN QUICK

- I have heard that one of the primary factors in connexion with the rejection of this agreement was that the proprietors of the Murray River steam-boats felt that if the agreement were adopted their interests would be prejudiced, and that they would lose the rebates which they had been in the habit of receiving under the old agreement of 1870. Whether that be true, or not, I am not quite sure, but I have no reason to doubt that the Government of Victoria had sound and tangible reasons for not acquiescing in this agreement. I mention this as illustrating, not only the manner in which efforts have been made in times past to settle these conflicts and antagonisms, but as illustrating also the failure of those efforts, and further, and most important of all, as illustrating how it is possible for experts meeting together on common ground to arrive at an approximation of an agreement which will be acceptable to the whole of the States. If these railway experts, meeting together in May, 1 895, were able to make such an important advance in the direction of an agreement, how much more likely is it than an InterState Commission, composed of independent men, and equipped with constitutional authority,, would be able to discover some modus vivendi that would reconcile and harmonize the various conflicting and antagonistic interests of the States. Before I go into the details of the Bill, I would like at this stage to mention the contention which has been raised that it was never intended that this Inter-State Commission should have any power or jurisdiction over commerce borne from one State to another by ocean navigation. I have already drawn

attention to the section in the Constitution which clearly and specifically contemplates control over Inter -State navigation, or over commerce which is carried from one State to another by means of ocean navigation. It is also said that there is no reason whatever why the federal authority should vest any power or jurisdiction in the Inter-State Commission over this class of carriage. With reference to that point, I had the opportunity of a conversation with Mr. John Mathieson, late Railways Commissioner of Victoria, a few days prior to his departure from this State. I think honorable members will recognise in that officer a very able, reliable, and valuable man, whose opinion is entitled to respect. Mr. Mathieson, in discussing with me the functions of an Inter-State Commisssion, made this observation, which I took down at the time -

Among other matters it might report on are the sugar trade, the emigration of aliens, and the rates charged by steamers between coastal ports. The rate charged by steamers for the conveyance of goods from Sydney to Townsville is cheaper than the rate from Brisbane to Townsville. Brisbane is suffering from this undue advantage given to Sydney. I know as a fact that cargoes have been left on the wharves of Brisbane weeks and weeks whilst cargoes have been sent direct from Sydney to the northern ports.

That was the first piece of information I received on the subject which led me to make further inquiries as to whether it was necessary or desirable to give the InterState Commission an y j jurisdiction over coastal steamers. I mentioned the matter to the honorable member for Oxley, and asked him whether he could give me any information on the subject. The honorable member very kindly undertook to send a telegram to one of the leading merchants in Brisbane, as follows -

Is it true that steamers give preference in loading from Sydney to northern Queensland ports, charging cheaper rates, and giving better facilities than are given at Brisbane ?

The reply received was -

Yes ; steamers give preference 5s. ton as between Sydney and Brisbane ; prohibitive for heavy goods.

That is a piece of information which tends to support the statement which Mr. Mathieson made to me.

Mr Bamford

- There are more glaring cases than that.

<page>5663</page>

Sir JOHN QUICK

- The honorable member says that there are more glaring cases than that which I have cited, and that tends to support the contention in favour of some form of control over ocean navigation so far as it is utilized in Inter-State trade. I find in the Brisbane Courier of Monday, 15th July, this paragraph -

A prominent merchant of this city was also seen, and he stoutly maintained it was a fact that the three Inter-State shipping companies gave a preference to loading from Si'dney to northern Queensland ports, and charged Sydney shippers os. per ton less than they levied on Brisbane shippers of goods for the north. This preference which he declared was shown to Sydney as a shipping port was the means of depriving Brisbane of a deal of the northern trade, and was, he considered, a decided blow at the commerce of this port.

