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1901-07-24
Senate,
The President took the chair at 2.30 p.m., and read prayers.
POST AND TELEGRAPH BILL
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Senator MILLEN
- I desire to ask the Postmaster - General a question without notice. Is the honorable and learned senator aware that signatures are being solicited in Sydney to a petition against a provision of the Post and Telegraph Bill conferring power on the Postmaster-General to decline to deliver letters addressed to sweep promoters, and that those signatures are being solicited on the ground that the petition is one to prevent the Postmaster-General from tampering with letters?
SenatorDRAKE. - I have heard, though not officially, thai there is a movement on foot not only in New South Wales, but in other States, to obtain signatures to a petition with regard to the Post and Telegraph Bill. I do not know what inducements may be offered to persons to sign the petitions, but I may say, with regard to the clause relating to letters in that Bill, that there is no power asked for which is not contained in the Postal. Acts of the various States.
COMMITTEE OF ELECTIONS AND QUALIFICATIONS
Saundersv. Matheson
Senator Sir Josiah Symon
- With regard to the order of the day for the consideration of the report of the Committee of Elections and Qualifications, I would ask you, Mr. President, as a matter of procedure, whether, as it now stands, there is any question before the Senate ? The report was brought up by Senator Sir John Downer as chairman of the committee, and on that occasion, when it was moved that it be printed and made an order of the day, you, sir, drew attention to Standing Order 374, which provides that, before any proceeding or motion is taken in respect to a report, it must be brought before the House by a specific motion, of which notice must be given in the usual manner. No notice has been given with regard to any action, in respect of this report, one way or the other, and certainly no honorable senator has had any opportunity of knowing what course it is proposed to take. The standing order seems to be clear that a specific notice of motion must be given in the ordinary way, before any proceeding with regard to a report of this kind can be adopted. I ask whether there is any question before the Senate now with respect to the consideration of this report, and what it is?
The PRESIDENT
- I am bound to say that it is somewhat difficult to reconcile the provisions of Standing Orders 372, 373, and 374, and that is why I called the attention of the Senate to Standing Order 374 on a previous occasion. It will be seen that Standing Order 372 provides -
The report of the committee shall be brought up by the chairman,
That is imperative. and may be ordered to lie upon the table or otherwise dealt with as the House may direct.
Underthatstanding order the Senate directed that this report should be taken into consideration on a certain day, and its consideration was subsequently postponed until to-day. When I was last in South Australia, seeing that there was some difficulty in reconciling the provisions of these three standing orders, I asked the Speaker of the House of" Assembly - under whose standing orders we are acting - what the practice had been in reference to them. He kindly had the records of the House searched, and he has informed me in a letter that it has always been considered that it is a quite sufficient compliance with Standing Order 374, if the House orders that the report be taken into consideration, and that then any motion may be moved which is relevant to that report. I shall be guided by the construction which, during a long series of years, has been placed on these standing orders by the House by which they were framed, and my ruling is that any motion which is relevant to the subject of this report may be brought forward by any honorable senator. I am quite willing to admit that Standing Order 374 seems to conflict with the other two, but for the reasons which I have stated I think it will be sufficient if any honorable senator moves a motion dealing with this report, otherwise the Senate will be stultifying itself, because it has ordered that the report shall be taken into consideration to-day, and if we take it into consideration

some motion must be made in reference to it.
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Vice-President of the Executive Council
Senator O'CONNOR
- I move -
That, in the opinion of the Senate, the law does not prevent the committee from entertaining the petition, and that the petition be referred back to the committee for further inquiry and report.
I think it will be admitted that the occasion of dealing with the first report regarding a disputed election to the Senate is one of very considerable importance, and I need hardly give an assurance that I look at the question from one point of view, and one point of view only. That is that we should be careful in dealing with the report that in no way are the privileges of the Senate to deal with the question of a disputed election of a member surrendered, and that every effort is made to do justice not only to the honorable senator whose seat is involved in the inquiry, but also to the electors of the State of Western Australia, who are interested in the petition against his return. I need hardly say that there is nothing before us as to the merits of the petition. I know nothing about them, I care nothing about them, and I feel sure that the Senate will approach this question without any regard to the personality of the honorable senator whose seat is involved, to what side of the Chamber he sits on, and to the merits of the allegations which have been made against him, but solely with the desire of seeing that we shall not take a false step on the first occasion on which we are asked to deal with the question of a disputed election, and that we shall take care to put on a proper footing both our own proceedings and the powers and the proceedings of the Committee of Elections and Qualifications. I ask the Senate to say that the report of the committee not only should not be adopted, but that it contains a statement of a legal position which it is quite impossible for the Senate to adopt. The report, which is very short, is in these words -
That the petitioner has not conformed with the electoral law of the State of Western Australia, and your committee recommend therefore that the petition be not entertained.
I shall now state the circumstances and facts upon which that report is founded. It appears that the election which is disputed took place on the 29th March. The return to the writ, as will appear from the writ itself, was made on the 18th April, and on the 23rd May a petition was lodged with the Clerk. I am assuming for the present that the electoral law of Western Australia has some application to the procedure which takes place on these petitions. As I shall point out by-and-by, I think it is very questionable indeed whether the procedure regulating the presenting of and dealing with petitions under that law, in reference to the tribunal which was specially established there, has anything to do with the procedure which is to be followed in bringing a petition relating to a disputed election before the Senate. But I am assuming for the moment that the procedure may be applied. Section 146 of the State Electoral Act of 1899 is the section which more particularly deals with this matter. In Western Australia there is a Court of Disputed Returns, consisting of two Judges of the Supreme Court. That court deals with all questions of disputed elections, and practically finally decides all questions that are referred to it - following the law of the House of Commons in Great Britain, and of other places. Now, the procedure to be followed in bringing a petition before the Court of Disputed Returns is set forth in section 146-
No return shall be disputed except by petition, and no petition shall be noticed, nor shall any proceedings be had thereon, unless the petition -
Is addressed to the House affected, and presented by a member or left with the Clerk within forty days after the date of the return.
This petition was left with the Clerk of the Senate within 36 days of the date of return, and, therefore, well within the 40 days.
Is signed by a candidate at the election in dispute, or by a person who was qualified to vote thereat, and has each signature attested by two witnesses, whose occupations and addresses are stated.
That condition has been complied with.
Isaccompanied by a certificate of the Clerk that.£50 has been lodged with him as security for costs.
That provision has also been complied with. The £50 has been lodged with the petition as provided here.
Then the next section provides -
All petitions shall, within ten days after the same have been received, be referred to the court.
Now, I think it will be seen that the procedure there imposing an obligation to do anything upon the elector

who disputes the election is this : He has to file his petition, lodging it with the Clerk ; and the petitioner has to comply with these different requirements. All that has been done. The Act goes on to say -
All petitions shall, within ten days after the same have been received, be referred to the court.
So that the Act appears to contemplate that, when once the petition has been lodged and all these formalities have been complied with, then automatically the petition goes to the court, whether it is referred to the Judges by an order, or is brought to their notice by the Clerk I do not think we need inquire. Every portion of the procedure has been followed as set out in section 146. I understand that the only failure there has been in the chain of procedure, supposing that it is applicable at all, is that within ten days after the' petition was received by the Clerk it was not referred to the Senate. I say - and I make the statement in the belief that no person can gainsay it - that it is an utter impossibility that the petitioner could have done anything else than what he did do ; and it is utterly impossible that he should have taken any other steps than he did take to bring the matter before -the Senate. If the matter was not brought before the Senate the petitioner cannot be blamed in any way for it. In addition to that the law of Western Australia imposes no obligation to bring it before the Senate or before any court. So that assuming for the moment that the law of Western Australia does apply to this procedure it is perfectly plain that the procedure has been followed in every respect so far as it could be followed by the petitioner. But then there is another question - perhaps a more important one - which is that that law of procedure can have no possible application to the circumstances in which the Senate now finds itself in dealing with this petition. Under our Constitution, by section 10 -
Unt.il the Parliament otherwise provides. . . . the laws in force in each State, foi- the time being relating to elections for the more numerous House of the Parliament of the State shall as nearly as practicable apply to elections of senators for the State.
So that in the mode of carrying out the election, the law of the State, as far as practicable, has been complied with. Under the 47th section of the Constitution it is provided that -
Until the Parliament otherwise provides any question respecting the qualification of a senator. or respecting a vacancy in either House of the Parliament and any question of a disputed election to either House shall be determined by the House in which the question arises.
So that the Constitution has left the matter in this position - that inasmuch as the election is to be carried out under the law of the State, that law, so far as it is applicable, governs the matter ; but in regard to the inquiry into the validity of an election - of what is called a disputed return - that is left entirely in the hands of this Senate, to decide in any manner that it thinks fit. That being so,
I say that the law of Western Australia having relation to the method in which the court of Western Australia is to deal with this particular matter, can have no possible application to the procedure to be followed before the Senate, and that there is nothing in the law of Western Australia which in any way governs the procedure to be followed by a petitioner when he has once presented his petition. The matter being therefore entirely open, all this Senate can ask is - " Has the petitioner in a reasonable way brought his petition before the Senate." In this case what he has done is this : In regard to the signing of the petition, the vouching for its authenticity, the guarantee of bona fides in reference to expenses and the deposit of the money required under the local law - all that has been done, and I think done very properly, in order to give this Senate the best possible guarantee that the petition is a bond fide one, and is accompanied by every circumstance of bona fides. All that having been done, it appears to me that this Senate has no other course open to it than to consider the petition, and if the Senate refuses to consider the petition because of any alleged failure to comply with the law of Western Australia it will be denying a light which the petitioner has, and will be taking away from the power which this Senate undoubtedly has to regulate the procedure in regard to petitions that are brought before it.
Senator Sir Josiah Symon
- But the Senate has not regulated the procedure. When did it regulate the procedure ?
Senator O'CONNOR
- The Senate has the absolute power to regulate the procedure.
Senator Sir Josiah Symon
- When has the Senate done so?
Senator O'CONNOR
- The Senate has done it by referring this matter to the Elections and Qualifications Committee.

Senator Sir Josiah Symon
- Without any procedure 1
Senator O'CONNOR
- Without any procedure.
Senator Sir Josiah Symon
- That was not very fair to the committee.
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Senator O'CONNOR
-That is a different question altogether. If "the committee wished to have further instructions from the Senate in regard to procedure, they could easily have come to the Senate for further * instructions.
Senator Sir Josiah Symon
- It was the duty of the Senate to give the committee instructions.
Senator O'CONNOR
- I wish to discuss this matter without any heat, and entirely in an impersonal way, making no-imputation of any kind on the conduct of the committee. I say, on the other hand, that it is just as well that no reflection should be made on the Senate in regard to its leaving the committee without instructions.
Senator Sir Josiah Symon
- I make no reflections upon the Senate.
Senator O'CONNOR
- If there was any necessity for any other instructions the committee could have done what other committees have done - come back to the Senate for further instructions. I was saying that the Senate having this power, and having referred the matter to the committee, has left it entirely in the hands of the Senate. In what terms was the committee appointed to act? As honorable senators are aware, there being no election law governing procedure in reference to petitions presented to this House in regard to disputed elections - there being only the section of the Constitution which makes the Senate the judge of disputed elections, it became necessary to appoint some tribunal to take evidence, and deal with the question. That was not, however, absolutely essential, because it was quite open to the Senate to do what I understand is done sometimes in the House of Representatives in America - to have the question decided by the House itself, there being simply a committee appointed to take evidence, which has to be produced to the House. But it appeared to me, who moved the motion - and I assume it appeared also to the Senate who carried it - that it would be very undesirable to have discussions as to disputed elections taking place in the House itself; and that inasmuch as there was no tribunal constituted by law to deal with the matter, the best plan was to constitute a tribunal by resolution of the Senate which could as far as possible take all the proceedings which ought to be taken outside this Senate itself, and report to the Senate the result of those proceedings.
Senator De Largie
- And the Senate would throw out their report when they brought it in.
Senator O'CONNOR
- If necessary. Therefore the Senate deliberately, instead of making the committee a body to decide this question by itself, which of course the Senate might have done, appointed a committee with certain duties, and certain duties only. The committee was appointed in these terms -
That the President be requested to lay upon the table as early as practicable his warrant for the appointment of a committee of Elections and Qualifications, consisting of seven members of the Senate, to inquire into and report on all questions respecting the qualification of any member of this House, or respecting a vacancy in this House, and all questions of disputed elections to this House.
The duty of the committee, therefore, was to inquire into and report to this Senate upon all questions of disputed returns. In pursuance of that resolution the committee were appointed by warrant laid upon the table of the Senate to "inquire into and report upon " all questions respecting the qualification of any member of or any vacancy in the House, and any question of a disputed election to the House, pursuant to the provisions of section 47 of the Commonwealth of Australia Constitution Act. That being the tribunal, this question was referred to it for inquiry and reply. An interjection was made just now by Senator De Largie which I understood to be that the committee would report to the Senate, and that the Senate would be asked to throw out the report. I feel that I am stating what is in the mind of every honorable senator

present when I say that if this committee had enquired into this case, and had reported on the facts of it, there would be very few honorable senators who would for one moment dispute the accuracy of that finding. I think that as a matter of policy it would be highly undesirable that the Senate itself should be made the arena in which questions of fact relating to elections were discussed. I feel sure that if the committee had inquired into the matter and brought up a report upon the facts, the Senate would not have interfered with that report. But this is a different question altogether.

Senator Charleston

- The Senate would interfere with the report if it felt justified.

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Senator O'CONNOR

- Undoubtedly ; I have no doubt the Senate would interfere if they thought there was very strong ground for the view that the committee had given a wrong judgment upon the matter. I do not say that the Senate would not be entitled to do that, but what I do say is that the Senate would not lightly enter upon the consideration of the accuracy of the committee's report on any question of fact. A different state of things altogether has arisen here. The committee have declined to go into the facts. The committee which was appointed to inquire into and report have determined, upon their view of the law of Western Australia, that they are not entitled to go into the question, and, therefore, they have practically decided and reported . to the Senate that the petitioner cannot be heard before this House. They have decided that the petitioner has no right to have his claims considered by us. When the committee come to a conclusion of that sort, it must on every ground be examinable by the Senate, which is the fountain of authority, which gives the committee its power, and to which the committee must report. When the report denies a hearing by a committee of the Senate to the petitioner, it is only right that we should have an opportunity of saying whether that denial is on proper grounds ; whether it is upon grounds which do justice in law to the petitioner, and which are consistent with the power which this House ought to have and must have with regard to any question of disputed returns. If the laws of the different States, applicable to elections, are to be applied here, it is quite evident that in regard to many of the States it would be impossible to petition the Senate at all. These laws of the different States tare always open to amendment, and it would be possible for any State to amend its electoral laws in such a way that it would be practically impossible for any elections to be challenged before this House. It must therefore be perfectly obvious that the Senate has a right to inquire into the report of the committee, and to express an opinion which shall be a guide to the committee. We have a right to send this petition back to the committee for further inquiry and report. What is the position ? If I may sum it up in a few words, it is this : My view, and the view which I ask the Senate to take, is that there is no justification whatever for the report of the committee that the electoral law of Western Australia prevents them from hearing the petition. In my opinion, it does not prevent the committee from hearing the petition. In the first place, the electoral law of Western Australia cannot apply to the circumstances here. In the second place, the law of Western Australia can only be applied as far as practicable, and applying it as far as practicable to this case we find that it has been complied with in every possible way by the petitioner. The electoral law of Western Australia does not apply to prevent the petitioner from being ' heard. That being so, it is the duty of the Senate at the earliest moment to express that opinion, and with that expression of opinion, to send the petition back to the committee for further inquiry and report, so that the committee shall be in a position to hear any evidence that may be called, and to decide the question upon its merits. I have moved this motion because while I have no knowledge whatever of the merits of this petition - nor do I care what they are - it appears to me that it would not be consistent with the position which the Senate ought to take up in regard to disputed returns to adopt a report of this kind, or even to allow it to be laid upon the table of the House without taking the action which is necessary - first of all to inform the committee of the opinion of the Senate in regard to the question of law which is to be raised, and in the second place for further inquiry and report in order that the petitioner may have his rights, and in order also that the rights of the Senate may be maintained.

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Senator Sir JOSIAH SYMON

- Has the . Chairman of the Committee of Elections and Qualifications nothing to say? I think this is the most extraordinary and unprecedented proceeding ever heard of in modern parliamentary history. I am not surprised that the Vice-President of the Executive Council has not been able to adduce one single

precedent for the attitude which he takes up, in inviting the Senate - a House of Parliament - to constitute itself a court of appeal from the decision of its own tribunal appointed to inquire into and report - which is the parliamentary phraseology for deciding - upon a dispute between two persons. I defy my honorable and learned friend to find anywhere any precedent for such a position. Then there is a great element of unfairness in this proceeding. No notice of this motion has been given. The courtesy of a notice was not even extended to any honorable member of the committee, so far as I am aware, before we gathered together in this Chamber, that it was intended to propose what is a vote of censure upon a tribunal of this House. We may phrase it as we like, we may cover it with all kinds of expressions such as the Vice-President of the Executive Council has used, but in substance it is a vote of censure proposed upon a committee, to which was delegated the judicial office of deciding the dispute between these two parties. If parliamentary history is ransacked - unless we go back to the days of the Stuarts - no parallel will be found to this. But that is not all. Why has the representative of the Government in the Senate espoused the cause of the minority on the committee? My honorable and learned friend says we are to discuss this without heat. It is difficult, however, to discuss it without some little feeling when we find that the Government, who have nothing to do with these election petitions at all, and who ought to hold themselves aloof from such matters, have espoused the cause of the petitioner; have espoused the view of the minority of the committee represented by the Chairman, Senator Sir John Downer, who does not get up and tell us what his opinions are on this question. That honorable and learned senator shelters himself behind the Government. I say that is not fair. More than that, I tell Senator O'Connor that he will have a great difficulty in getting honorable senators who have, as we all have, self-respect, to serve on committees of this character - which are judicial tribunals-if a minority judge who feels sore because his opinion was not immediately accepted, but was overruled is to be allowed to appeal to the Senate, against the decision of the majority. It is no wonder that such a position has hitherto been unheard of. Honorable senators we're appointed by this House to go into and settle a dispute which is one of the most important that could possibly arise - because no one will underrate its consequences - a dispute wherein the petitioner is, so to speak, in the language of lawyers, the plaintiff, and a sitting member is the defendant. The dispute is referred to this tribunal who are to decide - and I hope the Senate will not be misled by what Senator O'Connor said unintentionally, no doubt, in the course of his arguments - to decide questions of law as well as of fact. When they decide questions of law, according to their consciences and judgment, are they to be told that the whole thing, at the instance of one of the dissentient judges, is to be overhauled by the Senate ? The Vice-President of the Executive Council admits that on questions of fact there would be no appeal.

Senator O'Connor

- I did not say that. I said that the Senate would be very careful before going into questions of fact.

Senator Sir JOSI AH SYMON

- Of course, I admit that the Senate can do anything. The Senate can override any decision of any tribunal which it creates. But I am talking of what would be the proper thing to do.

Senator Sir John Downer

- Does the honorable and learned senator say that Senator O'Connor has taken this action at my instance ?

Senator Sir JOSIAH SYMON

- Certainly.

Senator Sir John Downer

- Well, I say certainly not.

Senator Sir JOSIAH SYMON

- Oh ! Does my honorable and learned friend mean to tell the Senate that he and the Vice-President of the Executive Council have not been acting in concert ?

Senator Sir John Downer

- Certainly we have not.

Senator Sir JOSIAH SYMON

-What ?

Senator Sir John Downer

- I say "no."