These are facts which demand explanation, and which justify some limited jurisdiction being given to the Inter-State Commission to inquire into anomalies of the kind. I should say, in justice to the steam-ship companies, that the three InterState steam-ship lines doing business with Queensland ports have repudiated the correctness of the reply sent to the honorable member for Oxley ; and that involves a question of fact which I cannot pursue an}' further. I merely point this out as evidence, showing the existence of these preferential rates on the part of some of the coastal steamers. There is another matter in which it may be deemed desirable that some control should be exercised over coastal shipping and navigation by the Inter-State Commission. I refer to the recent action of the New South "Wales Government, through the Sydney Harbor Trust, in making Harbor Trust regulations, which was alluded to by the Minister for Home Affairs in introducing this Bill. The Minister mentioned that the New South Wales Government had instigated or had taken action through the Harbor Trust for the purpose of abolishing, or reducing, the wharfage rates upon trade and commerce between Sydney and the various coastal ports of New South Wales. I have before me the New South Wales Gazette, dated 18th June, 1901, in which the following announcement appears -

SYDNEY HARBOUR TRUST REGULATIONS

The following regulations, made by the Sydney Harbour Trust Commissioners,under the provisions of the

Sydney Harbour Trust Act 1900, having been approved hy His Excellency the Lieutenant-Governor with the advice of the Executive Council, are published in accordance with the requirements of the above-cited Act.

REGULATIONS UNDER SYDNEY HARBOUR TRUST ACT 1900

Wharfage B-AT.ES.

. No outward wharfage rates shall be charged on any goods shipped to any port in New South Wales to be used or consumed in that State.

No inward wharfage rates shall be charged on any of the goods mentioned in the schedule hereto, which are the produce of, or have been manufactured in, New South Wales.

Then there is a schedule showing goods on which wharfage rates have been abolished . inwards.

An Honorable Member. - That is protection.

Sir JOHN QUICK

- It certainly looks like protection of a pronounced character. In support of my contention that the InterState Commission should have some control in this direction, I would point out how wharfage rates of this kind, preferential as regards steamers trading between Sydney and the various ports of New South Wales, might be utilized for the purpose of defeating and prejudicing to a large extent InterState free-trade. As the Minister in his speech pointed out, a steamer trading between Sydney and south of the Tweed Heads would be entitled to trade, carrying goods to and from Sydney, with immunity from the payment of wharfage rates, whereas a steamer trading from the Queensland border, or from Southport, a few miles further north, would be obliged, whenever it entered the port of Sydney, or whenever it cleared out for Southport, or other ports in Queensland, to pay wharfage rates. The competing steamer favoured by New South Wales would be free from this burden, and that undoubtedly would be a very serious interference with Inter-State free-trade. Such a thing as this Harbour Trust regulation ought not to be tolerated, as undoubtedly repugnant to the principle of Inter-State free-trade. If that be so - and I presume it will be generally conceded that such a regulation will interfere with Inter-State freetrade, and be undue favoritism to a certain class of steamers - does that not furnish another, and a very strong argument indeed, in favour of the Inter-State Commission being established for the purpose of dealing with difficulties and anomalies of this kind that are not supposed to be tolerated by the Constitution 1

<page>5664</page>

Mr Glynn

- Are these regulations not bad apart from the commission ? Can they not "be challenged in a court of justice t

Sir JOHN QUICK

- As I pointed out earlier, these laws may be bad and unconstitutional, but the question is, who is to set them aside ? "Who is to take the initiative in order to quash them ? Does the honorable and learned member wish to impose on private citizens the initiative of fighting a big constitutional battle ? Where is the private citizen who will undertake to fight the State of New South Wales on a big question such as this, or on other great questions somewhat similar? It is expecting too much from private citizens that they should rush into the arena and fight these battles. If a private citizen did so, he might be met with the contention that the Inter-State Commission is the guardian of Inter-State free-trade, and that the commission is the body charged by the Constitution with the duty as well as the right of executing and maintaining laws with reference to freedom of trade. Inasmuch as the Constitution contemplates an Inter-State Commission, I think the House will have to give effect to the meaning and intention of the Constitution in some form or other. I do not say that we ought to accept tha Bill absolutely in the shape in which it has been presented ; but I do say that we ought to accept the Bill in substance, and that it is advisable and necessary that the InterState Commission should be constituted by Act of Parliament to perform the duties contemplated by the Constitution. Even if we pass a Bill containing only the bald words of the Constitution, declaring that there shall be an Inter-State Commission to execute and maintain the laws of the Commonwealth with reference to trade and commerce, it will be quite enough. As far as the control of the Inter-State Commission over railways is concerned it is practically embodied in clause 16 of this Bill. That clause is really the heart of this Bill, so far as it contains any definition or grant of power, and honorable members will see that it merely repeats almost word for word the terms of the Constitution itself. It says that there shall bc an Inter-State Commission practically to execute and maintain the laws of