Senator Sir JOSIAH SYMON
- The honorable and learned senator is responsible for this motion. Did he not bring up the report, and did he not move that its consideration be made an order of the day for the following Wednesday ? Did he not have charge of the motion ?
Senator Sir John Downer
- No.
Senator Sir JOSIAH SYMON
- How did the honorable and learned senator come to hand over the motion to the Vice-President of the Executive Council ?
Senator Sir John Downer
- I told the honorable and learned senator I would not move it.
Senator Sir JOSIAH SYMON
- Did the Vice-President of the Executive Council jump the honorable and learned senator's claim ?
Senator Sir John Downer
- Oh! Quibble away.
Senator Sir JOSIAH SYMON
- It is of no use for my honorable and learned friend to make these long good-humoured sighs.
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Senator Sir John Downer
- Very well. I will not interrupt the honorable and learned senator anymore.
Senator Sir JOSIAH SYMON
- The honorable and learned senator's interruptions are so inappropriate, and so recoil on himself that he had better not interrupt me any more. He had charge of this motion. He put it on the paper. Did the Vice-President of the Executive Council rob him of it, or did he take it with the consent of the honorable and learned senator? Surely there could be no more cogent evidence of the combination between these two honorable and learned senators.
Senator Stewart
- A conspiracy.
Senator Sir JOSIAH SYMON
- What is the reason ? The reason is that my honorable and learned friend, Senator Sir John Downer, does not like to get up as a minority judge and say that he is going to appeal against the decision of the majority. How can a tribunal decide anything but by a majority? Is it a new qualification for judicial office that the minority judge is to conduct the appeal or to initiate the appeal against the court of which he is a member? Is that a reform which is to be introduced in judicial affairs? I am astounded at the position taken up. My honorable and learned friend signed the report. Why did he not sign a dissent on the face of it ?
Senator Sir John Downer
- Because the honorable and learned senator objected to it.
Senator Sir JOSIAH SYMON
- I will tell the Senate what I objected to. Senator Sir John Downer came to the tribunal with his judgment ready written in his pocket before the arguments took place.
Senator Sir John Downer
- I say that is not true.
The PRESIDENT
- The honorable and learned senator ought not to say that.
Senator Sir John Downer
- Well, I will say that it is a mistake.
Senator Sir JOSIAH SYMON
- No doubt it was a mistake. My honorable and learned friend produced a written judgment, as those honorable senators who were at the meeting of the committee know. I suppose he took it from his pocket. I did not see any other place from which it could come. He read the judgment to the committee there and then, immediately the arguments were finished. He does not pretend that he wrote it out there.
Senator Stewart

- Perhaps it was dictated to the honorable and learned senator.
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Senator Sir JOSIAH SYMON
- I will explain to the Senate. I do not complain of the Vice-President of the Executive Council, who could not know the facts. I think that the Senate has a right to complain, however, that the duty of informing the House of what this tribunal did, and of the matters that were before it for consideration should have devolved under this arrangement upon the Vice-President of the Executive Council, who was not there, and who knew nothing about the case, when it ought to have been taken up by my honorable and retiring friend, Senator Sir John Downer. Now, the first thing that strikes one is that the motion which is made says that, in the opinion of the Senate, the law does not prevent the committee entertaining this petition. Will the Senate believe me that the committee never decided anything to the contrary ? This Senate is asked, for the purpose of censuring the committee, to assume that they decided something to the contrary of this assertion of opinion on the part of the Senate. We did nothing of the kind. I mention these matters now so that the ground may be cleared. Nor did we decide that the Western Australian procedure - I am summarizing the arguments of my honorable and learned friend - was obligatory in relation to this petition. We did not decide anything of the kind. As is admitted, we saw, of course, that the procedure in Western Australia had relation to a presentation of the petition to the court in the case of disputed returns, and all that sort of thing.We were under no misapprehension on that point at all. We did not decide that this Senate had not the most absolute and unrestricted power to decide its own procedure in relation to election petitions. But we found in the first place that no procedure had been described by the Senate. We found - and I do not use the word in the sense that we decided ; it was a fact - that no procedure had been prescribed, and we found that the parties had in this case, as in the case of the House of Representatives, where a similar petition had been presented, adopted the Western Australian procedure. The sole question was whether this petition should be allowed - and it is a matter of substantial justice and fair play not to be obscured by these cobwebs, which quite properly, perhaps, have been spread over it by the Vice-President of the Executive Council - to play fast and loose with his own procedure ; or whether, according to all Parliamentary practice and procedure, he should be made to adhere strictly and rigidly to it. That is the position that came before us. Finding, as we did, that the petitioner had followed the Western Australian practice, the question for us was whether, having done so, he was bound so far as it could be applied. We took care to ascertain by inquiry from the petitioner's counsel whether his proceedings were governed by the Western Australian practice, and whether he had adopted that practice? Again and again he was asked to say whether he had followed it, and whether it was by that he was governed. He admitted again and again it was so, so far as it was applicable. But the extent to which it was applicable was for the tribunal to determine. It was surely not for the petitioner to pick and choose, and to say - "Well, this that I can comply with I shall adopt, and this other portion that I cannot comply with I shall not follow." The same practice had prevailed in the House of Representatives on the question whether the procedure was not complied with in respect of the deposit, and in respect of the irregular attestation of signatures. There the petition was held not to have conformed to the law of Western Australia, which was no more applicable to the House of Representatives than it was to proceedings in connexion with the Senate. Surely it was the duty of the committee so far as it could to preserve if possible, without doing injustice to anybody, a uniformity of procedure between the two Houses? They were not under any obligation. This House may adopt one procedure in respect to election petitions, and the House of Representatives another ; but, if possible, it is wise that we should have uniformity between them, and here there was no difficulty whatever, because the parties had accepted the Western Australia procedure as governing their course of action. What the majority of the committee felt was that they at any rate could not sanction any evasion of the Act of Parliament.
Senator O'Connor
- Of what Act of Parliament ?
Senator Sir JOSIAH SYMON
- Of the Act of Parliament prescribing the practice which they had adopted.
Senator O'Connor
- What Act of Parliament ?
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Senator Sir JOSIAH SYMON
- The Act of Parliament of Western Australia. As I have said, so far as my own opinion is concerned, I hold that the Act and practice of Western Australia have no application whatever. The committee never said so for a moment. But there was no practice, and no procedure. The Senate might have adopted - and I venture to think it was the duty of the Vice-President of the Executive Council when he moved in this matter, to have formulated - sessional orders governing the limitation of time within which petitions should be presented, and the procedure that should have been adopted. That has been done in every instance with which I am acquainted, and whatever the practice is which is adopted by the House, or followed by the party, it should be rigidly adhered to. Honorable senators will find that all these questions are to be determined by the committee. It was sand, and this was the only answer made to the preliminary objections offered, that the committee had not to decide them. The preliminary objections are all matters to be dealt with by the committee. The presentation of the petition is a mere matter of course when it comes up before the House. The practice is rigid, as honorable senators will find in Sharkey's little book on parliamentary petition. At page 34 they will find that as to the time within which petitions should be presented -
The practice of Parliament is strict in this respect.
And an instance is given of very grave hardship, it would seem ; but still, an instance of the rigid application of the rule -
A petition being delivered to the Clerk on the evening of the day on which the fourteen days expired, but after the House was up, though circumstances might have warranted a relaxation of the rule, the petition was not received. But if the House did not meet, or having met, did not proceed with business on the fourteenth day, petitions have been received on the next day of its sitting.
And with a view to preventing any difficulty the time has sometimes been extended. Now here is what we have before us. We have the preliminary objections taken by the respondent's counsel - first, that the petition was not presented within the 40 days; secondly, that if presented it was not referred to the court - or the substitute, of course, for the court, whatever was the appropriate tribunal - within 10 days. I may point out to the Senate that as matters at present stand, unless we have some directness of application in regard to practice, no honorable senator is safe from the presentation of a petition, at any time, challenging his seat.
Senator Lt Col Cameron
- Quite right.
Senator Harney
- Quite wrong.
Senator Sir JOSIAH SYMON
- I would not like it at any rate that we should be kept in suspense for six months or more.
Senator Lt Col Cameron
- Quite right, if anything wrong has beendone.
Senator Harney
- Are we to sit in the House under a penalty for six years ?
Senator Sir JOSIAH SYMON
- According to the usual principle, which has been announced quite correctly by the Vice-President of the Executive Council, every petition presented to the Senate is to be received. It is to be received as a matter of course, but who is to decide whether a petition has been honestly presented ? Who is to decide whether, looking at the circumstances all round, it is bona fide ? Who is to decide whether it is fair and right that after a lapse of so long a time a sitting member should be obliged to have the whole of his election affairs investigated upon some perhaps frivolous charge? Why, the committee. If it is not the committee, and if they are not to exercise not merely a technical, but a broad view such as would be expected of them, there would be no end, so long as the Senate endures, to petitions challenging the seats of honorable senators. It is, therefore, infinitely safer to follow the parliamentary rule, which is rigid in the application of this doctrine of adhering to these limitations, and not to allow any laxity of practice to creep in . The petition being received here it passes on as a matter of course to the committee. The Senate might, if it had chosen - but it is never done - have dealt with the question, and debated as to whether or not the petition ought to be received. I may say here that although my honorable and learned

friend has said that I was responsible for the position, it rather appears to me that my honorable and learned friend himself was responsible for the position in having presented this petition at all. What have the Government got to do with these election petitions, I would like to know ? What right have the Government to take up an election petition, and even present it ? What was it that came before the committee ? Why, this. My honorable and learned friend gave us the dates, but we have a little more than that. All these restrictions are an incentive to vigilance and diligence on the part of petitioners. On the 23rd May this petition was left with the clerk, and from the 23rd May to the 27th June it was practically derelict. It was, to use a phrase used in the committee - and a very good one - kicking about, so to speak, in the clerk's office between the 23rd May and the 27th June.

Senator DE LARGIE

- Whose fault was that ?

Senator Sir JOSIAH SYMON

- My honorable friend has asked a very pertinent and proper question. It was the fault of the petitioner. It is the petitioner who has the conduct of his own petition. It is he, according to parliamentary practice, who has got to be diligent and to be active. The Senate is not to blame, and the only answer that was suggested with regard to the petitioner to excuse him for what were admitted laches on his part was that the Senate was to blame. I deny that the Senate was to blame. It is for the petitioner to move the Senate, and he cannot shelter himself, under an accusation against the Senate, against the consequence of his own want ofdiligence.

Senator Charleston

- How is he to move the Senate ?

Senator Sir JOSIAH SYMON

- In the same way as he presents a petition - by getting an honorable senator to do it.

Senator Walker

- Supposing that he can get no honorable senator to do it?

Senator Sir JOSIAH SYMON

-Ican hardly believe that to be possible, but if he cannot get an honorable senator to do it then he must do without it.

Senator Keating

- And his petition would not be heard.

Senator Sir JOSIAH SYMON

- And his petition would not be heard.

Senator Keating

- That is an absurd position.

Senator Sir JOSIAH SYMON

- He would have an extraordinarily bad case if he could not get an honorable senator to present his petition; but whether it was through negligence on his part or whether it was because he could not get an honorable senator to present his petition it was left knocking about derelict from the 23rd May to the 27th June.

Senator Charleston

- The property of the Senate.

Senator O'Connor

- Hear, hear !

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Senator Sir JOSIAH SYMON

- The Senate has nothing to do with petitions until they are presented. It is the right of every man to petition, but election petitions are quite different things. Election petitions are proceedings by one man against another. These are in the same position as a litigation by one man against another. The plaintiff or the petitioner has to see that his litigation - there is no better word to use - is conducted with diligence if he wishes it conducted, and I am told that the petitioner was informed by the Clerk that it was necessary that he should have his petition presented by an honorable senator. Why was it not presented? On the 27th June the Vice-President of the Executive Council finds this petition, gathers up this foundling, and presents it. The committee felt - and it is obvious - that the petitioner, knew it was necessary that his

petition should be presented by a member of the Senate. When my honorable and learned friend moved that the petition be received, he said -
I take this action solely as the representative of the Government in the Senate charged with the duty of seeing that petitions which are brought before the House claiming . redress of any grievance shall be before the Senate in such form that they shall have consideration.
I deny that.
Senator Charleston
- That is a duty which ought to have been done before.
Senator Sir JOSIAH SYMON
- Perhaps it ought to have been done before : but I venture to think that my honorable and learned friend is a little too Quixotic, is driving the doctrine in regard to petitions a little too far, when he applies that observation to an election petition. I deny that it has any application to an election petition. It is for the active party who is challenging the seat of the sitting member to bring that petition on with the utmost expedition, and the facts show that instead of expedition there was the grossest neglect and the grossest delay, and it was a delay, moreover, which went beyond the time specified in the practice which the petitioner had adopted, fixed by the Act of Parliament of Western Australia. The ground of the decision of the committee was not the bald ground that the petition was left with the Clerk; but that the leaving with the Clerk was not treated by the petitioner or by any one else as a presentation within the meaning of the Western Australian law which they had adopted, and that a presentation by an honorable senator was essential. That presentation by an honorable senator was gratuitously undertaken by the Vice-President of the Executive Council, and for the reasons which he stated, but that was out of time. The committee decided upon that ground in the first place, and then the second point was taken. Moreover, the petition when it came before us, I ought to point out, was marked as received by the Senate on the 27th June, 1 901 . That was the date according to which . the period of 40 days should be computed, and the date which the committee, in the exercise of its judgment, was entitled to deem, and did deem, to be the date of the presentation to the Senate, and following the rule held the petitioner to the practice which he had himself adopted. They could come to no other conclusion than that he was out of time. After a prolonged and anxious investigation, after long and elaborate arguments by counsel on both sides, they came to that conclusion, and it was embodied in the report and signed by the Chairman and presented to the Senate.
Senator Playford
- There is one point : He did leave it with the Clerk within 40 days. That is the Western Australian law.
Senator Sir JOSIAH SYMON
- It is the Western Australian law, but my honorable friend has not quite followed what I have been saying. The petitioner left the petition with the Clerk, but that was not treated by him as a presentation to the Senate.
Senator Playford
- It was practically one within the word of the Act.
Senator Sir JOSIAH SYMON
- No ; at any rate we came to the conclusion that it was not an actual presentation and that the petitioner had abandoned that leaving with the Clerk, as a presentation to the State. The presentation to the Senate was that made by the Vice-President of the Executive Council on the 27th June, and if there was anything in the leaving of the petition with the Clerk, that was entirely superseded and done away with by the subsequent presentation.
Senator Keating
- Had he withdrawn it in the meantime?
Senator Sir JOSIAH SYMON
- No.
Senator Keating
- It was still with the Clerk?
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Senator Sir JOSIAH SYMON
- It was a derelict with the Clerk. It was neglected, no action was taken on it, no step was taken. It might

have been kept there for the next five years.
Senator Charleston
- And the citizens suffer accordingly.
Senator Sir JOSIAH SYMON
- And Western Australia might have been disfranchised for so long as the petitioner chose. If the Vice-President of the Executive Council did this on his own motion, as I take it lie did, then but for his action the petition would have been lying about in the Clerk's office to-day.
Senator Keating
- If lie did it by his own motion, why does the honorable and learned senator seek to hold the petitioner bound by that sis superseding the previous presentation ?
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Senator Sir JOSIAH SYMON
- Because the petitioner adopted what the Vice-President of the Executive Council did. That is what we had before us, and having adopted that as the presentation to the Senate there was an end to the whole question. He knew perfectly well that he was out of court. What he trusted to was that this was one of the things to which the practice was not applicable, that so long as he had got his petition presented and referred to a committee he considered that was sufficient. That is really what the line of difference was - that he was at liberty to pick and choose as to what was practicable and what was not, and the only answer that was offered with regard to these objections was that it was the fault of the Senate, that it should have taken up the matter and conducted the petition as the prosecutor, and it was responsible if anything went wrong with it. All this practice was laid down with the view of making people diligent and expeditious in the assertion of these rights. We must look at what the position is. As my honorable and learned friend says, these States are widely apart. We know that investigation may go on. for months owing to all the difficulties of obtaining evidence and so on. These investigations also, if petitions are presented, may be initiated at any moment if there are no regulations, as there are not, made by the Senate. If there are no regulations, then the tribunal which is chosen for the Senate with the view of dealing with these matters has to do the best it can. This tribunal did the best it could. It investigated the whole matter from every point of view. It dealt with the practice which the parties had adopted; it dealt with the matter from the point of view of the diligence with which these proceedings ought to have been carried out, and after all the investigation had taken place adjourned the hearing, so that no - hasty conclusion should be arrived at. The committee then concluded as is embodied in the report, and the petitioner's counsel anticipating that that was the and of the matter, as he was entitled to do, asked for a recommendation that the deposit should be returned. Now. we are face to face with a position which practically carries back the proceedings with regard to controverted parliamentary elections to the time of 150 years and more ago. We know quite well that the whole object in appointing a body apart from the House of Parliament itself is to secure that, whether they are right or whether they are wrong, they decide the matter according to the material before them, in the best way that is possible. We believe that our decision is absolutely right ; but whether it be right or whether it be wrong it is infinitely better that it should be affirmed than" that, following the iniquitous practice of old, it should be brought before the Senate and determined perhaps on a party vote or according to the feeling of individual senators, which cannot altogether be suppressed. AVe have nothing to gain by such a matter as this. All that can possibly happen is that we shall be introducing the practice in connexion with this petition - I hope for no other - of bringing clown to the floor of the Senate the determination of these questions. AVe had, hundreds of years ago, corruption and abuse of the worst kind. AVe know that so long ago as 1770, with the view of preventing these inquiries from being conducted on the floor of the House, Lord Grenville's Act was passed to remit them to a committee. The committees then appointed, strangely enough, were too large, and were affected by the same vices as affected the House of Commons itself. And so reform went on from time to time, until, in 1839, a great improvement was made in the way these committees were constituted ; and . finally, in 1868, came the salutory provision referring these election petitions, together with all preliminary question's of law and fact, to a Judge, or, as it is in my own State, to a Judge sitting with members in the nature of assessors. But who would ever believe that, supposing a tribunal of that kind had arrived at a wrong conclusion upon a preliminary objection as to the right of a petitioner I to have his petition heard, that that would be brought up on the floor of the House for debate ? Yet that is the

situation here. My honorable and learned friend admits that on matters of fact no such thing could be contemplated as the question being overhauled or debated in the Senate. It would be a deplorable thing for that to be done.
Senator Keating
- Has not the court to which the honorable and learned senator refers power to declare the seat vacant without reporting ?
Senator Sir JOSIAH SYMON
- When they are a tribunal properly constituted. The position of the court is exactly the same as that of the committee. The only difference is that we use the phrase " to inquire into and report."
Senator O'Connor
- Instead of " inquire into and determine," which makes all the difference.
Senator Sir JOSIAH SYMON
- My own impression is that in South Australia the court reports to Parliament.
Senator Sir JOHN DOWNER
- No. The court determines the question in South Australia.
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Senator Sir JOSIAH SYMON
- I refer honorable senators to Warren's book on the Law and Practice of Election Committees, in which, on page 334, the author says - and the same principle is in all the books on the subject -
It has been properly observed that a select committee is the legitimate tribunal before which objections to both the form and the substance of petitions ought now to be taken ; and that any attempt to restore the old practice of discussing controverted elections and returns in the House is an infringement of the Grenville Act, and a violation of the present constitution of Parliament.
That is years and years ago ; and yet this Senate is asked to go back upon that and to introduce into the Senate of the Australian Commonwealth an old and discredited practice, and declare that, although we appoint a committee in the same way as those old committees were appointed - a tribunal to determine these preliminary questions - we are to have the matter brought back to the Senate and have it discussed, involving also the preliminary discussion and a review of the decision of the committee appointed by the Senate, and a censure upon the committee for the conclusion at which they have arrived. Then, honorable senators will find that on page 330 of Warren's book the position as to the judicial position of the committee even in the old days is set forth with the very greatest clearness and emphasis. An objection was raised by Mr. StuartWortley against the House of Commons acceding to a motion with regard to a petition presented to the House. Warren says : -
An election petition, relating to the same transaction, was pending, which would necessarily bring that transaction before a judicial tribunal of the House - a select committee ; and it had been the policy of the Legislature, ever since the Grenville Act, to take from the jurisdiction of the House at large all matters connected with elections, and refer them to a more impartial tribunal.
But we are now asked to set aside that salutary doctrine and adopt the practice of the House of Commons in the old days before the Grenville Act. On page 331Warren says -
Though the inquiry now sought for -
Because it always takes the form of an inquiry and report - might possibly operate on the election petition and be so far inconvenienced it ought not to bind the committee -
That is, the decision arrived at by the House ought not to bind the committee - nor in any way to influence it in discharging its judicial duties.
Yet the committee in the present case, having been invited to discharge, and having discharged, a judicial duty, this Senate is asked to review what has been done and reverse it. Again Warren says, page 331 -
No one can doubt the inherent and inalienable right of the House of Commons ; while all must own the serious inconvenience which was acknowledged by the former to exist, viz.., almost unavoidably anticipating and prejudicing a pending grave judicial inquiry by a tribunal constituted by members of this House. Without further discussing the matter, it may be observed that the ends of justice, and the purity and dignity of Parliament might have been deemed effectually secured by giving precedence to the judicial inquiry by the select committee, before whom all the facts might have been satisfactorily elicited, and on oath.

The full extent of the committee's jurisdiction is to decide questions of law and fact, besides preliminary objections, and all other objections that are brought before it ; and if the Senate is to revise one preliminary objection, it can revise all. We find upon the records of the proceedings of the House of Representatives that a petition was reported upon in the same way as this in respect of noncompliance with the Western Australian law, as to deposits and attestation of signatures. These were preliminary objections which it would have been just as competent and proper to have brought up for review in the House of Representatives as it is to bring up for discussion in the Senate the preliminary questions with regard to this petition. Then we find that another petition was presented to the House of Representatives by the same gentleman, and, although the merits' were the same - because the first petition was dismissed on a preliminary objection - the same course was recommended with regard to the second petition.

Senator Charleston

- The petitioner did not pay his deposit in that case.-

Senator Sir JOSIAH SYMON

- The preliminary objection is the same. My honorable and learned friend, Senator O'Connor, admits that if it were a question of facts - that is, of the merits of the petition - this Senate ought not to interfere. Surely there is no difference if it is a question of law. It is a question of merits all the same ; and if this practice is-to be permitted whenever any objection is taken and it is upheld by the majority of the committee, and if there is a minority that disagrees, that minority can always come down - especially if they get the help of the Government - in order to reverse the decision, reopening the whole thing and keeping it going for years to come. In the meantime the State from which the senator petitioned against is returned is disfranchised, he is deprived of his vote, and the Senate is deprived of his presence and vote. Furthermore, we introduce the old and iniquitous system which has been discredited in connexion with parliamentary government for the past two centuries, at any rate. These observations, it seems to me, cover the grounds upon which the matter rests ; and I hope not only that, but the grounds which warrant us in saying that the committee in their decision were absolutely right. But if* they were not right, surely this Senate is not the tribunal which should investigate and determine a question of law of this kind. We have it admitted that there is no move unsuitable tribunal - if I may use the expression - for deciding judicial matters than any House of Parliament. We have had examples lately of decisions arrived at by Houses of Parliament as to which - whether they were right or wrong - grave differences of opinion may prevail. But where the Senate chooses its tribunal, appoints a committee to which it in trusts the duty of determining every question which shall arise in relation to disputes between two parties at elections, then I say that it would no only be unprecedented, , but it would be a blot upon the proceedings of this Senate at the very threshold of its legislative operations if this motion were passed. It will, as I say, produce inconvenience of the gravest kind. It will discourage honorable senators from serving upon any such tribunal in future. Certainly, I for one should hesitate greatly to undertake the duty if the decisions that were' to be arrived at could, at the instance of a minority, be appealed against to the Senate which appointed the tribunal. We should very soon come to sink the dignity of the Judge in the partisan zeal of the advocate. I hope we shall avoid anything of the kind.

Senator Sir John Downer

- Hear, hear.

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Senator Sir JOSIAH SYMON

- I hope my honorable and learned friend will in the future try to reconcile himself to being in a minority. He is responsible for this. I do not envy him if he succeeds in getting the Senate to pass this vote pf censure on its own tribunal. He will not cause any inconvenience or uneasiness, I am certain, to the members of the majority on the committee. I am sorry some of the members of the committee are not present to-day. That shows the inconvenience of our not having proper notice of what is going to take place. But I am satisfied - and I do not wish to make too much of these matters of unfairness - that the effect of these proceedings is to censure the majority of the committee, of whom I happen to be one. I am proud of the position I took up. I should decide in the same way again to-morrow. But if we are to maintain the purity and dignity of Parliament, if we are to uphold that procedure in reference to elections petitions, which is only effective by means of the choice of a tribunal winch will endeavour to determine the issues

brought before it without fear or favour, then the duty of the Senate- is to back up the committee, and when they have come to a conclusion, not to support the minority. While, as I say, I do not envy the Vice-President of the Executive Council or the Chairman of the Committee if he supports this motion, my fear is a great one that the . carrying of the motion will not only be to censure the committee, but to expose the Senate to damaging animadversions' reflecting on the I position of a committee of its own choosing - a committee which has, at any rate, striven earnestly and anxiously, and after great deliberation, to do that which in its conscience it believed to be right.

Senator Sir JOHN DOWNER

- I thought that my fellow committeemen upon the Elections and Qualifications Committee were in a strictly judicial position, and were to inquire without knowledge of the parties, without fear or favour, into the case, and to report accurately and exactly the results of their inquiries and conclusions. We had a commission sent to us to inquire into certain disputes. I think all the members of the committee can say - certainly I can say - that, except the name of the petitioner, I had never heard of anything in relation to this case. I was only acquainted in the Senate - favorably acquainted as far as I could see - with the senator whose election was disputed. The whole matter was considered without reference to feeling or anything of the kind. I thought we had a duty imposed upon us, and that we were all determined to do it as well as we could. AVe were told to inquire and report ; and what did we do 1 We refused to inquire. We did report, and yet we did not report.

Senator Sir Josiah Symon

- We did not refuse to 'inquire. We inquired and decided.

Senator Sir JOHN DOWNER

- I do not want to indulge in any strong language such as my honorable and learned Friend has used. I want to be temperate, in spite of all temptation which he 'may hold out to me. I will say that we did inquire. Counsel came before us, and the counsel for the respondent made certain objections. He contended that the law of Western Australia was the guiding law] that it applied both as the law which would govern where an election was properly conducted, arid as the law which should regulate our procedure. I said at once that I thought it governed the law which regulated the election, but not the law of our procedure. I was practically overruled. I said to the committee - " Do not let us decide it to-day," and we then adjourned. During the adjournment, and practically while I was sitting in the Senate, I went over the matter very carefully and jotted down the- reasons why I thought my original answer to the objection was well justified. That is what my honorable and learned colleague on the committee, Senator Sir Josiah Symon, referred to when he said that I caine down to the committee before the argument was concluded with my reasons cut and dried. I say that the argument was concluded.

Senator Sir Josiah Symon

- We argued the matter for two hours after that.

Senator Sir JOHN DOWNER

- Excuse me. ' I insist on this. When we adjourned Senator Sir Josiah Symon wanted us to resume at half-past nine next morning, and to give judgment right off.

Senator Sir Josiah Symon

- I did nothing of the kind.

Senator Sir JOHN DOWNER

- The honorable and learned senator suggested that half-past nine should be the meeting hour.

Senator Sir Josiah Symon

- Nothing of the sort.

Senator Sir JOHN DOWNER

- When the objection was taken we adjourned over Wednesday till the following Thursday week. Then the majority of the committee had made up their mind§. I urged, however, that we should not decide that night, but that we should sit next morning at half past nine and deal with the matter, so that in the meantime we would be able to think it over. Counsel for the petitioner then asked to have a further chance of arguing the point. He was told that a further chance would be given to him, and next morning he said something. In the meantime I did what any other judge ought to do. I attended to my work ; I looked into the case and wrote out the result of my' deliberations, nothing being said subsequently by counsel for the petitioner to alter m}' opinion. That is what occurred. The other members of the committee

read their statement after I had read mine.
Senator Sir Josiah Symon
- No one else read anything.
Senator Sir JOHN DOWNER
- I was in error in saying that the other members of the committee read their decision. No one else read anything, because no one had prepared anything; otherwise we should have had a different judgment. I was the only one who had taken the trouble to think about the case.
Senator Sir Josiah Symon
- We waited until the arguments were concluded.
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Senator Sir JOHN DOWNER
- I will put before the Senate the dissent which I read before the committee, and which was assented to by the minority, who have been so much reflected upon. What I read was as follows -
Section 10. - 1. Until Parliament otherwise provides, the laws in force in each State relating to elections shall as nearly as practicable apply to elections of senators for the State.
I should like Senator Millen to listen to this.
Senator Sir Josiah Symon
- The honorable senator has not heard it before, but I have.
Senator Sir JOHN DOWNER
- Exactly; that is why I do not ask Senator Sir Josiah Symon to listen to me. The words in section 10, " relating to elections," constitute the governing term. The dissent, which I read, continued -
Do "elections" cover disputed elections? If so the clause would make the State court decide. If not, then the clause would be satisfied by confining it to the election itself.
But the Act shows that it is not to extend to disputed elections, for section 47 says that "any question of a disputed election to either House shall be determined by the House in which the question arises." So the question of "a disputed" election has to "arise" in the House concerned, and at once all the procedure in reference to it under local laws is displaced.
Then what is the procedure? That is for the House concerned. That House may impose conditions as to deposit, or otherwise - whether the procedure by petition or motion should be adopted - but altogether what it pleases.
Here the House was approached by petition founded on a certificate of its clerk that all the conditions of the Western Australian law had been observed, whereupon it referred the petition to the Election Committee for report.
If the State Act does not apply, the petition is legally before us. I will show that in a minute, in answer to Senator Sir Josiah Symon's argument. I would ask the Senate to bear in mind that the reason given by the majority of the committee, as drawn by Senator Sir Josiah Symon, is that the petitioner has not conformed with the electoral law of the State of Western Australia. The honorable and learned senator says, however, that the law of Western Australia does not apply, and he has really answered his own reasoning. But I wish to continue the reading of my dissent -
If the State Act does not apply, the petition is legally before us. That is conceded. But assuming that it does apply, then that law has been observed. Section 146 of Part 5 makes four conditions -
That there should be a petition.
That it should be addressed to the House affected, and presented by a member or left with the Clerk within 40 days after the day of return.
That it should be signed and attested.
That a deposit of £50 should accompany it.
These are all conditions that the objector has it within his power to comply with. He complied with every one. His petition was left with Mr. Black more within 40 days, duly signed and attested, and was accompanied by a deposit of £50.
What more could he do? The Act makes no further call upon him.
But section1 47 provides that all petitions shall, within ten days after the same have been received, be referred to the court - meaning the court of two Judges established by that Act. Conceding, but merely for the sake of argument, that by the combined effect of the two sections of the Commonwealth Act referred

to the court will in this case be the Senate or its committee. On whom is the duty cast of referring it ? Not on the petitioner, who is powerless, and should not depend on the good will of any senator to assist him, but on the Senate, who have a statutory duty imposed upon them, to be carried out as of course by themselves.
But has the petitioner been negligent. The declaration of the poll took place on 1 8th April -
I would ask the Senate to note these dates - and the petition was left with Mr. Blackmore on 23rd May, being within the prescribed 40 days. The Elections Committee was appointed on 12th June, but as their office was inoperative till after four sitting days later. They really were in no position to act till 20th June. The petition bad to be left with the Clerk of the Senate.
There being no court within ten days after the presentation of the petition, the Act could not be complied with.. Within ten days after the court could act - namely, on 27th June - the House performed its statutory obligation by referring the petition on the motion of Mr. O'Connor. There was, therefore, no negligence anywhere, neither of the petitioner nor the House.
But it is said that the decision of the House of Representatives in Mr. Solomon's case binds us. The cases are not parallel, as can be. gathered from what we have suggested. But if they were, the Senate, which claims coordinate authority with that House, can scarcely be bound by the House of Representatives' decision in reference to its own members.
It was said that we were bound by the decision of the House of Representatives in Mr. Solomon's case, but the whole argument is now different from what it was.
Senator Sir Josiah Symon
- That is not so.
Senator Sir JOHN DOWNER
- I say it is.
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Senator Sir Josiah Symon
- Then the honorable and learned senator is wrong.
Senator Sir JOHN
DOWNER.Some honorable senators think I am right. This was the dissent made by myself and Senators Macfarlane and Walker to the finding of the committee.
Senator Dobson
- Did the other members of the committee give any consideration to those notes 1
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Senator Sir JOHN DOWNER
- 1 read them. lt appeared to be generally conceded that the law of Western Australia did not apply, but it was said that, as the petitioner had assumed that the law of Western Australia did apply, and had acted under it to a large extent, that because he did -not follow out the law of Western Australia so as to come up cap in hand and ask an honorable senator to propose that the petition be referred to a court which did not exist at the time, therefore the law of Western Australia bound him. ' In other words, it was said that he became bound by a law by which he was not really bound, simply by a mistaken assumption that he was bound by it. AVe sat there not as lawyers, but as laymen, I suppose. As a lawyer, I might have felt a little astounded at the proposition. We are not dealing with this question on its merits. The honorable senator complained about is presumably innocent. That is a matter about which we express no opinion in any shape or form. The only question is that of the procedure. Is the petitioner to be entitled to have his petition heard, or are we to shut him out because, owing to the embryonic condition of our regulations at the present time, there is no procedure to -which he can properly resort 1 He has been as diligent as he could possibly be in trying to bring this matter before the Senate. AVe have not followed out statutory duties, and are we to indulge in quibbles, which would shock a special pleader of the old school, in trying to prevent inquiry, and possibly to interfere with the administration of justice. This is not a party question. I venture to say, with all respect to honorable senators all round the House, that this is a matter which affects our personal honour. It may be any case to-day and yours to-morrow, or your case to-day and mine to-morrow. It does not concern us whether the party against whom the complaint is made has been supported by one lot or another lot. It goes to the root of the administration of justice, which is much higher than our particular prejudices for or against any man. And when we have this appeal from a

colleague on the committee in reference to the insult to the committee, the chairman of the committee might say on the other hand that, if he were clearly and unmistakably right, it would probably be in the nature of an insult to refuse to say so. But I object to that position of the committee altogether. AVe are not a court in the ordinary sense. It may be, as Senator Sir Josiah 'Symon says, that 'the Grenville Act was passed to alter the abominable conditions in which1 wc are in at the present time and in which we have to try election petitions by select committees appointed in the ordinary- course. It may be that in time we will make 'regulations which will bring about the relief which the Grenville Act provided, or bring about relief in the form which -the Western Australia Act provides. Meanwhile we have, to consider and deal with our status exactly as it is, which is that the Senate -and the Senate alone is the court, and that nobody they depute is any more than their deputy. They told us to inquire - we*, did not : to report - we did. Now the leader of the Senate proposes that the petition be sent back to us to carry out what we were originally asked to do, not as an insult to the committee, because I think the committee has insulted the Senate. The committee was told to inquire and report ; it refused, and we are now asked to send the petition back to the committee to do what they were originally told to do. Insult there can be none. Most of us are old parliamentary hands, and we know all about select committees. AVe know they make inquiries and bring up reports, and the House deals with them with perfect freedom, a.nd without considering for a single second that they will insult any member of 'the committee by disagreeing with its decision. Why, the business of the House would be relegated to committees if it were to have every special committee coming up and telling us that they will resign, or offering some terrible threat of the kind to the House, if the House insults them by refusing to take their report. Parliamentary government would be at an end, and we should have the American system, by which everything is done by committees and nothing by the House, and not the system under the British Constitution, where we say everything shall be done by the House and nothing by committees. We send to a committee the work of inquiry and report, because we are too cumbersome a concern to do it ourselves, but, when the committee send up their report, we consider it on its merits, and when we disagree with it we do so with the greatest respect, and no insult is intended. None was ever consented to or thought of, and it is only Senator Sir Josiah Symon's sensitiveness upon this point, upon which he has gone wrong, that has stirred up any suggestion of the kind. I do not know that there is anymore to be said. I agree with my honorable and learned friend that it is a pity that this has been discussed. We do not want any heat or feeling in connexion with a subject which should be one for the calmest judicial inquiry. So far as I am concerned, I regret that reflections have been made on the leader of the Government in the Senate, and on myself and others for the purpose of supplying a little smart talking. I could not move the adoption of the report, because I disagreed with it. No honorable senator would ask me to move the adoption of a report from which I deliberately dissented.

Senator Sir Josiah Symon

- The honorable and learned senator said he would consider and let the Senate know.

Senator Sir JOHN DOWNER

- I did not say that I would let the Senate know. I said that as the report was only the report of a bare majority I would consider, but I said nothing about letting the Senate know. There is no question about that. I was not going to let them know at the beginning, and lose my right of speaking. I am too old to be caught with chaff of that kind. I behaved absolutely ingenuously with my honorable and learned friend, and moved exactly as I had arranged. Many honorable senators suggested that I should move it, but I said certainly not, as 1 would be stultifying myself. All I said was that I would move that the report be received and . taken in to consideration on a certain date.

Senator Sir Josiah Symon

-Does the honorable and learned senator believe in the decision of a minority?

Senator Sir JOHN DOWNER

- I am perfectly satisfied with my own conduct in the matter. I said that, as the report had been carried by a bare majority, I had not yet made up my mind whether I would move it. Every one knew what that meant.. It was referred to in the newspapers, and it was common talk that I was entirely against it. I made no secret of it.

Senator Sir Josiah Symon

-The honorable and learned senator should not have disclosed that to the press.

Senator Sir JOHN DOWNER

- So far as I am concerned I suppose I did pretty much what honorable senators on the other side did - when any one spoke to me oil the matter I told them my views.
Senator Sir Josiah Symon
- I never spoke to a soul.
Senator Sir JOHN DOWNER
- It is useless to take the matter any further. I refused, and I told the Vice-President of the Executive Council that I refused to make any motion. I could only have made one, that the report should be disagreed with. Whether that would have been in order or not I did not know I was inclined to think it would not. I thought that perhaps a motion for the consideration of a report required to have an affirmative motion connected with it, that the report should be agreed with or else it would drop. So I took the position of not wishing to appear so strong on the matter as Senator Sir Josiah Symon has been. I wished to be distinctly impartial in the event of further inquiry. I simply said I would not move anything. I left the matter to the Senate to deal with it as it pleases, and the head of the Government in the Senate, knowing that that would leave the thing like Mahomet's coffin, hung between heaven and earth, thought it his business, and I say I think it was his duty, to take some action to get the matter cleared up.
Senator Sir Josiah Symon
- To take the honorable and learned senator's side.
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Senator Sir JOHN DOWNER
- Either with a view to adopting the report, or with a view of sending it back to us for. further consideration. There is the. whole question. It is rather serious for us. In this we have got to decide - does the Western Australia law apply? The Western Australia law creates certain offences, which shall be considered as offences against the electoral laws, and which shall invalidate an election. The same Act provides also for disputed elections, and for a court of two Judges to try and finally decide them. The Commonwealth Act provides that until the Commonwealth Parliament otherwise provides the laws of the several States relating to elections shall rule, and it is shown that this does not include disputed elections, because it is said in a subsequent section of the Constitution Act that disputed elections for either House shall be settled in the House in which the question arises. That is, in which the question of a disputed election arises.
Senator Sir Josiah Symon
- With that we all agree.
Senator Sir JOHN DOWNER
- I know that honorable senators opposite all agree with that, but they do not agree in the way I like, and they do not agree consistently either. That being the point, and it being agreed that the Western Australia law does not apply, we have a committee appointed to inquire into and report upon a petition, and they recommend that the petition be dismissed. Why ?Because the law of Western Australia has not been complied with. It is admitted all round, that the law of Western Australia does not apply. Yet we have all kinds of imputations thrown upon us if we endeavour to interfere with the finding of the committee, who have said they have come to the conclusion that the petition should be dismissed because the law of Western Australia does apply, when they themselves get up and say that they cannot contend for a moment that it has any application.
Senator Sir Josiah Symon
- Does the honorable and learned senator think that a correct statement of the argument?
Senator Sir JOHN DOWNER
- I think that an absolutely correct statement of the argument -
That the petitioner has not conformed with the electoral law of the State of Western Australia.
That is the only ground given.
And your committee recommend, therefore, that the petition be not entertained.
The only ground we have before us from the committee is that the petitioner has not conformed with the electoral law of the State of Western Australia. Nobody yet has said that that law applied. I look with some interest for some one to convince me that it does. That is all I have to say.
Senator HARNEY
- As one of the senators from Western Australia, I confess I take a considerable interest in this matter, but

I take a more worthy interest in seeing that justice is dealt out to every one. I think that this Senate ought to be slow to interfere with the decision of its own committee. -
Senator Charleston
- Whether it believes in that decision or not?
Senator HARNEY
- I do not say that it is not open for the Senate to overrule what the committee has done, nor do I say that the Senate ought to hesitate so to act if the committee in their judgment was clearly wrong ; but where there is any doubt, where the thing is not only a question of doubt, but where it is not clear to every member of the Senate that the committee was wrong, I think it is our duty, if we are not to establish a precedent that may be most iniquitously used hereafter, to adopt the report of the committee. Senator O'Connor has stated that he, for one, would hesitate long before quarrelling with the report, upon a question of fact, but that this is a question of law. What my honorable and learned friend was thinking of was the practice in all our courts which makes the finding of a nisi prius tribunal more sacred on questions of fact than on questions of law. But why does that rule prevail in the court? For this reason, and this reason only, that the first tribunal is the one best calculated to deal with the facts, and that the appellate tribunal is the one best calculated to deal with the law. The positions are exactly reversed in this case. In this case the primary tribunal is clearly the best qualified to deal with the subtleties of lawyers, and the Senate is best qualified to deal with general facts. So far, therefore, from drawing the distinction between questions of fact and questions of law in the way my honorable and learned friend has drawn it, I would draw it in just the contrary direction. Whatever may be said as to a House of Parliament being a competent tribunal to draw inferences from facts, there can be absolutely no doubt that a more unfitted tribunal to draw inferences from law, and to go through the mental distinctions that are here necessary, it is not possible to find.
Senator Walker
- Legislators ?
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Senator HARNEY
- Legislators, no doubt, but there is a vast difference between a legislative tribunal and a judicial tribunal. The legislator is a person who seeks to train himself to bring to play upon any subject all the general information he may have. A judge is a person who trains himself to exclude from the opinion he forms upon a subject everything except what comes before him in the way of evidence. The abuses, which in olden times were always attendant upon the determination of election disputes by Parliament, would be brought about in the Senate far more surely by allowing the propriety of appeals on questions of law than by allowing the propriety of appeals on questions of fact. Assuming that there is a partisan majority in 'the Senate, the question is referred to the proper tribunal ; and if their finding is on facts, it will look upon that partisan majority, who want to upset their finding, to prove beyond yea or nay that the inference from facts was wrong. But if their finding is on a question of law, a subtlety, a neat question of procedure, then the partisan majority, when it comes up, can safely say - "AVe are of opinion that the decision of the committee on the point of law was Wrong, and we shall supersede it." They need not, then, in the face of it, so that the public will understand it, give irrefutable reasons for justifying them in upsetting the finding of their own tribunal, as they must if it is on a question of fact. Let it be on a question of law like this, and assume that there is a partisan majority in the Senate - effect being given to their wishes being the very thing we want to avoid - and that the decision of the committee has been on a question of fact, they will have to show how that decision was clearly wrong. But as to the decision given in this' case all the partisan majority has to say is - " We are perfectly satisfied that the committee was wrong in law." It is a very difficult question to explain, but we have our lawyers' opinions, and our own view is that it was wrong. If abuse is to arise at all from our reviewing the findings of such a committee as this, the abuse, instead of being less, as Senator O'Connor lias endeavoured to show, where the appeal is on a question of fact, becomes greater when the appeal is on a question of law. I think that must be clear to every honorable senator. I propose according to. my own light to show that, however opinions, may prevail as to the point of procedure upon which the petition was dismissed, at all events it is not a question upon which we can so clearly form an opinion that any of us would be justified in creating the bad precedent of upsetting such decisions on such a very doubtful interpretation as we have in this case. I quite agree with