the Commonwealth. Now, what are the laws of the Commonwealth? If we look at section 102 of the Constitution we shall see what are the laws contemplated. By clause 16 it is provided that the Inter-State Commission shall have power to deal with the rates on the State railways, and the provision practically takes the form of a prohibition. That is the constitutional form. The Constitution says that the Parliament may forbid preferences and discriminations to be given by the States, but until Parliament moves by passing a Bill that power is dormant. Section 102 will not ' come into operation until it is set in motion by this Parliament, and the object of clause 16 is practically to bring into operation the latent power of the Constitution. Yet we are told that there is no necessity for this Bill, or for the InterState Commission. Until this Parliament legislates, the prohibitions contained in section 102 of the Constitution are latent and have no force whatever, and the railway authorities of the three States, Victoria, New South Wales, and South Australia, may go on passing their preferential or differential rates in. the same way as they have done for the last 40 years.

Mr O'Malley

- Yes; slaughtering InterState free-trade.

Mr Glynn

- I think the courts of justice could prevent that.

Sir JOHN QUICK

- The powers conferred by section 102 of the Constitution cannot be exercised until they are brought into operation by this Parliament.

Mr Glynn

- I read it the other way

<page>5665</page>

Sir JOHN QUICK

- There may be other provisions of the Constitution which are open to argument, and about those I will express no formal opinion ; but the power contemplated by section 102 will not be brought into operation until this Parliament takes action by passing this or some other corresponding Bill. Clause 16 brings this power into operation, because it forbids that which the Constitution contemplates as being forbidden. It provides that; -

It shall not be lawful for any State or for any State railway authority to give or make upon any railway the property of the State, in respect of external or Inter-State commerce, or so as to affect such commerce, any preference or discrimination which is undue and unreasonable or unjust to any State.

Now, there is nothing in any other part of the Constitution which corresponds with these prohibitions. What is wanted is something to bring them into operation, and there is no other way than by passing a Bill of the Federal Parliament. I am aware that there is a declaration in the Constitution that on and after a certain date trade and intercourse between the States shall be absolutely free ; but supposing that proceedings were taken against some State railway authority on the ground that it was enforcing a differential rate or a discriminating rate contrary to the principles of InterState free-trade, do not honorable members perceive that, unless this clause were brought into operation by a Federal Act, the objector would be immediately met by the point that such action on the part of the State had not been prohibited by the Federal Parliament? How could this act of State, performed under the authority of State laws, be assailed until it had been forbidden by a Federal Act of Parliament ? Until State railway authorities are forbidden to do so by an Act of the Federal Parliament, it may be quite lawful for them to charge differential rates, and very strong arguments would have to be brought forward to convince any court that, until we bring these powers into operation by placing an Act on our statute-book, we can in any way enforce them, in pursuance of the principles of Inter-State free-trade.

Mr Glynn

- I think this was looked upon as an addition to the effects of the other sections, and not as a substitution for them.

Sir JOHN QUICK

- The honorable and learned member will find, on looking at the Constitution, that until the acts contemplated in the prohibitory provisions of the Constitution are forbidden by the Federal Parliament, the courts must be led to the conclusion that they are to be tolerated. Therefore, an Inter-State Commission Bill of some sort or other, even if it be limited to clauses 16 or 17, ought to be carried. I would direct