Senator Sir John Downer that section 10 of the Constitution Act has absolutely nothing to do with the question. Any one who reads that section cannot hesitate for a moment to come to the conclusion that it refers to circumstances entirely different from those with which the committee had to deal. It says -
Until the Parliament otherwise provides, but subject to this Constitution, the laws et each State for the time being relating' to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State. What does that mean? It refers to the appointment and the duties of returning officers,' preparation of rolls, the nomination of candidates, the imposition of fines, the fixing of the places of polling, the declaration of the poll, and all matters of that sort. It has absolutely nothing to do with disputed elections. And if there was any doubt on the subject it is at once dispelled, as Senator Sir John Downer says, by reading section 47, which would not be there at all if section 10 dealt with disputed elections. Section 47 says -
Until the Parliament otherwise provides, any question respecting the qualifications of a senator or a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House, in which the question arises.
There is not the faintest doubt there that section 47 is the only section of the Constitution Act having reference to disputed returns, and if the committee did come to the conclusion that by reason of section 10 the procedure of Western Australia was incorporated, they were, in my humble judgment, awfully and egregiously wrong. Whatever view I form in this case it is very regretfully formed in this respect, that as regards the strictly legal position taken up by Senator Sir John Downer at the time I am in entire accord ; but there are other things which operate on my judgment, as I shall show. It does not conclude this question for us to be satisfied that section 10 does not apply at all. Section 47 says -
Any question of a disputed election shall be determined by the House in which the question arises.
Could anything be clearer ? Every honorable senator at first sight will say - "No complications; here is a disputed election let the Senate decide it." Well and good But how is the Senate to decide it it is not given some procedure? One might as well say to a man - " Bow across the river ; but I shall not give you any oars." No procedure is necessary I heard one honorable and learned senator interject during the last speech. Are we to be told that any corner boy can present a petition? Must it be presented by a candidate, or by an elector, or by a British subject? Can a Kaffir come across from South Africa and present a petition against the return of any honorable senator? It is absurd on the face of it. Again, when is it to be presented? Within ten days, within three months, or within six years? Without a procedure there is no time. Again, how is any tribunal - the Senate or any representative body it appoints - to determine without some rules ? How can they administer an oath ? How can they punish a man if he tells a lie? How can they compel a witness to attend ? If they summon a man and he says, " Oh, thank you, I shall not attend ; I am going off to the races," how can they make him give up going to the races and attend? If a witness has a letter in his pocket which throws light on the question., and they say, " We want to see the letter," and he says " No, I shall not show it to you," how can they compel him to show it? Honorable senators will see, if they look at it from the commonsense point of view, that unless we have procedure it is absolutely impossible to give effect to section 47.
Senator O'Connor
- Has the honorable and learned senator read section 49 ?
Senator HARNEY
- I have not read it in reference to this inquiry, but I shall read it now with pleasure.
Senator O'Connor
- I think it will solve a good many of the. difficulties which the honorable and learned senator has been putting.
Senator HARNEY
- It says -
The powers, privileges, and immunities of the Senate and of the House of Representatives and of the members and of the committees of each House shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom and of its members and committees at the establishment of the Commonwealth.
Will my honorable and learned friend tell me what immunity or privilege of the House of Commons

declares the time within which an election petition has to be presented to this Senate ? What immunity or privilege of the House of Commons declares whether the petitioner must be a white man or a black man or a British subject? What immunity of the House of Commons says that it must be by motion, by petition, or in person? What immunity of the House of
Commons says that evidence can be taken by. affidavit or on oath, or that they have power to punish a man for telling a lie? None.
Senator O'Connor
- The honorable and learned senator evidently does not know that there is a statute which gives a committee of the House of Commons power to administer an oath, and power to make these inquiries.
Senator HARNEY
- My honorable and learned friend will forgive me for pointing out - I know he is laughing at his own observation that powers, privileges, and immunities refer to certain advantages which members of the House of Commons as members of Parliament possess, and these are the powers, privileges, and immunities which, in the absence of. special legislation, are conferred on the Senate. It has absolutely nothing to do with the procedure which is necessary to carry out any judicial inquiry.
Senator O'Connor
- Although the word " committees " is used there ?
Senator HARNEY
- Certainly, although the word is used.
Senator Sir Josiah Symon
- The time for presenting petitions used to be limited by sessional order.
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Senator HARNEY
- I do not know, and I would not have digressed into this matter except for the interjection, because it strikes me as unarguable, that if the Senate does not lay down procedure it cannot give effect to the section, or if it does it must do it in a haphazard manner. The section says very clearly, no doubt, that the Senate shall determine the dispute. How is the Senate going to bring before it the person making the dispute? If so how is it going to make the inquiry ? I appeal to every layman in the Senate to try and realize the situation for a moment. I ask them - " How are you to determine this question ; how are you going about it; what are you to do"? Let any one look into his own mind, and ascertain his thought is on the question. What will the Senate do ? Taking this particular case, will it go to Mr. Saunders and say to him, " Comehere, Mr. Saunders." If he says " I shall not come," how is it going to bring him? Will it go to some persons who can give evidence against Senator Matheson ? If they say they will not come, how is it going to bring them ? It is obvious that it cannot do it without procedure. We find this petition, such as it is, referred to a committee that was properly appointed under the warrant of the President. What were they to do ? They had to determine the dispute. They had no procedure. They knew it was contemplated that procedure would be laid down before the necessity for determining a disputed election would arise. Under the circumstances what were they to do? It was, of course, open to them there and then to lay down their own procedure. It was open to them to say, "We shall adopt the procedure of the State from which the petitioner comes " with this limitation no doubt - that they could not adopt the procedure of Western Australia and make it retrospective without being unfair to the petitioner. Now there; in my opinion, is the crux which is to determine whether the committee was right or wrong. If before the petition reached them there had been published in the Gazette a. notice saying that the Senate would adopt the procedure of Western Australia, could anybody have had any fault to find with the committee for considering the petition in accordance with that procedure? But there was no such Gazette notice ; and in the absence of knowledge it would have been very hard to try the petitioner by a procedure which to him was non-existent. Now; in this dilemma, what was the conclusion to which the committee came ? Though the Western Australia procedure had not been adopted legally, as against that particular individual, it must be taken to have been adopted, because he himself' proceeded on exactly the same basis as he would have clone had it been the legal form of procedure adopted by the Senate. I have not yet come to the question of whether the petitioner carried out that procedure. The question now is, does it lie with the petitioner to complain against his case being dealt with under the procedure which he himself chose, and which he followed in the most minute detail? This is a fair question. There are no legal subtleties there. It is an

observation addressed to the common sense of the Senate. Here we find the committee hawing no legal procedure, and finding itself in a quandary. The committee have to adopt some procedure, and they say - " We will be so fair to the petitioner that instead of foisting upon him any procedure of our own, we will say to him - " Petitioner by your own procedure will we deal with you : you have acted as if the Western Australia procedure were the law ; have you any complaint against us if we try you by that procedure "? I think the Senate will agree with me that nothing fairer could have been done. Now, we come to the question of whether in trying the petitioner by the procedure of his own choosing, the committee were justified in dismissing the petition? Here is the Western Australia procedure - this has to do only with disputed returns -

There shall be a Court of Disputed Returns.

It shall be constituted of two Judges of the Supreme Court,

No return shall be disputed except by petition, and no petition shall be noticed, nor shall any proceedings be had thereon, unless the petition 1. Is addressed to the House affected, and presented by a member, or left with the Clerk within 40 days after the day of return.

The first question is - Was this protest presented by petition ? - Yes. Quite right there. Was it presented by a member or left with the Clerk within 40 days? Yes; not presented in person, but left with the Clerk within 40 days. I make no point whatsoever between presented by a member or left with the Clerk. The petitioner fulfils that condition in leaving the petition with the Clerk. Then the section goes on -

Is signed by a candidate at the election in dispute, or by a person who was qualified to vote thereat, and by two witnesses.

That was complied with. Then the petition must be accompanied by a deposit of £50. That was complied with. Here let me say to the Senate that the petitioner in this case puts forward as one of his grievances that he is dealt with under this procedure, which, in every minute, he himself tried to follow out.. Has he any merits ? Is there any substance of justice in such a grievance as that ?

Senator SirJohn Downer

- He adopted the only procedure he knew of.

Senator HARNEY

- Precisely ; and nothing fairer could we do to that petitioner than try him by the only procedure he knew of, and which he attempted assiduously to follow.

Senator O'Connor

- Will the honorable and learned senator point out in what respect the petitioner failed in that procedure?

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Senator HARNEY

- I am coming to that. So far, I have shown that the petitioner followed out that procedure as far as he could have done. We now have it that the deposit has been made, the petition is with the Clerk, duly signed and properly complying with the Act in all respects. Then comes section 147 -

AH petitions shall within ten days after the same have been received be referred to the court.

There is the issue. It stands admitted, if I have the dates correctly, that the petition was lodged with the Clerk on the 23rd May and presented to the Senate on the 27th June, five weeks afterwards.

Senator Sir John Downer

- Do not forget that there was no court.

Senator HARNEY

- I am not going to forget it. I am trying to go by degrees,because I can assure the Senate that the attitude I am taking up in this matter is one that is dictated according to the principles of justice as they appear to me, and I am striving, perhaps unconsciously - though the effort is consciously made - to make justice fit in with the avoidance of a very dangerous precedent. The words of the Act are - within ten days after the same have been received be referred to the court.

I come from Western Australia, and let me tell the Senate that I know exactly what was meant by that section. A petition in Western Australia is presented to Parliament within 40 days after the return. Parliament then refers it to the court.

Senator Sir John Downer

- Suppose it is presented to the Clerk - what is done ?

Senator HARNEY

- In Western Australia that section has always been taken to have this meaning - the petition is either presented in person to the House or is left with the Clerk within 40 days. Either does. It is for the House of- Parliament in Western Australia to refer the petition to the court ; and if the House does not refer it to the court within ten days the petition is annulled, and has no effect.
Senator Charleston
- Suppose Parliament neglects to do its duty.
Senator HARNEY
- If Parliament does not send on the petition - not only through a neglect of duty, but absolutely through corrupt motives on its part, the petition is dead.
Senator Sir JOHN DOWNER
- I disagree with the honorable and learned member absolutely. No jurisdiction can be lost by such wilful neglect.
Senator HARNEY
- As the section is understood in Western Australia, and as I read it, it means that if within ten days nothing is done - and it lies upon -the man presenting the petition to see that everything is done - the petition is dead. If it has been killed, so to speak, by the corrupt motives of anybody the law says - "You have your remedy against that person." If it is killed by reason of the negligence of those who should have sent it forward, the law says - "You have your remedy."
Senator Charleston
- What remedy is that? .
Senator HARNEY
- A hundred remedies. All the remedies that can be found in the books of law against wrongdoers.
Senator Charleston
- Against the Parliament ?
Senator HARNEY
- Against a Clerk of the Parliament.
Senator Charleston
- The honorable and learned senator has been saying practically against Parliament.
Senator HARNEY
- It is rather unfortunate that honorable senators will interject in regard to legal points without fully apprehending them. All I say is - and it is to my mind very clear - that there is a period of ten days within which Parliament could send the petition to the court and if ten days has passed and the petition does not reach the court, the respondent is entitled to say - "The condition precedent to the court dealing with the matter lias not been fulfilled, and I am free from the effects of that petition. "
Senator Best
- Surely the ten days condition is a mere direction.
Senator HARNEY
- The Act says that they shall do it, and if they fail to do it, they have not complied with the necessary condition.
Senator Sir Josiah Symon
- Surely that must be imperative.
Senator Sir John Downer
- Of course it is imperative ; and because it is imperative, it is fi reason why the clerk should do it ; but if he does not do it, he does not get out of his responsibility. .The honorable and learned senator's argument is terribly bad law.
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Senator HARNEY
- My honorable and learned friend Senator Sir Josiah Symonhas said that surely this strictness as to time and as to the compliance with all the necessary conditions is intentional, and that if they are not complied with many abuses are opened up that are infinitely greater than the particular injury that may be done. Therefore when we come to construe an Act of Parliament - especially an Act dealing with a matter of a quasi criminal character, such as unseating a Member of Parliament - which is a very severe punishment to inflict - we must construe the section strictly. What object had Parliament in putting in ten days in that

place1! I sit a mere surplusage1? Does it convey nothing ? If ten means twenty, why put in ten ? That being the position, if the petitioner were in Western Australia, let us convert the terms so as to make it applicable to this Senate. The petition was placed with the clerk of the court we will say within 40 days. Quite right. I say that; it was for the Senate as a legislative body to refer the petition to the Senate as a judicial body within ten days. The only way in which we can apply the procedure is by saying that "Senate" is convertible with "court," and we therefore have the Senate in two senses. We have the Semite receiving the petition, and it then lies with the Senate as a legislative body to present it to the Senate as a judicial body within ten days. Now, it will be said - and this is the point urged by Senator Sir John Downer - " What more could this man do ? Why is he to suffer because the Senate does not do its duty?" In reply, I would ask - Why should Senator Matheson suffer because the Senate does not do its duty ? Why injure one man more than another ? If the Senate failed to do its duty for two or three years, was this sword of Damocles to hang over Senator Matheson 's head all thai time? Was he never to be rid of this burden ?
Senator Lt Col Neild
- Senator Matheson could have hurried the thing along.
Senator HARNEY
- Now we come to the point. As long as the petition lay in the Senate without being presented there was a charge hanging over Mr. Matheson's head. There was a petition by Mr. Saunders that had not been carried out. Who should have moved ? That is the question for us to determine. Did it lie upon Senator Matheson to come forward and move the burden upon his own head ; or did it lie upon the person who was making the charge to come forward and move it to its proper destination ? Whose duty was it to get some honorable senator to stand up and say - "What about this petition against Senator Matheson ? It has to be presented to the judicial body within ten days." Some one ought to have done it. Whose duty was it to put that some one in motion ? Will any reasonable senator tell me that it was Senator Matheson's duty to ask somebody to put an annoying proceeding against him in motion ? Surely every lawyer knows the term donimusUtw. Whosoever seeks to do anything by the instrument of the law has himself to wield it or to see that the proper person wields it. That is the meaning of dominuslitis. Clearly the petitioner must come forward and see that every step is taken that will carry out the procedure necessary to have his charge effective brought. . Let me put an analogous case before honorable senators. We have a procedure something like this in our summary jurisdiction. A magistrate is bound within a certain number of days to state a case upon the application of one of the parties. Suppose that I. apply to a magistrate to state a ease for me, but that the magistrate gets drunk or goes asleep and neglects his duty. The three days pass within which the case should be stated and my complaint cannot be heard. Who is to suffer 1 The law says the person who seeks to have the case stated is bound to see that the magistrate does his duty within the proper time. If he has been neglectful the appellant cannot complain against the respondent. If he has shown vigilance then he has a right of action against the careless magistrate.
Senator Keating
- Is the magistrate bound to state a case within a certain time ?
Senator HARNEY
- Certainly.
Senator Keating
- Is not the party bound by the time in which he makes his application ?
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Senator HARNEY
- In some cases it is so. In others there is a specific period. Departing for a moment from -these subtleties, let me put the matter to the common sense of the Senate. It is nearly four months since this petition was presented. All that time has elapsed without anything being done by reason of the failure of the Senate to refer the petition to a tribunal. When the committee sat, the man who brought this petition chose to adopt the procedure of Western Australian law. He had a lawyer, and his lawyer should have told him what to do. Of course we expect very learned things from lawyers, and although perhaps they are unable to do all we expect of them, the court is very stern with them, and they are mulcted in damages if they do not discharge their duty. The petitioner's lawyer might have told him what he had to do in order to carry out the procedure under the Western Australian Act. It was necessary that the Senate

should have had the petition referred to it by some one within ten days from the 23rd May. The petitioner's lawyer should have advised him to that effect. He did not do it. Weeks and months passed and yet he failed to do it. Now is it quite fair to Senator Matheson for us to say - "You will get no sympathy whatsoever. You are to be disregarded, although for all these months the carlessness of this man or of those who are his advisers, has allowed this matter to hang over your head " ? It was the duty of the petitioner not only to do everything that he had to do by his own hand, but to do more and to see that sill the intermediate agents did their duty.
Senator Sir Josiah Symon
- The law only assists those who are diligent.
Senator HARNEY
- Exactly. Has any one the faintest doubt that if within the ten days the petitioner had obtained a spokesman in the Senate, the Senate would not then and there have fulfilled its duty ?
Senator Charleston
- The honorable and learned senator has already argued that the petitioner presented his petition to the court when he handed it to the Clerk.
Senator HARNEY
- I have not argued anything of the kind.
Senator O'Connor
- The honorable senator has admitted it. .
Senator HARNEY
- I did not mean to say anything of the sort. It is scarcely fair to the twenty or more other honorable senators for me to go over the same point again and' if Senator Charleston does not follow my argument he ought not to interject. I said nothing at all of the kind.
Senator Charleston
- The honorable senator did.
Senator HARNEY
- I think I said that Saunders correctly lodged the petition with the Clerk within the 40 days ; that then the Senate had to refer the petition to a court within ten days, and that the duty the petitioner failed in was that he did not set the Senate in motion. Senator Sir John Downer asks " How could that be clone ? It was impossible." But was it impossible ? If the petitioner had been alive to his interests, and had asked
Senator Best or
Senator Sir John
Downer or any other honorable senator to inform the Senate that the petition had to be referred within ten days, does any one think that it would not have been so referred? The only answer possible is that this man lay upon his rights and did not come to the House within the proper time. The clerk of the court will agree with me here, because I have taken the trouble to inquire in order to find out whether the petitioner could say that he did not set the- Senate in motion within ten days, because he was utterly ignorant. He went to the clerk of the court himself, and that officer told, him it was his duty to get some honorable senator to come forward and move that the petition be referred to a committee
Senator Sir John DOWNER
- I think that is a little irregular.
Senator HARNEY
- I do not think it is.
Senator Sir Josiah Symon
- But it is true.
Senator McGregor
- It is not irregular if it is true.
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Senator HARNEY
- The question then comes to this: If we interpret section 47 according to its plain grammatical meaning, the court is the body I am now addressing. The petitioner could not approach that body except by some ascertained procedure. This man did ascertain the procedure of his own State, and he followed it out with great particularity.' That procedure required that within ten days after 23rd Maj', some honorable senator-

should ask to have the petition referred to the committee or to the' Senate in a body. No one did so. Who is to suffer, Matheson or the petitioner, whose clear duty it was to have instructed some one, and to have avoided this technical want of the procedure that was required? Senator Sir John Downer, in the very able paper which he has read to us, has said - " But the Senate was not the court. It was not possible for the man to have the matter referred to a non-existent body. The court was the committee that was appointed, and there was no committee . appointed for several weeks after the petition had been lodged with the clerk of the court." There is a twofold, answer to that. ' The committee was not the court. It was only the body which the true court - the Senate - called upon to take evidence, and to report. The judgment lies with the Senate, and therefore the Senate is the court. The petitioner must be tried by the question whether he had the matter referred to the Senate within ten days after the petition had been lodged with the Clerk.

Senator Sir John Downer

- The honorable and learned senator has said that by lodging his petition with the Clerk, the petitioner referred it to the Senate

Senator Sir Josiah Symon

- The honorable and learned senator did not concede that.

Senator Sir John Downer

- The honorable and learned senator did say so.

Senator HARNEY

- No.

Senator Sir John Downer

- I say that the honorable and learned senator did. I can listen intelligently just as well as the honorable and learned senator can talk unintelligently.

Senator HARNEY

- I am quite willing to admit that it is all my own fault of expression.

Senator Charleston

- I think the honorable and learned senator will have to make that admission.

Senator HARNEY

- The honorable senator should speak for himself. Honorable senators who do me the honour of listening to me and trying to follow me, will know that I have referred to two sections in the Western Australian Act. One section has to do with the presenting of petitions to Parliament; that is section 146. The other section has to do with some duty which lies upon Parliament ; that is section 147. What I did say was that it was correctly presented to Parliament, but that the Senate did not carry out its duty, in that it did not within ten days send the petition before the judicial body that was to determine the matter. I think that is quite clear. My friend Senator Charleston hasconfused these two sections; I have not confused them for one moment. That the petition was correctly left with the Clerk I acknowledge. It lay upon the Senate, within ten days, to refer the petition to the judicial body. The Senate did not do so. Who is to suffer 2 That is the question, and I say the person is to suffer whose duty it was to set the House in motion. If I am asked how he could set the House in motion, my reply is by simply asking a member to get up in his place and say - " I move that the petition presented on the 3rd May be considered." That is all he had to do, that he was told he should have done, and that he failed to do. I must apologize for having occupied the time of the Senate so long. I do not propose to say much upon the points dealt with by Senator Sir Josiah Symon as to the propriety of quarrelling with the decision of our own appointed committee ; but I do think that, in a. matter of doubt of this kind, it would be establishing a most dangerous precedent if we were to take it upon ourselves to overrule on a difficult point of law the chosen body that we delegated to decide for itself. As I said at the opening, so far from the finding being less sacred because it is one of law than if it were one of fact, it is quite the contrary, because while it would be as competent for the committee perhaps to determine a question of facts, a large body of 25 or 30 is decidedly not at all as competent as the selected five or six to determine nice questions of law or procedure. Realize the position we are in, in the future, if we lay down this precedent. A partisan majority would then have it in its power to overrule every finding of a committee of the Senate by merely saying - " We do not agree with them in their point of law." They need give no justification that the world can understand ; they are not supposed to enter into learned disquisitions, and they need simply say -" We disagree with the finding of the committee cm a

point of law."
Senator Sir Josiah Symon
- It is only substituting a majority of the Senate, influenced by party feeling it may be, for a majority of a judicial committee.
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Senator HARNEY
- Now, what is our position? Suppose we were to say we will refer this matter back to the committee, would the committee act, or would they resign ? If they do act, do we fancy that we will have converted the majority into a minority ? If they refuse to act, how will it be possible to get an impartial committee after honorable senators have taken sides? I say it deliberately, if we now divide upon this question, those who say it should be referred back will have made up their minds upon the point of law in one way, and those who say it should not will have made up their minds the other way. How is a committee to be . fairly chosen from these two sides to determine the same point of law again ? I think the matter bristles with difficulties all over. My last remark is this- let us at all hazards do justice to the parties. If we were to send this back, no procedure being established, months more might elapse before its merits could be determined, and for half a year, or perhaps nine months, we would have the respondent lying under the anxiety of this charge. We must look at his side as well as the other. Is that fair to him? I think all will agree that it would be very hard for him. Is it hard upon Saunders, the petitioner, that his petition should be dismissed for noncompliance with the procedure which he chose himself ? Leave out the question as to what is legally right or legally wrong. Lawyers appear to differ about it; my honorable and learned friend, Senator Sir John Downer, is on one side, and Senator Sir Josiah Symon and myself are on the other. I dare sal. that other lawyers will be taking other views of the matter. How are we going to determine these nice points of law 1 I say the difficulty has arisen by reason of our having no procedure, and we should determine these cases by doing substantial justice to the parties. Substantial justice seems to be this : Matheson, who lias already had this thing so long over his head by reason of non-compliance with procedure by the petitioner, is entitled to be released, and certainly the petitioner has no right and no justification whatever, to complain against the course taken, which was simply treating him by the letter of the procedure which he chose himself.
Senator Dobson
- How does the honorable and learned senator get over the fact that the committee dismissed the petition because the Western Australian law had not been complied with, when Senator Sir Josiah Symon admits that it is not applicable?.
Senator Sir Josiah Symon
- - I do not admit that.
Senator Dobson
- - -I understood the honorable senator to admit that.
Senator Sir Josiah Symon
- No, the parties adopted it.
Senator HARNEY
- The words used ave -
That the petitioner has not conformed with the electoral law of the State of Western Australia.
That is the ground given.
Senator Dobson
- That is the only ground.
Senator Sir Josiah Symon
- That is the ground the petitioner himself gave. He said he had conformed.
Senator Dobson
- That is the ground which I understand the honorable and learned senator to say does not exist.
Senator Sir Josiah Symon
- I say it does exist. I have said so again and again.
Senator HARNEY
- That is the ground given, and I think that ground is correctly given, because from the way the committee looked at it and from the way I am arguing it they deemed the law as applicable against a man who

himself chose it, and therefore they are justified in saying that " with these circumstances before us we dismissed the petition because the petitioner has not complied with the law of Western Australia." Honorable senators must remember that the committee do not say that the law of Western Australia was obligatory upon the petitioner.

Senator Sir Josiah Symon

- If he had said that he did not follow the law of Western Australia, but something else, we should have judged him by it.

Senator HARNEY

- If the words used had been these -

The petitioner has not conformed with the electoral law of the State of Western Australia as required by law - there would have been reason for the remark.

Senator Dobson

- Then the committee took their law from an ignorant layman 1

Senator HARNEY

- They did not take their law from any one. They were guided as every Judge is by the law of estoppel, more or less, the law of assumption.

Senator Sir Josiah Symon

- We asked him by what procedure he would be governed, and he said by the practice of Western Australia.

Senator HARNEY

- The committee recognised the position that they could not deal, with the matter at all unless they had some procedure. They asked -the petitioner what .procedure he had adopted, and he said he had adopted the procedure of Western Australia. They then, I think, very wisely and justly said - " By no more fair procedure can we deal with you than that which you have adopted yourself." The report might be filled in in this way -

The petitioner has not conformed with the electoral law of the State of Western Australia, he having chosen that procedure himself.

Senator Dobson

- "But we think it does not apply."

Senator Sir Josiah Symon

- We say it does apply, because he chose it.

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Senator HARNEY

- It would be for the respondent to make that point and to say - " How can you make your procedure binding upon me. How can you choose your procedure and bind me by what you choose" ? Senator Matheson has not done that, but he has said to the petitioner - "You have chosen this procedure and I am willing to allow you to be tried by what you have chosen yourself." Honorable senators must remember that the objection comes from the wrong side. If the objection came from the other side there would be perfect force in- it, but 'how could the objection come from the side which chose the procedure for itself ? That would not be allowed in any regular tribunal. These are the only observations I have to make. I hope that honorable senators, where there is any doubt - and there must be a doubt in this case where there are so many contradictory opinions held - will not allow it to go forth that the Senate, whenever it has any hesitancy as to the correctness of some finding of its own committee, will overrule the judgment of that committee. That will be a monstrous precedent. I do not think that in this case it has been shown that the decision was so clearly and irrefutably wrong that we should establish such a dangerous precedent in order to carry our ideas of what is right.

Senator Sir FREDERICK SARGOOD

- I read with no little surprise the report of the committee, introducing as it did the electoral law of the State of Western Australia, and I waited with considerable interest to hear the discussion ' that would take place on it. We have had a very interesting discussion for and against the finding' of the committee, but the longer the discussion continues the more my surprise is increased at the action of the committee in introducing the reference to the law of Western Australia or of any other State. We have been told that the committee decided upon this case as they did because the petitioner, forsooth, took it upon himself to

introduce his petition under the regulations observed in the State of Western Australia - the only law, I suppose, of which he had any knowledge whatever. If this is followed out it really means that whether the petitioner was right or wrong, was acting legally or illegally, and simply because he commenced his procedure under the Western Australian law, this Senate must, therefore, adopt that procedure, whether it be in accordance with the Constitution or against the Constitution. AVe have also been told that the Senate should on no account overrule the report of its committee.

Senator Sir Josiah Symon

- Not on no account, but if the matter is not very clear.

Senator Sir FREDERICK SARGOOD

- The honorable senator put it very nearly as strongly as I have done, but i confess that in this case the matter appears to me very clear. I was under the impression that the object which any House of Parliament has in referring a matter to a committee for inquiry and report, was to enable the committee to go into the details, which I quite agree the House is not qualified to do so satisfactorily. The committee then brings up a report, and the House deals with that report, and either accepts, rejects, or amends it.

Senator Sir Josiah Symon

- But they do not do that with the reports of Elections and Qualifications Committee. There is no precedent for this.

Senator Sir FREDERICK SARGOOD

- I do not know how far the honorable and learned senator is right, but, personally, I do not see why there should be any difference in dealing with a Committee of Elections and Qualifications. There can be no question that the final determination in any case must lie with the Senate, and not with the Elections and Qualifications Committee, or any other select committee that may be appointed. We are told also that, because there was jio procedure laid down by the Senate, the committee was, therefore, justified in taking account of the procedure already commenced, incorrectly, I think, by the petitioner; but I venture to think it will not be contended that, because no procedure is laid down by the Parliament of the Commonwealth, we must, therefore, take the procedure of some other body.

Senator MCGREGOR

- What would the honorable senator take ?

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Senator Sir FREDERICK SARGOOD

- I am speaking of the Senate, and I say that as far as the committee is concerned, they took the procedure laid down by the Western Australian Parliament; although section 47 of our own Constitution Act states distinctly that the procedure is to be laid down b}' the Federal Parliament. That section goes on to state distinctly that the determination of the whole matter shall lie .with the Senate. It does not say that the Senate shall pass procedure, but it does say that pending the passing of procedure by Parliament the Senate must decide. What did . the Senate do 1 It received a petition. I do not think the Senate is bound to inquire whether the petition was in accordance with the Western Australian procedure or any other State procedure. The Senate did not lay down any procedure itself, and it was the sole judge of whether it would receive the petition or not. The next step was to decide what it would do with that petition. The Senate decided to refer it to the committee. That was clearly within the power of the Senate, and it did so with the instruction to the committee "to inquire and report." To inquire what ? Surely not as to the procedure of some Other State, but as to the facts of the case. We have not a single statement before us dealing with the facts concerning that petition. So I venture to think that the committee have failed to carry out the distinct instruction of the Senate. We have been toldby Senator Harney that inasmuch as there was no procedure laid down by Parliament, the committee had no powers whatever, and 'that if they desired to call evidence and compel the presence of witnesses they were absolutely without authority to do so. Is that a fact? What does the 49th section of the Constitution Act say? That in the absence of procedure or regulations laid down by the Senate the committee shall have all the powers - of what? Of the House of Commons. Surely in those powers the committee had ample authority to summon any witness they liked. To my mind the whole question resolves itself into this - are we justified in taking the slightest notice of any State laws in this matter? All we have to do is to go to the only authority that can guide us, namely, the Constitution Act itself. It is clear from section 10, if that were the only section dealing with everything pertaining to elections, that we should have in some way or other to stretch the

words "of elections" into "disputed elections." But we know perfectly well that in section 47, which deals with disputed elections, there is laid down the distinct statement that pending the passing of procedure by Parliament it should be decided by the House - namely, the Senate in this case. What can be clearer than that? It does not seem to me to be open to any discussion whatever. I am dealing with this matter solely as a layman, but as one who has had some experience in connexion with disputed elections. In the first instance I thought there was a section in the Constitution providing that disputed elections should be dealt with under the State procedure. I very soon found that I was confusing sections 10 and 47. I am aware that it has been argued in the committee, and since that, if the view I and others held were correct, petitions might be presented against the return of any honorable senator without limit of time, but I frankly acknowledge that, and I do not see that any other reading of the law is possible. But suppose for argument'ssake that the Senate still abstains from dealing with the procedure, and that months hence a petition is presented. Then it is quite within the power of the Senate to State that in consequence of the lapse of time it will not entertain that petition. I grant that it is unfortunate that we have not dealt with this procedure. I have no doubt that now we shall pass such procedure, and then the unfortunate contingency of a delayed petition being presented cannot very well occur. But I venture to say that if any petition were presented after a lengthy period of time, the Senate would not entertain it. I have endeavoured to deal with this matter from a common-sense point of view. I have no interest or feeling one way or the other as to the result ; and I must confess that I was sorry to hear Senator Sir Josiah Symon refer to the motion as being an insult to the committee.

SenatorSir Josiah Symon. - I said a censure.

Senator Sir FREDERICK SARGOOD

- I do not think it is even that. It is possible for any of us to make a mistake, and if I made a mistake and was told so, I should not consider it a Censure upon me. I should be inclined to look at the matter again and see if I was wrong. I am sure that the Senate has not the slightest intention of passing any censure on the committee, but I venture to think that the majority of the Senate will adopt the motion moved by the Vice-President of the Executive Council, and return the petition to the committee. Then I think the committee will be perfectly right in dealing with the duty laid upon it, inquiring into the facts of the case, and reporting to the Senate, after which the Senate can deal with the matter.

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Senator MILLEN

- It is with a great deal of regret that I feel obliged to give my support to the motion now before the Senate.

I may state that I came here with a very strong and a very natural resolution, as one who has had a small experience of Parliament, to stand by the committee if it were possible to do so. I have listened with a great deal of attention to the speech of Senator Harney, who has pointed out the very serious consequences which may result from a disturbance of the committee's report. I admit that. But I can see a much more serious consequence which might follow to this Senate if by any action of its own an impression were allowed to go abroad that we were prepared to deny justice to a petitioner in order to protect one of our own members. I can see also a very great danger which would follow the decision of the Senate if it were shown that we were too much the slavish adherents of usual methods of parliamentary procedure in reference to committees in adopting their reports, even when we differed from them. Senator Sir Josiah Symon has remarked that the present procedure is unprecedented. That may be admitted. We have also to admit that the circumstances which gave rise to it are unprecedented. What are those circumstances? I propose to take them as I can, very much as they have been stated by Senator Harney. It is curious to me that the honorable and learned senator attempts to defend the action of the committee, although that decision is based upon a statement from which he dissents. The decision of the committee is based upon the statement that the petitioner has not conformed with the electoral law of Western Australia, while Senator Harney himself was emphatic in stating that the law of Western Australia had no application except that which was imported to the case by the action of the petitioner. It is necessary to lay some emphasis on that, because I submit that it gives us the right to disturb the finding of the committee seeing that upon its own showing the committee has arrived at its decision upon wrong premises. If the committee had presented a report to the effect that the petitioner had not conformed with the electoral law of China, for instance, and in consequence thereof the petition should

not be entertained, how would the case stand ?
Senator Keating
- Or, say, with the electoral law of Victoria.
Senator MILLEN
- The case of China occurred to me as being a little more absurd. If it is admitted that the law of China had no application to the case, and if the committee nevertheless applied it clearly we should not adopt its decision. This is probably an instance of the folly of a Judge giving any reasons at all; but the committee have given their reasons. If I understand aright the arguments used, they amount to this : The committee have applied the law of Western Australia to this matter because the petitioner himself elected to have his petition tried under that law. If . it be so, I contend that the petition had to be judged by the law of Western Australia, plus the 10th section of our Constitution Act. If that is so, the committee could take the law of Western Australia only so far as it was applicable. But what have we been asked to do to-day ? So far as I have been able to understand we have been asked -and I ask my honorable friends who advocate the adoption of the committee's report to indicate to me how it could be done - to say that the petitioner should have handed a document to the committee before that committee existed. But it clearly was not practicable to hand anything to a non-existent body. If my honorable friends can show me how anything can be handed to a non-existent body I will admit that my argument fails.
Senator Harney
- What body is nonexistent?
Senator MILLEN
- The committee was non-existent at the time this petition was lodged.
Senator Harney
- But the court is the Senate.
Senator MILLEN
- If we take section 47, it is evident from that provision that the Senate can take the petition in hand now and deal with it. In fact, it might deal with the petition ten years hence.
Senator Harney
- Certainly.
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Senator MILLEN
- That being the case we need not argue about section 10 at all. The petition is here now. That being so, the grounds on which the petition has been objected to - that it is not in conformity with the law of Western Australia - does not apply. If that be the case the committee have been going on wrong lines. The committee have said that because the petitioner elected to be tried under the Western Australian Act they tried him under it. So far as I can see, the attempt to apply the ten days' limit of the Western Australian Act to this petition is not reasonable, because it was clearly impracticable to refer the document to a non-existent body.
Senator Harney
- The Senate was existing.
Senator MILLEN
- If we take the Senate as being the court we go away from the Western Australian Act. In that case there is no limit as to the time. There is no time limit upon the petitioner if the Western Australian Act does not apply ; nor need he pay a deposit ; nor need there be any witnesses at all to his signature. Indeed the petitioner can present an ordinary petition to this Chamber. That being the case no stress need be laid upon the ten days' provision. But, on the other hand, upon the question of negligence, let me point out this fact - that so far as the petitioner was concerned, there was only a loss of seven days from the time the Senate was in possession of that document to the time it was sent up to the committee. I think it was on the 6th of June that the preliminary resolution was passed, authorizing the President to lay his warrant on the table constituting the committee. On the 12th June - just about a week later - the President did lay his warrant on the table. I venture to say that there was no negligence there. Considering that this Senate does not meet every day, the period from Thursday, the 6th June, until the following Wednesday, cannot be called a delay in any sense of the word. I say that the President acted with all the promptitude that can be expected. But when the President laid his warrant upon the table, that did not constitute the

committee. There had to be a lapse of four sitting days ; so that it was not until the 20th June that the committee was in a position to proceed with any work with which it might be intrusted. Within a week from that date the Vice-President of the Executive Council moved that the petition be referred to the committee. I venture to say that the consideration of those dates, and the lapse of time I have referred to, clearly indicate that there was no undue negligence on the part of any one. The matter proceeded with as much promptitude as I ever expect to see in reference to any parliamentary procedure. Another point made by Senator Harney was that having no procedure the Senate was not competent to do anything. I reply that the very fact that the Senate has adopted no procedure leaves it freer to do anything it likes than it would be had it adopted a procedure. The Senate can call the petitioner here, and inquire into the merits of his case. It can unseat Senator Matheson if it likes, or dismiss the petition if it likes. The hands of the Senate are freer to-day than they would be if the procedure recommended had been adopted. While having a serious objection to disturbing the decision of a committee to which the Senate has submitted any matter, I still think the Senate is bound to do so if it comes to the conclusion that a mistake has been made by a committee ; and I say openly and frankly that the decision of the committee should be reversed rather than that we should become parties and instruments in the perpetuation of what we believe to be a wrong.
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Senator PLAYFORD
- I trust that the Senate will not be led away by the arguments of Senator Harney, who has told us of the position that one of our honorable senators will be in for a considerable length of time, as the result of altering the decision of the committee. We should look at the matter from the point of view of justice, altogether apart from the consequences that may possibly follow from our action. At all events, I intend to look at it from that point of view, and from a common-sense consideration of the question, and not from the point of view of the injurious effects that the action of the Senate may have upon any person outside or inside this Chamber. It is very pleasant to follow the legal members of the Senate who have offered different views upon this subject. Senator Harney does not agree with Senator Sir Josiah Symon, who in his turn does not agree with Senator Sir John Downer, and if we had two or three more lawyers addressing themselves to the question I expect we should find them holding dissimilar views upon it. But if I may exercise the presumption of speaking upon a legal question as a layman, it appears to me that the whole trouble has arisen upon the point which the lawyers seem to be agreed upon - although apparently they are agreed upon nothing - namely, that we are in no way bound by the State laws in regard to the trial of disputed elections. They quote section 10, which they say would apply if it stood alone. They then refer to section 47, and they say that because it makes a certain provision, that therefore section 10 does not apply, and that consequently if there is a disputed return we are absolutely free to deal with it just as we like, without the slightest reference to any State law. To my mind, and I say so with all modesty, that is giving a wrong meaning altogether to the Constitution. Let us examine section 10.
Senator Harney
- We are all with you there.
Senator PLAYFORD
- I am going on my own. Have I not the right to ray own opinion. Section 10 of the Constitution provides - Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous Houses of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.
It is argued that if that section stood alone there would be no doubt that the laws of the particular State would govern matters of disputed elections. Then reference is made to section 47, which provides - Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.
That simply means that where under section 10 the law would undoubtedly be applicable, we in the Senate shall determine the election as we choose ; but we are bound to determine the election according to the laws of the State that will apply. Common sense ought to teach us that. The absurdity of trying a

senator who happens to come from Western Australia by laws that govern a disputed election in Queensland, has only to be stated to be apparent, and if the Senate was to adopt any particular law of its own relating to disputed elections, and say that this shall disqualify a man from sitting in the Senate, and so on, that would also be utterly wrong. It would be contrary to justice that a man should be tried under such a law. It appears to me that the drafters of this Constitution undoubtedly intended, and under section 10, provided that so far as the first Parliament of the Commonwealth was concerned, a man whose return was disputed should be tried by the laws of the State in which he stood for election, because he would know and understand the laws of that State with regard to disputed elections. He could not be expected to have a knowledge of laws that might be framed by the Senate, or which might be in existence in other parts of the Commonwealth. Therefore I contend that in common fairness to the petitioner, as well as to Senator Matheson, this case of a disputed election ought to be tried under the laws with which the parties are thoroughly acquainted. To try them by other laws would be grossly unfair. Then comes the question whether the petitioner has obeyed, as far as he can, the laws relating to disputed returns, with which he is acquainted. It is admitted on all hands that he has, and that if there is any fault at all the fault rests with the Senate. The petitioner paid his deposit of £50, he sent his petition in in time, he did everything he possibly could up to the one stage - the stage of bringing the petition before the court - because the Senate was the court. He deposited the petition' with the court that had to try his case. That ended his responsibility, and it was, then, for the court to deal with the case.