attention to the fact that clauses 16 and 17, with two qualifications, relating to financial responsibilities and development rates, contain the sole provisions of the Constitution with reference to the rates to be charged on State railways. When we come to clause 18, we find that it deals with carriers and State authorities other than State railway authorities. The provisions of clauses 18, 19, 20 and 21 do not relate to the State railway authorities, and there is no doubt that it is quite open to argument whether this Bill would not be a workable measure, and meet all the requirements of the present situation, even if it were confined to clauses 16 and 17. I think it well worthy of the consideration of the Government, whether at this initial stage in the history of our Commonwealth, in view of the various difficulties and problems connected with the launching of a great enterprise such as this, we might not fairly and reasonably restrict the operation of this Bill, at any rate at the beginning, to State railways alone.
Honorable Members. - Hear, hear.
Sir JOHN QUICK
- So far as clauses IS and 19, having reference to common carriers, are concerned, no doubt the whole of the provisions are quite consistent with the Constitution. I do not wish it to be understood that I consider them to be irrelevant or inconsistent, because I hold that they merely give effect to the free- trade provisions of the Constitution with reference to carriers and State authorities other than State railway authorities, and the draftsman of this Bill no doubt drew it strictly upon the lines of the Constitution.
Mr Glynn
- He followed the American and the English Acts too closely.
Sir William McMillan
- It is a great pity that he knew so much.
Sir JOHN QUICK
- This Bill has been drawn according to the lines of the Constitution. It is quite true that the draftsman had in view legislation of a kindred character in England and America, and I think he was wise in being guided by the precedents established in those countries. They have been of the greatest value in the consideration of these transcendent problems. As to whether it is absolutely necessary that these provisions should be included in this Bill, I think the matter is quite open to debate, but there is nothing in them inconsistent with the Constitution, and they may be very useful indeed. At any rate, I see nothing in the provisions to justify the great outcry that has been made about our taking power to deal with common carriers, and to insure that the rates fixed by them shall be reasonable and just.
Sir William McMillan
- If .the honorable, and learned member had been a shipowner, he would probably have thought differently.
<page>5666</page>
Sir JOHN QUICK
- These clauses, which really enact the provisions in the Constitution relating to common carriers, do not apply generally, but only to InterState trade, and there is nothing in them to justify the adverse criticisms to which they have been subjected. At any rate, even if these clauses were omitted the backbone of the Bill would still remain, in the shape of the prohibitions against preferences and discriminations on the part of the railway authorities of the various States. The other clauses are no doubt intended to cover InterState navigation, and with regard to ocean navigation, the cases I have mentioned are quite sufficient to justify them. I admit, however, that they are not so urgent as the provisions giving us full control over the State railway authorities. Still, grievances do exist, and possibilities of evading and defeating the Constitution may arise, and be taken advantage of quietly and insidiously, so that it may be necessary to have some watchful guardian to look after these various carrying agents. I trust that, inasmuch as we ore about to deal with the Tariff legislation, by which we hope to gain Inter-State free-trade, the debate on the second reading of this Bill will not be merely aimless, but that it will be transmuted into federal legislation, which, I believe, will be calculated to promote one of the fundamental principles of the Constitution, and to largely assist in welding together the people of these Australian communities under one commercial bond that will make us a thoroughly united people.
Debate (on motion by Sir Wiliam McMillan) adjourned.
EXCISE ON BEER BILL
Mr. SPEAKERreported the receipt of a message from the Senate informing the House that the Senate

had agreed to the amendment made by the House of Representatives upon the Senate's amendment No. 2.

IMMIGRATION RESTRICTION BILL

Report adopted.

ADJOURNMENT

Prime Minister's Speech of Pacific

Islands Labourers Bill - Order of Business - The Budget Speech

Motion (by Mr. Deakin) proposed -

That the House do now adjourn.

Mr WATSON

- I wish to ask the Attorney-General whether there is any likelihood of the Government insuring the distribution of the Prime Minister's speech upon the Pacific Islands Labourers Bill ? I think it would be of interest to have that speech as widely circulated as possible. It contains a lot of matter of an informative character, and, apart from any controversial aspect involved, it would be an advantage generally if it were distributed pretty widely. I should also like the Government to make some statement as to what business it is proposed to deal with next week. Some honorable members are under the impression that after the Treasurer has delivered his Budget, and after the probable adjournment of the debate upon the Tariff question proper, an adjournment might be made. I am not in favour of that course being adopted myself. But whatever is the intention of the Government I think it would be just as well if it were stated, so that honorable members may know what business will be dealt with next week upon the days following Tuesday.