Senator Harney

- That happens not to be the rule.

Senator PLAYFORD

- I want to go on what I think are fair and just and right lines, and to state what Ave ought to honestly and decently expect the man to do. We cannot ask the man to do something beyond a certain stage. The petitioner did everything according to the law of Western Australia when he presented his petition and lodged his deposit with the Clerk. He approached the court, and it was for the court itself to take action.

Senator Sir John Downer

- That is what I have always said.

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Senator PLAYFORD

- I say that to visit on the head of the petitioner the wrong that the Senate itself has committed would be altogether unfair. At all events, it would not be acting fairly and justly to the petitioner under the circumstances. We are told that we must not upset the decision of the committee, because, if we do so, we shall be going back to the bad practices of our forefathers. That is an argument raised by Senator Sir Josiah Symon. Senator Sir Josiah Symon knows, however, that the" position is altogether different. I have not the slightest doubt that the members of the committee, whether they be those in the minority or in the majority, acted in the best of good faith and. did what they believed to be light under the very difficult circumstances in which they were placed. It was something new that was sprung on them. They acted according to their judgment, and surely if the Senate, after giving the. matter consideration, comes to the conclusion that the minority were right, I do not think that the majority- which was a majority of one - ought to consider for a moment that they are being slighted in any way or receiving a back-handed blow. Such a thing is not intended.

Senator Sir Josiah Symon

- It was the same majority which decided the other day, in the Supreme Court of the United States, the question in regard to Cuba - a majority of one.

Senator PLAYFORD

- That may be, but this is a committee. "We have delegated certain work to certain individual senators. We have asked them to inquire and to report upon a particular subject. They have come back with a report, in which they give their decision on an exceedingly technical objection. There is no doubt about that. Senator Sir Josiah Symon must admit that it is an exceedingly technical objection.

Senator Sir Josiah Symon

- Yes, an exceedingly difficult one-

Senator PLAYFORD

- They say upon that objection that in their opinion the petitioner has not complied with the law, and that

they do not propose to proceed any further. Surely we have a right to review that. I do not wish in any way to cast any reflection on the majority of the committee who have come to this decision. We believe they have made a mistake. Surely they will, admit that they are human, and like other people, are liable to make a mistake.

Senator Harney

- Is the honorable senator going to review their decision on a point of law ?

Senator PLAYFORD

- Yes, certainly. I would do so at any time.

Senator Keating

- There were plenty of laymen on the committee.

Senator PLAYFORD

- If any mistake has been made, it has been made by the Senate, and we ought not to take advantage «©f our own laches. I think that is a good legal maxim. It is absurd to say that by upsetting this decision we shall be going back to those fearfully bad times when election petitions were always decided by parties. The Government, if they were strong enough, unmistakably ousted a man. who was appealed against, and actually the fate of Ministries has depended upon the effect of a disputed election return. I think that Walpole went out at last after fighting a hard battle when he found that one of his supporters, whose election was disputed, was, by a majority of the House, turned out of Parliament. We are not likely to go back to those times. We know that in a very short time the Government will bring in provisions providing for our own court of disputed elections, and for all matters appropriate and relating to elections for the Commonwealth Parliament.

Senator Sir Josiah Symon

- .But what procedure is this committee to be governed by if it goes on again ?

Senator PLAYFORD

- In the .circumstances, I shall vote for the Government on this occasion. I shall do so with a certain amount of reluctance, because I admit that this is a thing that is not to be lightly undertaken. Having appointed a committee to inquire into a certain matter, and that committee having brought up a report, its decision is not to be lightly set aside, no matter what it may be. I think this case is such a clear one, however, and that we should commit such an act of injustice in the circumstances, if we did not set aside the report, that 1 feel compelled to vote for the Government in the circum-stances.

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Senator WALKER

- If I might take the liberty, I would suggest that the Vice-President of the Executive Council should add to his motion an instruction to the committee to consider the merits of the ease irrespective of the procedure. If that is not done, and if the committee does ' meet again, they will probably have to approach the Senate for instructions on the point. As a member of the committee, who was in the minority, I should have liked at the time to have had an opportunity of setting out the reasons of our dissent. It was not convenient, however, for us to do so. Senator Sir John Downer has stated the plain facts of the case in his memorandum. We really had the views of counsel on both sides before we adjourned, and during the interval I presume that we all thought over the matter. In my own case I was so clear as to the injustice of throwing out the petition on a technical ground, that although I was not, perhaps, justified in doing so, I requested the committee to allow me to express my views before any one else did. I said that, as a layman, it seemed to me to be simply unfair that when the petitioner had done all that was in his power and could do nothing more, he should be thrown out of court for his failure to comply with the ten days' limit under the Western Australian law. One of the majority - I suppose it would not be right to mention names - referred to the action taken by the other House with regard to a petition there, but it seemed to me then, and it still appears to me, that the argument raised by the honorable and learned senator is very weak. The cases are not on all fours. Even taking the Western Australian practice, we know that in the case of the petition against the return of a member of the other House, the £50 deposit had not been lodged, whereas, as far as one could judge, everything that could be done by the petitioner in this case had been done by him.

Senator Harney

- There was a technical objection, just the same, in the other case.

Senator WALKER
- Every thing that the petitioner in our case could have done has been done, whereas in the other case the same cannot be said of the petitioner. That is surely a material difference. According to section47 of the Constitution Act the question remains with the Senate, and I certainly should have been one to ask for a further direction from this House before bringing up a final report. We are free from any party feeling in this matter. Several of those of the committee who formed the minority are on the same side of the Senate as Senator Matheson, whose seat is challenged, and so far as the debate has gone in the Senate, I am glad to notice that this matter has not figured as a party question at all. One argument that carried great weight with some members of the committee was that there would be no finality with regard to this matter, and that any honorable senator's seat might be petitioned against during the currency of the Parliament if the petitioner were allowed to go on, in spite of the technical objection, after the ten days.
Senator Harney
- So he might.
Senator WALKER
- All I can say is that if any . one of us has been guilty of anything for which he should be punished, I see no reason why he ought not to be punished.
Senator Millen
-Parliament would not entertain a petition if it were lodged preposterously.
Senator Harney
- Who is to determine the meaning of the word "preposterously."
Senator WALKER
- The committee consisted of seven members. Two were lawyers and those two only differed. It was therefore practically left to the laymen to decide. We who were in the minority may or may not be right. We certainly think that the right to petition in regard to an election is a matter of such importance that we ought not to throw a petition aside on merely a technical ground. Personally, I have very great sympathy, if I may say so, with the honorable senator against whom the petition is lodged, but I tried to rise to the occasion and to do what is right, remembering the old maxim, Fiat justitiaruat coelum. I believe that every member of the committee acted according to the best of his judgment, thoroughly irrespective of party feeling, and I hope that Senator O'Connor will see his way to amend his motion in the way that I have suggested.
Senator O'Connor
- I do not think that is necessary.
Motion (by Senator De Largie) proposed -
That the debate be now adjourned.
Question - That the debate be now adjourned - put. The Senate divided -
10
AYES
15
NOES
Majority ... ... 5
Question so resolved in the negative.
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Senator DE LARGIE
I am rather sorry the debate was not adjourned, because two of the majority of the committee are absent, and I am sure that if they were present a different complexion would be put upon this matter. That is why I moved the adjournment of the debate. Seeing that we have got to proceed, .1 may say that I differ with the majority of the honorable senators who have spoken, and who say that we have no line of procedure to go upon, and that we should not have adopted the practice prescribed by the "Western Australian Electoral Act. I can assure the Senate that the majority of the committee had that Act in their minds when they came to their decision, and they adopted as a basis of the procedure the electoral law of Western Australia. There is no other Act I am aware of upon which they could have based any opinion. We took sections 10 and 47 of the Constitution as giving us the right to follow the trend of the Western Australian

Act, and as that Act had not been complied with in all its conditions, we considered we were well within our right in rejecting the petition, just as the House of Representatives had done in connexion with a somewhat similar condition of affairs. If the petition had been presented within the prescribed time I am sure there would have been no objection to going into all the pros and cons, but having found that the petition was not presented properly, we thought we were acting rightly in saying . that we could not go any further with it. It is unnecessary for me to quote the section of the 'Western Australian Act, which has already been referred to, but it says that a petition, after being laid in the hands of the Clerk, must within ten days be placed before the court. . Whose fault was it that the petition was not placed before the court before the Senate, or before the committee of the Senate? I hold that it was the fault of the petitioner himself. It was the duty of the petitioner to see that the various steps necessary to have- his petition considered were taken,. and having failed in that I hold that it was his fault and not the fault of any one else. There might be some impression that it was perhaps the fault of the Clerk of Parliaments, or perhaps the President of the Senate, or the leader of the Senate, but I do not think so. I think the fault lay with the petitioner. He failed to see that the various necessary steps were taken and the petition was not put before the committee within the time limit allowed.

It is a very liberal time limit. Under no other law with which I am acquainted is there such a time allowed as under the Western Australian Act. Forty days are given in the first instance and ten days after that time are allowed to any petitioner to see that his petition is presented to Parliament. Under most other Electoral Acts in Australia from seven to ten days is the limit allowed, and in this case though a much more liberal time was allowed, the petitioner did not comply with the provisions of the law. I therefore hold that the committee did the right thing in saying that the petition should not go any further. There may be some impression among honorable senators that the petitioner did not know what his duty was, but we have the word of Senator Harney that the Clerk of Parliaments clearly told him what was his duty, and what was the procedure.

The PRESIDENT

- Perhaps in fairness to the Clerk I ought to explain that he says he must have been misunderstood. He did not say what he is stated to Have said. Indeed he could not have said it because there was no tribunal in existence at the time.

Senator Harney

- May I just state that I was informed that what occurred was that the petitioner actually saw the Clerk, and the Clerk told him that he ought to get a member of the Senate to have the petition presented.

The PRESIDENT

- That is a different thing. That is correct, I believe.

Senator Harney

- All I stated was' that he could not complain that he had had no warning as to what he should do.

The PRESIDENT

- The honorable senator should not make another speech. What I understood Senator Harney to say was that the Clerk had told the petitioner" that he ought to have his petition referred to the tribunal that was to try it. What I understand the Clerk did say - and I think he stated it in private, and it should not have been made use of - was that he ought to get an honorable senator to present the petition.

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Senator DE LARGIE

- I think it was the duty of the petitioner, if he found he had tins petition to present, to approach some member of the Senate to do the office for him. I know from many honorable senators that they were not approached by the petitioner or asked to present his petition.

If he had asked any honorable senator and had been refused, he would have had grave reason to complain of that senator's behaviour, but the petitioner has admitted thai; he never asked any senator to present his petition. His counsel having admitted that, the whole of the responsibility rests with himself. I have already referred to the very liberal time allowed the' petitioner to present a petition under the Western Australian Act, and I think the petitioner in this case cannot say he has been harshly dealt with. If we had not a time limit no senator would be free from having a petition filed against him at any time within the term for which he is entitled to sit in Parliament. How would any senator like to have a charge presented against him after a considerable lapse of time, and to be fined, according to the Constitution,

.-£50 for every sitting during which he had been here, supposing the charge made was brought home to him without any reference to the nature of the evidence ? It is a much more serious affair than many senators appear to have considered it. I hold that it is the duty of the Senate to stand by the report of the committee.

Senator Lt Col NEILD

-Col. NEILD (New South Wales). - It seems to me that this committee came to a decision, and I notice that there is no statement of the division. We hear to-day that there was a division in the committee, and that the matter was carried by one vote, but in the report of the proceedings of the committee, as was laid on the table of the Senate, there is no record of any vote. There is no evidence of any disagreement, and it appeal's to have been a unanimous decision. I was for many years a member of the Elections and Qualifications Committee in connexion with the New South Wales Legislative Assembly. The speeches made in the committee were, of course, not recorded; but the whole proceedings of the committee connected with divisions, at any rate, were recorded. That might have some, advantage, because it seems to me to be rather informal that members of a committee should be disclosing secrets of the committee which are evidently intended to be sacred, seeing that they are not to be found in the report furnished to the Senate. It seems to me that the matter that we are now asked to decide is a highly technical and difficult one, and I do not think that substantial justice is done in the matter of election committees if the finest technical points are seized upon to affect the giving of the decision which members of the Parliamentary Committee are sworn to give. I am not saying this by way of casting any kind of reflection on the committee. 1 .

Senator Sir Josiah Symon

- This committee is not sworn.

Senator Lt Col NEILD

.- Well, such committees are always sworn in New South Wales, and if I am not accustomed to a custom that does not exist there yet I may be excused.

Senator O'Connor

- The honorable senator is substantia] lj' right. What does it matter whether they are sworn or not 1

Senator Lt Col NEILD

- It is certainly the duty of the committee, as I understand it, to deal with these matters so as to secure substantial justice rather than to deal with technicalities on which eminent lawyers differ. Eoi- instance, in this case we have two honorable and learned senators, both dignified by the title of King's Counsel, and they are absolutely at variance upon .the point.

Senator Staniforth Smith

- And we are to settle that constitutional point 1

Senator Lt Col NEILD

- It is not a constitutional point, as I understand it ; it is a strictly legal point. However, there is this point that occurs to me. If the petition is thrown out, the petitioner fails to secure justice. On the other hand, there is no injustice necessarily done to the sitting member. He is not deprived of any right. The petitioner is deprived of the right on a highly technical ground, if his petition* is thrown out on that ground. I, therefore, think that it is in the interest of broad justice that an election petition should be dealt with rather on the merits than on technicalities. It is purely upon that ground that I shall give my vote for a reference of the matter again to the committee, in the hope that, in view of the discussion that has taken place to-day, when the committee does deal with the matter a second time, it will deal with it on bread grounds of equity rather than on the narrow ground of technicality.

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Senator PEARCE

- The Senate is to be congratulated on the fact that this question has been dealt with quite apart from party lines. There are some prominent members of the free-trade party who are supporting the action of the Government in the matter. But at the same time I think the Government themselves are not altogether to be commended. Notice of the motion which Senator O'Connor has moved should have been given. That it was not given was most unjust to two honorable senators who sit on the Government side of the Chamber and who went away absolutely ignorant of the fact that the Government were going to bring this subject before the Senate. The two honorable senators to whom I refer are members of the Elections and

Qualifications Committee.
Senator Dobson
- I am prepared to pair with one of those honorable senators, and it will be found that a pair, has been arranged for the other.
Senator PEARCE
- In justice to those honorable senators they should have had an opportunity of being here, to hear the reasons which have animated the leader of the Government in bringing forward this motion. It was certainly, unfair to them to allow- the question to come up for discussion without notice being given of it. I speak with some diffidence upon the subject, because it is one of a legal character, but I must express surprise at the opinion that has been so generally expressed that the petition in. dispute is not governed by the Western Australian Act. It seems to me that this case is on all fours with another case, not of a similar character exactly, but in which the Western Australian Electoral Act and the Constitution Act both partly apply. In . regard to the election of senators certain provisions are laid down in this Constitution. The electoral Acts of the various States provide the method of electing those senators : and in Western Australia the Electoral Act provides that there shall be a deposit of £25 for each candidate. The Constitution is absolutely silent as to any deposit being required from a candidate, but we know as a matter of fact that one candidate was nominated and did not bring forward a deposit, and the Crown, law authorities ruled that he was not eligible to be a candidate.
Senator Sir Frederick Sargood
- That is provided for by section 10.
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Senator PEARCE
- Where does section 10 become operative? Does it cease to become operative as soon as the poll is declared ? All proceedings against a member to unseat him seem to me to be contingent upon the declaration of the poll. Within 40 days of the declaration of the poll a petition may be lodged against: the return. The election is not complete, and there is a possibility of upsetting it until those 40 days have elapsed. To my lay mind it seems to be common sense that in case of disputed elections, in so far as they are not provided for by the Constitution, the procedure must be that provided by the electoral law of the State concerned ; that is, " until the Parliament otherwise provides." What was the intention of the framers of the Constitution in regard to section 10? Was it not that' " until the Parliament otherwise provides," the electoral law of the States should apply in regard to the method of electing senators and members of the House of Representatives ? If that was the intention, would it not also be the intention of the framers of the Act that the mode of dealing with elections should be that provided foi- by the law of the States ? Otherwise, when there were such constitutional authorities as Senator Sir John Downer upon the Federal Convention, surely they would have provided some means for such a contingency as has arisen for dealing with disputed elections ; and seeing that nothing has been provided in the Constitution, I think we can fairly assume that the electoral Acts of the States do apply in this particular. Certainly the petitioner in this case thought so when he adopted the Western Australian procedure in submitting - his petition to the Senate. ' It has been asserted that section 47 clearly says that the Senate itself must deal with these cases and not the electoral Act of the State; but I would point out that section 47 merely provides that the Senate shall be the court, but does not provide procedure b}' which the case shall be brought before the court. Inasmuch as that procedure is missing from section 47, we have to take the procedure laid down in the electoral Act of the State from which the petition comes. I have heard nothing in the course of tins debate to lead me to any other conclusion ; and I must expres my astonishment to find those whs are defending the action of tl committee admit that the State law doe not apply, because, to my view, they would have a powerful case if they maintained that the State law did apply. I am of that opinion myself, and it will influence me in my vote upon the question. I should like some of the speakers who are to follow me to attempt to explain, in a clearer way than has already been done, why the State law does not apply in this case. If it does apply, I contend that the section of the Western Australian law, which provides that within ten days the case shall come before the court, would apply equally with the section that provides that £50 is the amount of deposit to be paid.
Senator Sir John Downer
- Supposing there is not a court?