Mr MAUGER

- I hope that the Government will favorably consider the request put forward by the honorable member for Bland. It seems tome that the distribution of the Prime Minister's speech would be a fitting corollary to the literature already circulated. We have had a great amount of literature circulated in connexion with this all-important matter, and it is ably summed up in the admirable speech of the Prime Minister. Already I have had a large number of letters from various parts of the State of Victoria asking for copies of that speech. If it is interesting in Victoria it is infinitely more so in Queensland. I am sure that if the course suggested is adopted it will be very much appreciated.

Mr O'MALLEY

- I coincide with the remarks of the honorable member for Melbourne Ports.

Mr PAGE

- I should like to ask the Attorney-General if the Government . are in possession of any further facts in connexion with the Pacific Islands Labourers Bill, and if so, whether they will cause the information to be distributed amongst honorable members as soon as possible ?

<page>5667</page>

Attorney-General

Mr DEAKIN

- In reply to the last question, I am not aware that any further facts are available, but there is a digest of the Imperial law and the Queensland law relating to the introduction of Pacific Islanders, explaining in simple fashion what is the present nature of those laws, and showing how they have succeeded each other. I believe that the digest in question is now in type, and I will undertake to have it distributed. With regard to the speech of the Prime Minister, I wish to say that such republications are not uncommon in certain of the States ; but I suggest that perhaps we should do well to be cautious in introducing the practice in the sense of making it common. However, I realize that the occasion is exceptional, and that a great number of electors may reasonably be expected not to be informed of all the steps which have been taken in connexion with post legislation on this matter. As the Prime Minister's speech was largely historical and explanatory, and not a controversial or party deliverance, perhaps it would be wise in this case to make an exception. I will obtain from the Government Printer an estimate of the number of copies that can be issued, and perhaps honorable members might suggest to the department the number of copies they would like. That will give us some idea of the number that should be obtained.

Mr Watson

- If the digest which has been referred to is in print it might be attached to the end of the speech.

Mr DEAKIN
- The digest of laws is intended for those who are studying the question. We should not be guilty of undue extravagance in republishing the speech of the Prime Minister, because I understand that wc can get 50,000 copies for £25.
Mr Glynn
- Can the Government circulate the Treasurer's Budget speech on Wednesday? Can they not have it published early in the week, rather than at the end of the week 1
Mr Watson
- That means an extra issue of Hansard.
Mr DEAKIN
- That is a suggestion which I venture to commend to the consideration of Mr. Speaker. The only other matter which has been referred to is as to the order of business next week. Naturally the Budget will come first, and the Pacific Islands Labourers Bill will be dealt with. Then there is the final stage of the Immigration Restriction Bill. I think that these measures will constitute the programme for the week, but, at any rate, we have the Inter-State Commission Bill to fill up any interstices.
Mr SPEAKER
- In reference to the matter mentioned by the honorable and learned member for South Australia, Mr. Glynn, I may inform the House that I have already arranged that a special number of Hansard shall be published on Wednesday including the debates of to-day and the proceedings of next Tuesday. I thought it was desirable that honorable members should be placed as soon as possible in possession of the official report. Being conscious that on Tuesday next there will be a great demand for seats in the galleries, I am arranging, as far as possible, to meet the convenience of members of the Federal Parliament and of others. I am therefore setting apart the gallery on my left hand for members of the Senate, and that on my right for members of the State Parliament, reserving the whole of the gallery above for persons who may have orders given to them by honorable members of this House. One ticket has been sent to each honorable member which will give admittance to the upper gallery. There is really not sufficient accommodation to enable us to give honorable members more than one ticket, otherwise two tickets would be sent.
Mr. DEAKIN(Ballarat - Attorney-General). - I trust that my allusion to the Inter-State Commission Bill, which only related to the time available next week, will not be misunderstood. There will come a time when the opportunity will be offered and eagerly embraced by the Government for keeping that Bill before the House. I recognise, however, that there is not much prospect of doing that next week, and, therefore, made the jocular allusion.
Question resolved in the affirmative.
<page>5668</page>
15:50:00
House adjourned at 3.5 p.m.