Senator PEARCE
- I take it that section 47 of the Constitution provides that the Senate is the court. The Senate, in appointing the committee, merely deputes its powers to that committee.
Senator Sir John Downer
- Was not the petition an appeal to the court immediately, without any ten days' interval at all?
Senator PEARCE
- I am not sufficiently well versed in the law to answer these legal subtleties at such short notice, but it seems to me that the case was not before the court until action was taken upon it by means of the motion moved by Senator O'Connor. It was open to the petitioner to get any senator to bring forward his petition ; and I am sure that no one would have refused to put the matter properly before the court, when it could have been dealt with in the manner provided by the Western Australian Act.
Senator Sir John Downer
- To whom would it have been referred?
Senator PEARCE
- It would have been for the Senate to deal with it. The Senate could have referred it to the committee. But the fact that it was not moved within the ten days does not excuse the Senate.
Senator Sir John Downer
- If the Senate is the court, the ten days' provision does not apply, because the petition was before the court when it was handed to the Clerk.
Senator PEARCE
- Then where is the necessity for the section that provides that the case shall be submitted to the court within ten days?
Senator Sir John Downer
- It shows that that section is inapplicable, that is all.
Senator PEARCE
- I think it is applicable; and that the committee was right in assuming that the electoral law of Western Australia applies. The petitioner assumed that it did, and since both sides assumed that it did, I say that the committee were right in contending that every section of the Electoral Act of Western Australia which did not conflict with the Commonwealth Constitution should be applied to the case as far as was practicable.
Senator CLEMONS
- Whatever decision the Senate comes to upon this question, it is a matter of very great regret that the present discussion has arisen. There can hardly be a single doubt about that. But I do not for a moment overlook the necessity of giving very full consideration to a question of such great importance as this. Some of our regret would have been avoided if this motion which has been moved by the Vice-President of the Executive Council had been moved by some other honorable senator. I am sorry to have to use these words, but I feel strongly on the matter, and I am not going to refrain from saying what I think. I will put it in this way - I believe that Senator O'Connor's good nature has been trespassed upon. This motion, in my opinion, should have been originated by the chairman of the committee who reported the decision of the committee to the Senate. I have no doubt whatever that Senator Sir John Downer's attitude when he brought forward the report was such as to convince every honorable senator present that be himself would move in the matter when it came before the Senate for discussion.
Senator Sir John Downer
- Certainly not.
Senator CLEMONS
- That is my honest impression.
Senator Sir John Downer
- The honorable and learned senator must have been subsequently convinced of that.
Senator CLEMONS
- I would point out that in obtaining the consent of the Vice-President of the Executive Council to moving this motion, the chairman of the committee has clothed it, to some extent, with the authority that the Government must and should possess in this Chamber.
Senator Sir J ohn Downer

- I asked for no consent, and obtained none. I did not ask Senator O'Connor to move the motion.
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Senator CLEMONS
- Of course, I accept, literally, the truth of everything the honorable and learned senator says. I am sure he knows perfectly well that I would not for one moment question it. My assertion to that effect is in fact absolutely unnecessary. But Senator Sir John Downer will recognise that he is to some extent responsible for the impression that has been created in the minds of most honorable senators present by the fact that this motion has been moved, not by the honorable and learned senator himself, but by the leader of the Government in the Senate. It is inevitable that we must consider that the motion lias the sanction of the Government ; but I feel strongly, and I am sure Senator O'Connor will agree with me, that this is a question to which, the Government should not have given its sanction. It is a question from which the Government should have carefully held aloof. They should have viewed it with a judicial mind, instead of approaching it with the attitude of a pleader. That is the way in which we have seen it treated. I frankly recognise why this motion has been moved by Senator O'Connor, and I am not ashamed to mention it, nor do I feel it to be undesirable to do so. It has been moved by him, although he is the leader of the Government in this Chamber, in order that the real originator of the motion, the chairman of the committee, might have an opportunity in supporting the motion in the Chamber to reply to his chief opponent.
Senator Sir John Downer
- Certainly not.
Senator CLEMONS
- I say distinctly that that is my view, and 'Senator Sir J ohn Downer himself practically told us so during Senator Sir Josiah Symon's speech.
Senator Sir John Downer
- Certainly not. Why did not Senator Sir 'Josiah Symon move the motion that the report be adopted ?
Senator CLEMONS
- Senator Sir Josiah Symon could have nothing to do with that at all. The report was brought in by thechairman of the committee, and in the ordinary course of things it would be his duty to move that the report be received. There is another question which will be forced upon us, and that is whether it is desirable to override the report of the committee under such circumstances. Senator O'Connor has very properly said that this Senate would with very great reluctance indeed attempt to dispute the decision of a committee where it dealt with facts. It has been said by previous speakers, but is quite worthy of repetition, that while we recognise with Senator O'Connor that such a tiring would be improper and undesirable, at the same time it is most undesirable indeed that the Senate should review a decision that is based upon some legal point and involves some legal technicality. If it is improper that the Senate should go into facts, I say, and I am sure that Senator Sir John Downer must agree with me, as a most competent and able lawyer-
Senator Sir John Downer
- I entirely disagree with the honorable and learned senator.
Senator CLEMONS
- That the Senate should not undertake the decision of a difficult legal point. It seems to me really extraordinary that Senator Sir John Downer should deny that proposition. I cannot believe that he really means it. At any rate, if I fail to convince him, I have every reason to hope that I shall convince others that it is very undesirable indeed that any House of Parliament should attempt to settle any difficult legal point. It seems to me that that proposition cannot be controverted for a moment. Therefore, honorable senators should hesitate about voting for this motion. That reason alone should be almost a sufficient ground to induce honorable senators to think very seriously before supporting a motion which deliberately and with intent overrides the decision of a committee on a legal point. I think the argument is just as strong on this ground as it would be if the Senate as a whole were, attempting to override a decision upon the merits of the question. " t
Senator Charleston
- Suppose we thought an injustice would be done ?
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Senator CLEMONS
- I am willing to leave that point, although it is worthy of mention. The Senate is not now considering the question of overriding the decision of the committee, but is attempting by itself to decide what ought to have been done by the committee. I confess that, opposing this motion as I do, I have to combat many different arguments that in themselves are inconsistent with and contradictory of one another. It has been argued' by some honorable senators that this question of procedure ought not to be subject-to any consideration whatever. Indeed, some are prepared to argue, I believe, that the committee ought to have dispensed with procedure altogether. I think I heard one honorable senator say that the question of procedure should be entirely dispensed with. Let me apply such an argument to its full logical extent. If we dispense with all procedure, we, practically speaking, dispense with all conditions that every one will admit to be very necessary in the case of any person bringing a petition against a sitting member. We make it quite possible for any petition to be lodged against a sitting member without, ibr instance, the deposit of £50. The condition with regard to the deposit of £50 ls no more important than the other conditions that the committee recognise as distinct and necessary. I do not think I need pursue that argument further. I do not believe any one will support this motion for the reason that he is of opinion that the question of procedure should have been waived entirely. Assuming that every senator recognises that some procedure was necessary, what is the grievance in the present case? The grievance, in the minds of some honorable senators, is not that the petitioner in this case did not, but that he did actually comply with all the conditions. I want to take that point first, because I am perfectly certain that at this stage of the debate there are some honorable senators who are firmly convinced that the petitioner has complied with all the conditions that were adopted by the committee as necessary forms of procedure.
Senator Sir John Downer
- There is no question about the petitioner having adopted the procedure required by the committee. The question is whether he adopted the pro0cedure required outside the committee?
Senator CLEMONS
- I am obliged to the honorable and learned senator for his interruption, because it reminds me of something which I should have referred to at first. It has been urged that there is no reason why this procedure should have been adopted by the committee. I say that there is every reason, if the committee were to do anything at all, because they could do nothing whatever without some procedure. Some procedure was absolutely necessary. I can scarcely think that any honorable senator would, in a sane moment, gainsay such an argument as that. The committee would have been rendered absolutely powerless if it had not adopted some form of procedure. Finding that some sort of procedure had to be adopted, what did they do? They did no injury to the petitioner. They in no way wronged him. They recognised at once the form of procedure which the petitioner himself desired and actually had adopted. It was clear to the committee that the- petitioner, in all that he had done in order to get the petition before the Senate, had adopted the procedure of the "Western Australian Act.
Senator Sir Josiah Symon
- He said so in so many words.
Senator CLEMONS
- The 'committee, instead of doing the petitioner any injustice so far as adopting this procedure is ' concerned, did him almost more than justice, because they allowed him to select his own mode of procedure.
Senator Sir John Downer
- I have never heard such special pleading.
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Senator CLEMONS
- That is the position. The petitioner attempted to comply with all the conditions laid down hy the Western Australian Act, and the committee deliberately allowed him to adopt that procedure, recognising that some procedure must be adopted, or that otherwise it would be impotent and powerless to do anything. Some honorable senators are prepared to argue and are actually convinced that the petitioner fully complied, not only with section 146, but also with section 147, which must be read in conjunction with section 146. Let me point out what that argument really means. The assertion is that in lodging the petition with the Clerk the petitioner practically complied with these conditions. There are honorable

senators who are prepared to hold that the lodging of the petition with the Clerk fully complied with the necessity for presentation to the Senate. Those honorable senators who support this motion admit as we do that the Senate is the court. There is no objection to that. I deny at once, however, that the court is the committee. It is perfectly hopeless to contend that the committee constitutes the court. Without question the court is the Senate. I am going to show Senator Sir John Downer to what logical conclusion his argument must lead him. That honorable and learned senator has urged that in lodging this petition with the Clerk the petitioner complied with section 147 which requires him to present it to the court, the argument being that the Clerk is the Senate. Senator Sir J ohn Downer admits that the Senate is the court, and he says the clerk is the Senate. I say the logical conclusion of his argument is that the Clerk is the court, in other words the Senate. That is perfectly and logically clear. I will draw the honorable and learned . senator's attention to the Western Australian Act, and I will point out to him that my contention is clearly borne out by the Act itself.

Senator Harney

- Honorable senators on the other side have not regarded the Act in their arguments.

Senator CLEMONS

- Section 146 says that the petitioner must, amongst other things, address his petition to the House affected, and that it must be presented by a member, or left with the Clerk within 40 days after the day of return. The fallacy that my honorable friends on the other side fall into is this - they use the word " Clerk " as it is used in the Western Australian Act to cover the same ground when applied to the Senate. If we follow' section 146, and go on to section 147, we shall find that something else has to be done: One of the necessary conditions in section 147 is that all petitions within ten days after the same have been received shall be referred to the court.

Senator Stewart

- By whom ?

Senator CLEMONS

- By the Parliament of Western Australia, without a doubt. My honorable and learned friend, Senator Sir John Downer, will perhaps be getting a little light on the subject.

Senator Sir JOHN DOWNER

- I think that the honorable and learned senator is getting into a hopeless fog.

Senator CLEMONS

- I am not getting into a fog at all. I am sorry that my honorable and learned friend's intellect will not allow him to follow me. Section 147 clearly provides that something else has to be done by Parliament.

Senator Dobson

- But not by the petitioner.

Senator CLEMONS

- That is not the question at all. Senator Sir John Downer's contention is that the lodgment of the petition with the Clerk was a presentation to the court.

Senator Sir John Downer

- To Parliament.

Senator CLEMONS

- Senator Sir John Downer is confusing the Western Australian Parliament with this Parliament. I do not know whether he uses these terms in an attempt to confuse me, but he is not confusing me.

Senator Sir John Downer

- I would not attempt to confuse the honorable and learned senator, because he is confused enough already.

Senator CLEMONS

- I withdraw any remark which might suggest that I think the honorable and learned senator is trying to confuse me.. If he gives this matter some consideration, however, he will see that my contention is perfectly true. If it were not then section 147 would be absolutely unnecessary.

Senator Sir John Downer

- And therefore section 147 does not apply.

Senator CLEMONS

- It does apply. If Senator Sir John Downer is going to contend that the whole of the procedure involved in

this case is only the procedure contained in section 146, then I will admit that his position is right ; but I point out to him that the procedure involved, if we are going to follow it at all - and it was followed at the petitioner's instigation - is contained not in section 146 only, but in section 147 as well.
Senator Sir J ohn Downer
- But he only gets to the court by the combined effect of the two sections.
Senator O'Connor
- These are the sort of points on which the right to petition depends.
Senator CLEMONS
- I should like to ask Senator O'Connor what is the logical issue to which he wishes to carry this argument? Does he wish to abolish the procedure; to do away with all conditions that must be complied with before the petitioner can get' a hearing ?
Senator O'Connor
- What conditions does the honorable and learned senator say are applicable ?
Senator CLEMONS
- I say those conditions are applicable which the petitioner himself elected to accept, and that the whole of his action in this matter is a clear proof that he was prepared to accept the procedure and the conditions that are set out , in the Western Australian. Act. If not, I would ask Senator O'Connor why the petitioner lodged his £50 deposit, and why he did everything else which is provided for in section 146?
Senator Sir John Downer
- Heaven knows why.
Senator CLEMONS
- Surely reason is to prevail, and an ordinary man knows why. The reason is perfectly obvious. He deliberately adopted that procedure, and he naturally adopted it coming as he does from the State of Western Australia. In all justice and with every equity and every desire to treat him with fairness, the committee allowed him to adopt that procedure and the committee worked under it.
Senator Sir John Downer
- The committee had nothing to do with it.
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Senator CLEMONS
- I will leave that argument in order that I may answer another extraordinary one which I have heard used. It is another instance of how elusive those honorable senators are who support this motion. It is provided by section 147 that all petitions shall, within ten days after the same have been received, be referred to the court. The argument I refer to interprets that section as not being mandatory but as being purely directive. If we are going to make any condition a mere direction, the whole procedure falls to the ground. There is jio reason why we should interpret the word "shall." in section 147 - and which ordinarily has a mandatory meaning - as carrying' merely the force of a direction, and yet refuse to the word "shall" in section 146 the same value 1 Why not say in that case that it is a mere direction. Why not say that all these conditions are merely matters of expediency? Why not carry the argument to a logical conclusion and say that the v are purely suggestions. It has been said, and I admit that it is a plausible argument which will appeal to most of us at once, that this poor petitioner has done all that he possibly can. That is the argument of those who admit that the procedure selected by him has not been complied with, but who contend that that failure has been be- cause of no fault on his part. I suppose the chief argument that has been used is that the petitioner is to be pitied because he did what he could and was unable to do more ?
Senator Charleston
- That is a strong point.
Senator CLEMONS
- It is a plausible argument. It is said that the petitioner has done everything else, and that his' lapse with regard to the requirement of section 147 has been created by no fault of his -own. In other words, it is said that the Senate has not done what it ought to have done. I cannot help asking, and I should really like to know as a matter of fact, how this petition was ultimately presented. We who were in the Chamber at the time know that it was presented by Senator O'Connor, as representing the Government, I suppose. Why was it presented when it was? By whose instructions, by what authority, and at whose request ?
Senator Harney

- Why not within ten days as well as five weeks. Senator CLEMONS.- Why at that stage? Senator O'Connor complied with section 147 in presenting the petition, except that he did not comply with the time limit.
Why did he doit then? Why .has it ever been done ? I am really at a loss to know the reason. If we assume that Senator O'Connor complied with this condition at' the request of the petitioner, then the ground must immediately fall from beneath the petitioner's feet, because it shows that he recognised the necessity of seeing that the presentation was made to the court - that is to say, to the Senate - but that he recognised it too late. Referring again to the argument that the lodgment with the Cleric really means a presentation to the Senate, I naturally ask Senator Sir John Downer why it was ever presented ? Was it a work of supererogation ?
Senator Sir John Downer
- Was there any court ?
Senator CLEMONS
- The court is the Senate. The court is not the committee. If the honorable and learned senator is going to contend that the lodging with the Clerk was a compliance with the requirement as to the presentation to the court, why, then, did Senator O'Connor send it to the Senate ?
Senator Millen
- For the purpose of sending it on to the committee.
Senator CLEMONS
- The honorable and learned senator presented it because in section 147 of the Western Australian Electoral Act, the conditions of which have been complied with in every other respect, it had to be presented to the court.
Senator Sir John Downer
- I say that it was presented when it reached the Senate, and was sent to the committee as soon as attention was drawn, to it. That is why Senator O'Connor took action.
Senator CLEMONS
- Senator O'Connor knows perfectly well that in making this statement I am only saying what he would, say, that the presentation to the Senate was made by himself ?
Senator Sir John Downer
- When was it made by Senator O'Connor ?
Senator CLEMONS
- Does the honorable senator want the date ?
Senator Sir John Downer
- Yes, I would like. to fix the honorable and learned senator to something.
Senator CLEMONS
- I believe it was made on the 27th June.
Senator Sir JOHN DOWNER
- Downer. - Exactly. That is right.
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Senator CLEMONS
- I have been very fortunately referred to Hansard, and if the honorable and learned senator looks to the report of the proceedings of the Senate on the 27th June he will find that Senator O'Connor, after presenting the petition, said : -
I move -
That the petition be referred to the Elections and Qualifications Committee for inquiry and report.
Senator Sir John Downer
- Hear, hear. The honorable and learned senator is out of court.
Senator CLEMONS
- I will read the whole of the extract. This does not refer to the presentation, it refers to the necessary corollary to that act. The presentation to the Senate was a presentation to the court, and the Senate decided to refer the matter to a judicial committee. This is what Senator O'Connor said -
I move - " That the petition be received."
I have taken this action solely as the representative of the Government in the Senate, charged us it

seems to me, with the duty of seeing that petitions which are brought before this House claiming the redress of any grievance shall be before . the Senate in such form that they will have consideration. I know nothing whatever about the facts of the petition, or as to its merits. I express no opinion about it. I am simply taking this action formally, in order that the petition may be brought before the Senate.
The honorable and learned senator made that statement, because he was desirous of complying with one of the conditions in the Western Australian Act. Why did he take this action on the 27th June ?
Senator O'Connor
- I tell the honorable and learned senator candidly that I did not know anything about that section in. the Western Australian Act at the time.
Senator CLEMONS
- Since Senator O'Connor is in a candid mood I would like him to say why he presented it.
Senator O'Connor
-i think I explained my reason in the speech which the honorable and learned senator has read.
Senator CLEMONS
- I am afraid, my honorable and learned friend's candour has vanished.
Senator O'Connor
-. - The honorable and learned senator does not call it candour when the answer does not please him.
Senator CLEMONS
- It is a matter of great curiosity to many of us why Senator
O'Connor presented this petition. It is alleged by us that the petitioner did not comply with the conditions. We say that the petitioner possibly made an attempt to comply with those conditions, because the petition was presented to the Senate which is the court. We are naturally curious to know why that was done, but although Senator O'Connor seemed likely just now to give us the information, I am sorry to say that he now appears to be likely to withhold it. I am unwilling to take up much more time about the question. I am certain we shall be able presently to hear some interesting opinions on the subject from Senator O'Connor, and I am so curious to hear his answer to this question of mine, which the honorable and learned senator will not answer at present, that I feel more tempted than I otherwise should be to resume my seat without discussing the question at any further length. Before I do so I would ask the Senate to consider what would be the result of referring this back to the committee. This is a direct motion, and I ask a practical question, and one which even Senator Sir John Downer cannot shirk, because I suppose he is still chairman of the committee - What is going to happen when the question is referred back ? What is the procedure to be adopted?
Senator Sir John Downer
- We have settled that.
Senator CLEMONS
- I am willing to allow myself to be interrupted if the honorable and learned senator will tell me what procedure is to be adopted when this matter goes back to the committee.
Senator Sir John Downer
- We have agreed upon the method of procedure, and if the honorable and learned senator has not read the minutes of the committee, I am not responsible for his carelessness.
Senator CLEMONS
- I will not continue the debate with anything more of an interrogative nature, but I wish to remind the Senate of what is likely to happen when this matter is referred back to the committee. The committee has no form of procedure. The committee, I contend, cannot possibly settle this question with any sort of self respect ; it cannot approach the consideration of the question unless it has some form of procedure. Procedure means something more than a mere formality, and I think I shall be right in saying that it means that certain conditions will have to be recognised as conditions precedent to the hearing of the case. What procedure can the committee have that will enable it to lay down these conditions ?
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Senator Sir Josiah Symon
- Suppose more preliminary objections are taken ?
Senator CLEMONS
- Is it considered for a moment that this question can be taken by the committee directly as to its merits

without subjecting it to any conditions? I do not know whether the petitioner has recovered the £50 deposit, but I submit without the slightest hesitation that if lie has he can simply laugh at any attempt that may be made by the committee to have the £50 deposit repaid as a guarantee of his bona fides in the dispute. There is no power whatever in the committee to insist upon his complying with that condition. If we waive the procedure with regard to the dates, the petitioner may insist upon our waiving all other conditions. I say without fear' of contradiction that this petition can ' now be heard, supposing the man has got his £50 back, without any deposit being made by him.

Senator Millen

- The' committee can refuse to go on unless the £50 is deposited.

Senator CLEMONS

- That is a denial of the whole thing. 'What is the question involved ? We are considering a breach of certain conditions, and failure to comply with a certain procedure. Would any one here allege that we can go on in this wayad infinitum,, because certain procedure has not been adopted.

Senator Sir John Downer

- We are never to get at the merits then ?

Senator CLEMONS

- I am astonished at some of the arguments which Senator Sir John Downer has adduced. The honorable and learned senator appears to assume that there is only one way of getting at the merits, and that is by dispensing entirely with all conditions. There are many ways of getting at the merits of the case, although there may be a regulated and hard-and-fast procedure. In this case there is no procedure or the committee can get no warranty for it. Where is the warranty for laying down any rules whatever ? By what rule can we compel a petitioner to comply with any condition ? I am astonished that the leader of the Government in the Senate, recognising the position in which we are placed, either by the Constitution Act or by our own fault, is attempting to compel the committee to rehear the petition when they can enforce no condition, and have no procedure and have no warranty for hearing any statement which may be made in connexion with the petition.

Senator Sir John Downer

- Then we have no court?

Senator CLEMONS

- I say distinctly that we do the petitioner no injustice on his own confession when we adopt a line of procedure that he has originated.

Senator Lt Col Cameron

- Give him a hearing. We are refusing him a hearing.

Senator CLEMONS

- The honorable senator does not see the logical issue. He says we are refusing the petitioner a hearing ; but if he is granted a hearing now, when the committee have decided that he has not complied with certain provisions, I will ask the senator who interjects if he likes the position in which he will be placed? The position is this, that it will mean that we must allow any man, no matter what his grounds may be, or how ridiculous his claim may be, or how impossible it may be for him to prove his case, to lodge a petition, and we will compel the committee to hear it, and compel this Senate afterwards to consider the report of the committee, and accept or reject it.

Senator Lt Col Cameron

- Is that any reason why this man, who has got a reasonable petition to submit, should be refused justice?

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Senator CLEMONS

- I am astonished that the honorable senator should say that this man has got a reasonable petition. For all I know the man may have an unanswerable case ; but I remind the honorable senator that as regards the merits of the case there is absolutely nothing before the Chamber, and there ought not to be. The question involved is whether this Senate, through its committee, can insist upon some condition being complied with before a petition can be heard. We are all here, I suppose, boiling over with sympathy with this petitioner, but it is about time that we felt some sympathy for the sitting member. I do not mean that we should have any unfair consideration for him, or any regard to the side of the House upon which he sits ; but I know that Senator Cameron will admit that we should pay some consideration to the fact that

Western Australia is deprived of half its representation while Senator Matheson - and I call him "senator" still - is deprived of his position in this Chamber. I know that nothing will appeal more strongly to Senator Cameron than considerations of justice, and some justice is due to Senator Matheson, and Senator Cameron' must see that if we insist upon this petition being heard under these conditions there will be nothing to prevent Senator Matheson being deprived of an opportunity of taking Iris seat in this Chamber, perhaps for years.

Senator Lt Col Cameron

- Let us try the case and be done with it, and do not talk so much.

Senator CLEMONS

- I expected more from Senator Cameron. I am not talking for the sake of talking, but because I feel very strongly on this case. I am entirely in earnest about it, and sincere in my desire to see fair play. I cannot too strongly point out to the honorable senator that if he wants fair play he must insist upon .certain conditions being complied with. Can the honorable senator possibly suggest that we should Hear any petition regardless of any conditions, at any time, and after any lapse of time ? If the arguments so strongly used on the other side are valid at all, this petition might have remained with the Clerk of the Senate until three years hence, and then be brought up here. If Senator O'Connor is sound in his contention, because he is nominally the mover of this motion, he will admit that if the petition had. been overlooked for three years, and had remained in the possession of the Clerk of this Senate, it might have been brought up at the expiration of that time, and we would have been forced into exactly the same position as we are now in.

Senator Sir Josiah Symon

- And it would not have been the fault of the petitioner !

Senator CLEMONS

- The argument is that the petitioner has done all that he could.

Senator PEARCE

- AVe had better ask the Clerk if he has got any more petitions.

Senator CLEMONS

- Senator Pearce justly remarks that we should ask the Clerk if he has any more petitions, and perhaps we ought to have a weekly search and be continually on the quivive to know if there are any more petitions. AVe have 36 senators, and there may be 36 petitions. If the arguments of Senators Downer and O'Connor have any force in them at all, the logical issue is that the petition might have remained for three years, and the Senate would then have been compelled to hear it.

Senator Playford

- -Whose fault would that be?

Senator CLEMONS

- I ask Senator Playford, is there any duty whatever cast upon the petitioner, who is practically in the position of an ordinary plaintiff?

Senator Playford

- -He is not an ordinary plaintiff. He cannot move the Senate.

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Senator CLEMONS

- ls he not expected to look after his own case ? Is there to be some d&as exmachina to come here and manage these matters for some wretched petitioner ? Is he to leave it to chance or to providence or to the caprice of a senator ? The thing is monstrous. Assuming for a moment that Senator Playford's argument is tenable, and that a petitioner has nothing further to do after he has lodged his petition with the Clerk, I will put this case to the honorable senator : Will Senator Playford admit that, if I can prove that the petitioner has been guilty of contributory negligence, it is right that his petition should fail ? We know that in this case Senator O'Connor has presented the petition ; we know that it was possible for the petitioner, to get it presented to the court, and we say: that contributory negligence would have been quite sufficient to take from the petitioner the right of being heard. He could rebut the charge of contributory negligence by proving to the Senate or the committee that he invited every one of the 36 members of the Senate, including the. leader of the Government, to present his: petition, and that all had refused. AVe know that Senator O'Connor presented' the petition, and probably he did so at the instigation of the

petitioner or hi» counsel. If the petitioner could have shown, that every one of the senators refused to present his petition, he cleared himself from all blame so far as contributory negligence' is concerned. Did the petitioner do that t The very fact that Senator O'Connor presented the petition, and that he is probably well known to the petitioner and his counsel as the leader of the Senatee, and further well known as one who would' never dream of refusing to present a petition, shows that the petitioner could not Have had the slightest doubt in the world that if he had gone to Senator O'Connor he would not have been' refused. Can we not also admit that he' knew it ought to be presented ? Can we imagine that he complied with all the provisions of section 146 of the Western Australia Act, and was entirely ignorant of the provisions of section 147? lt is impossible to conceive it, and he must have known that Senator O'Connor would carry out what was provided for in that section. Now we" are told that the Senate is entirely at fault, and that we should pity this poor petitioner because the Senate did not do what it ought to have done. The < facts are that the petition was presented four days too late - it is immaterial how much too late - and the fault was undoubtedly with the petitioner.

Senator Stewart

- That is not clear.

Senator CLEMONS

- I ask Senator Stewart to look at the facts.

Senator Stewart

- Did he not deposit his petition with the Clerk ?

Senator CLEMONS

- I cannot refer to that matter. The honorable senator will agree that the petitioner knew that he should get his petition presented. I am delighted to be able to appeal to Senator Stewart, not as a lawyer but as a man of common sense.

Senator Stewart

- 1 take the opposite view from the honorable and learned senator upon the point.

Senator CLEMONS

- I am afraid I am meeting with but ill success. I am extremely sorry that on a point that appears to appeal not so much to any legal knowledge that I may possess as to such rudimentary common-sense principles as I perhaps share with other members of the Senate, I cannot get Senator Stewart to agree with me. «

Senator Sir John Downer

- Has the honorable and learned senator entertained the same opinions that he now holds so strongly, throughout ?

Senator CLEMONS

- I do not know why Senator Downer asked me that question. I do not know even whether I should answer it, but I really suggest to Senator Downer that it is a question that should not have been asked. If I misinterpret the senator's mind as to what is behind the question, I apologize in advance, but if I understand the honorable and learned senator rightly, I say distinctly that, however much junior I may be in the matter of parliamentary practice to Senator Downer, it is a question that should certainly not have been asked in this Chamber.

Senator Sir John Downer

- It all depends.

Senator CLEMONS

- I have no doubt whatever about it, if it refers to private conversations.

Senator Sir John Downer

- No ; certainly not.

Senator CLEMONS

- I am glad the disclaimer has come out. The matter is immaterial, but if Senator Downer be reflecting upon my honesty in the. matter-

Senator Sir John Downer

- No; the honorable and learned senator may honestly change his opinion.

Senator CLEMONS

- I do not under, stand what Senator Downer means by changing my opinion, if he does not want to attribute to me motives which are unworthy.

Senator Sir John Downer
- Certainly not.
Senator CLEMONS
- I am glad the honorable and learned senator has disavowed it, but 1 still think the question should have remained unasked. There is no member of the Senate who changes his opinion so often, or who is so. much like the chameleon as the honorable and learned senator himself. In this matter I have arrived at a certain conclusion, and I shall not change my opinion. I have spoken on this subject at greater length than I intended, yet I feel very strongly about it. My apology must be simply that I think it a matter of very great importance. I am sorry to see that there is a tendency on the part of many honorable senators to practically flout the committee, and to prefer the opinion of a minority. If we carry the motion it will place us in a position that must be painful to most of us, and it will tend to destroy the dignity of the Senate, and create a precedent that will be harmful in the future. The Senate is asked, on a legal question, to override the report of a committee especially selected to deal with the subject. That is a course that ought not to be taken without very grave reasons indeed, and I do not see that there are reasons in the present case which would justify such a proceeding.
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Senator DOBSON
- Senator Cameron hit the nail on the head when he said - "Try the case, and have done with it." ' I rise with some fear and trembling to occupy a few minutes, as the the Senate is fast earning the reputation which the man in .the street gives to it of becoming a debating society. I think we should have disposed of this matter very long ago. When I opposed the adjournment of the debate I did so with the object of allowing the Senate te proceed with its business and get on with the work of the Commonwealth. Senator Sir Josiah Symon in his speech led off by saying that the Senate was asked to pass a vote of censure upon the Elections and Qualifications Committee. With all respect to my honorable and learned friend I do not think he ought to have used such an argument. If we differ from the majority of one we are not passing a vote of censure upon the committee. If we believe that they have made a mistake it is within our province to ask the committee to take back their report and reconsider it without being accused of passing a vote of censure upon them. The honorable and learned senator wound up his long and able speech by saying that the honour and dignity of the Senate were at stake, meaning that if the Senate did not affirm the report of the committee we should be sacrificing our honour and our dignity. It appears to me that the only way in which we can do that is by refusing justice to either the sitting member or the petitioner ; and the report of the committee most unmistakably refuses the simple common principles of justice to the petitioner.
Senator Sir Josiah Symon
- Suppose the petitioner had not paid the deposit - would it be a refusal of justice to him then?
Senator DOBSON
- The honorable and learned senator exactly confirms what I was saying. I admit at once that if the petition had not been presented within a reasonable time the case might have been different. In a matter of dilatoriness the court is always justified in refusing to hear the plaintiff. The sitting member is kept iti a state of uneasiness and is unable to come here and do his duty, and this, therefore, is one of those cases in which unreasonable delay might have been fatal to the petitioner. But no such delay occurred in this case. The petition was presented to the Senate within the time mentioned by the Western Australian Act. If the petitioner had not made a deposit of £50 that would have been a very good argument indeed for not hearing the petition. But he paid the £50. That is a vital point. The petitioner complied with every one of these vital conditions. Let me point out to Senator Clemons that he should read sub-section (1) of section 146, which says that the petition must be presented to the House, and must be presented by a member or left with the Clerk.
According to that very law, all that the petitioner has to do as regards presenting the petition to Parliament is to leave it with the Clerk, which is . exactly what the petitioner did in this case. What can be clearer than that ? The Act says what honorable senators opposite cannot see - that when the petitioner has brought his petition to the Senate and left it with our Clerk, the custodian of our records, his work is done and he can do nothing more. He has no right to do anything more. The rest of the work has to be carried out by the Senate itself. Senator Clemons asks the Senate to read section 146 with section 147. I decline to do

anything of the sort. Section 147 has absolutely nothing to do with the matter. It relates only to the Supreme Court of Western Australia. As to section 146, - although there are good arguments for saying that none of the Western Australian law need have been complied with by the petitioner - I think there are good arguments for saying that he should have complied with section 146. And he has complied with it.
Senator Clemons
- Section 146 does not contain a reference to the court that tries the case, which is the Supreme Court under the Western Australian Act.
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Senator DOBSON
- I quite understand that, but as the Senate is our court, we have nothing to do with section 147 - nothing whatever. When the petitioner left his petition with the Clerk of the Senate he did exactly what a petitioner of Western Australia has to do there. Section- 149 goes on to say - and let me call attention here to the way in which a court of law or equity would deal with this matter -
The court shall be guided by the substantial merits and the good conscience of each case without regard to legal forms or technicalities.
I thought four or five hours ago that this matter was at an end, and I venture to think now that the report of the committee is an absolute and positive inaccuracy. It says -
That the petitioner has not conformed with the electoral law of Western Australia, and your committee recommend that the petition be not entertained.
But Senator O'Connor has pointed out that the electoral law of Western Australia has nothing to do with it, and I understand Senator Sir Josiah Symon to agree with that view.
Senator Sir JOSIAH Symon
- But I said that if the parties adopted the law of that State, by that law they should be judged.
Senator DOBSON
- That is about the most amusing argument I ever heard used by any lawyer whatever.
Senator Sir Josiah Symon
- Though it may be amusing, it would be well if the honorable and learned senator would quote rae correctly. There is no amusement in misquoting me.
Senator DOBSON
- I understood the honorable and learned senator to say, in reply to Senator O'Connor's challenge, that he agreed that the law of Western Australia had nothing whatever to do with the matter. Now he says that though the committee, composed of two learned K.C's. and other honorable senators, believe that that law had nothing to do with the matter, they decided the question in accordance with that law. Can anything be more positively absurd than that?
Senator Sir Josiah Symon
- Except the honorable and learned senator's argument.
Senator DOBSON
- The honorable and learned senator generally instructs me. 1 look to him for valuable information. He usually makes me wiser, but in this case he amuses me. Let me give an illustration. We were talking the other day about the employment of lascars \ipou steam-ships, and we have seen lately that the House of Lords, I think it was, ordered that the Peninsular and Oriental Company shall provide those lascars with the same amount of space for their sleeping bunks as is provided for the white crews under the Merchant Shipping Act. These lascars were engaged under the Indian Merchant Shipping Act. The Peninsular and Oriental Company have been so engaging them for half a century. But although the House of Lords knew that, and knew that both parties had entered into the engagement under the Indian Act, did the House of Lords adopt the amusing attitude taken up by Senator Sir Josiah Symon and say - "Although we know the .British Merchant Shipping Act governs these cases, because the unfortunate lascars think that the Indian Act governs them, we will try the case by a law which the court knows has nothing to do with it" ? They did nothing of the kind, of course. I never heard such an amusing and extraordinary argument to proceed from the lips of a lawyer as has .proceeded from some honorable and learned senators this evening.
[ISC]
Senator Sir Josiah Symon
- What governs these matters if the Western Australian law does not ?

Senator DOBSON
- I take it that it is arguable whether the law of Western Australia at the time the petition was left with the Clerk of the Senate governs the case or not ; but if it does, the petitioner has complied with every jot and tittle of that law ; and it appears to me to be a denial of absolute justice to this man for us either out of sympathy with the sitting senator or for any other reason to refuse to entertain this petition. I hope that sympathy will not influence the Senate. We have all an unconscious sympathy towards our friends. Senator Matheson is such a. man as we desire to see in this Senate. He is a credit to the electors who sent him here. He is undoubtedly the right sort of man. I shall be pleased if he remains here. But we should lose our honour and dignity were we to refuse to do justice to a man who is absent and who cannot speak for himself. How can we, when this petition has been lodged with the clerk of this court, take advantage of our own wrong-doing ? This petition has been properly presented, and has been lying in the desk of the Clerk, and how can we, I ask, take advantage of our own wrong by sending this man about his business, and saying that we will not do him justice ? I very much regret that Senator Clemons has thought it necessary to criticise the action taken by Senator O'Connor. I understand that the motion is moved by Senator O'Connor as leader of the Senate, and not as leader of the Government. He has moved it in order to uphold the dignity of the Chamber, and in order to get on with the .work of the Senate, as well as to try and do justice to a man who is absent, and a man who is sitting here. I cannot understand any honorable senator expressing the view that because the leader of the Senate happens to be the leader of the Government, therefore this action can be regarded as a party matter. One-half of the duties which the Ministers representing the Government in this Chamber have to discharge are discharged as leaders of the Senate, and have nothing to do with party matters, or with their position as representatives of the Government. Therefore I think, it is a mistake that Senator Clemons has noticed this matter at all. If there are any of the Western Australian provisions that have not been complied with, that is the fault of the Senate itself. A wrong has been done and we should set about remedying it.
Senator PULSFORD
- I cannot lose sight of the fact that the Government have dealt in opposite ways with two petitions. Two - petitions have been presented from Western Australia - one in the House of Representatives, and One in the Senate. The report from the committee of .the House of Representatives was as follows : -
Your committee find that your petitioner has not complied with the law of the State of Western Australia relating to parliamentary elections, and your committee therefore recommend that the petition be not entertained."
What was done then t Did the head of the Government in the House of Representatives rise and move that the report be returned to the committee, and that they be requested to proceed to deal with it again 1 No ; he simply rose, and moved that the report be adopted, and the petition dismissed. Dismissed it accordingly was. Now we have a corresponding case in a petition against a member of the Senate. What is the result t The committee reported that the petitioner has not conformed with the electoral Act law "of Western Australia, and "that the petition be not entertained." The committee in each instance found that the law of Western Australia had not been complied with, and in each instance they recommended that the petition be not entertained. In the first case, however, the Government moved that the report be adopted and the petition dismissed, whereas in the second case with which we are now dealing, the representative of the Government has come forward and moved that the whole matter be referred back to the committee, and that they be compelled to go into the question again. These contradictory proceedings in the two Houses call for some considerable explanation, because it is to be noted that in both Chambers the petitions were recommended to be 'dismissed on a technical point - the - point that the petitioner has failed to completely comply with the conditions of the law which is held to govern the position. In the case connected with the House of Representatives, the failure of the petitioner was in regard to the lodgment of the deposit. Here the petitioner has complied with that provision, but there is a failure at a later stage.
Senator Drake
- But not through the fault of the petitioner.
Senator PULSFORD
- Yes, owing to the petitioner's fault. We are told that he did ask one or two honorable senators to present the petition. There are plenty of honorable senators who would have presented it if they had been

requested to do so.
Senator Sir John Downer
- If 'they had. been petitioned to do so
Senator PULSFORD
- The petition, would have been presented to the House if proper steps had been taken. These proper' steps were not taken. And now I understand that certain honorable senators wish us to overlook this failure on the part of the petitioner. They appeal to our sympathy to let the case go back again, because it has not been tried. They say, " Let it be tried, and let justice be done." The Senate is distinctly asked to do an injustice. If the case is to be dismissed in the House of Representatives, because the law of Western Australia has not been complied with,then the petition now before the Senate ought to be rejected, because there has also been failure in regard to it to comply with the law of Western Australia.
Senator Charleston
- On a much finer technicality.
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Senator PULSFORD
- It is not for us to decide on the degree of the fineness of the point. AVe all know that on the committee one of the most eminent legal lights of Australia is to be found. I refer to Senator Sir Josiah Symon. That honorable and learned senator holds that the petition ought to be dismissed on that point. The mere fact that we have such an opinion as that ought to go a long way in leading the Senate to determine that they should not take what I venture to say would be a great leap in the dark. I have been conversant with nearly all the petitions that have been lodged against the return of members in New South Wales for the last fifteen years. I have seen petition after petition presented, some of which have been dismissed on technical points and others on the merits of the cases, but I have never yet known a motion' to be tabled in the Legislative Council of New South Wales that a petition be referred back to the committee for consideration. The simple course has always been adopted at once of accepting the report of the committee, and then and there dismissing the petition. 1 am quite .sure that if we do -what the representative of the Government now asks us to do, we shall be taking a step which every one of us will live to regret, which will land us in many difficulties, and which cannot in any shape or form add to the dignity of the Senate.'
Senator KEATING
-! think that the feelings of all honorable senators in dealing with this matter are, as they should be, characterized by judicial calmness. We are here to receive the report of the committee appointed to inquire into and report upon the matter of this particular petition, and this is the court which is to . ultimately determine the effect of the petition. The circumstances are, as has already been pointed out, somewhat exceptional. No doubt the usual practice is for the chairman of a committee of this character, on presenting the report, and on that impOrt coming up for consideration, to move that it be adopted. We have already been told by various members of the committee of the circumstances which have led up to what I may say is the extraordinary procedare of this occasion. We have learned from the various members of the committee, who have already addressed themselves to the motion, a good many of the secrets relating to the proceedings which took place when the committee were determining the petition. I have listened with the greatest patience and attention to the views which have been urged, both in support of and against the motion, and I must certainly congratulate my honorable and learned friends opposite on the variety of the arguments which have been adduced by them in support of their position. Unfortunately the charms of their variety is more than counterbalanced by the gross inconsistency which, it seems to me, prevails amongst them. The question, to my mind, is this : In determining this matter does the law of Western Australia with regard to disputed returns apply to the procedure of this committee, or does it not do so t
Senator Sir Frederick Sargood
- That is the whole point.
Senator KEATING
- If it does apply, how does it apply ? Does it apply by reason of the circumstances to which Senator Pearce has drawn attention, namely, that the Constitution itself sets out that the law relating to elections in each State shall govern the first election of senators until the Parliament of the Commonwealth

provides otherwise? Or does it apply by reason of the circumstances which have been adverted to so eloquently by Senator Harney, and to which I noticed that the honorable senator who opposed this motion with the . greatest warmth - Senator Sir Josiah Symon - referred. He put it, that the petitioner himself recognised tacitly that the law of Western Australia did apply, and that by reason of that he is now estopped from denying that the procedure does, apply. Senator Dobson shattered to pieces the argument that, by reason of the fact of an individual adopting a course of procedure which the tribunal itself recognised did not apply, they were therefore enabled to apply it, and that inasmuch as the petitioner had adopted it in his ignorance, and as he had failed to fulfil it in every particular, it was therefore to be held that he had no locus standi.

Senator Sir Josiah Symon

- The committee did not form any opinion as to the Western Australian law not applying.

Senator KEATING

- They formed n*o opinion, but their recommendation is -

That petitioner has not conformed with the electoral law of the State of Western Australia, and your committee recommend therefore that the petition be not entertained. ,

Senator Sir Josiah Symon

- Because the petitioner desired to be judged by that law.

Senator KEATING

- Then the honorable and learned senator and his colleagues come here and approach this discussion. During the course of their observations on the motion we find that there is a perfect unanimity amongst them as to the fact that the law of Western Australia does not apply.

Senator Sir Josiah Symon

- We say it does apply to the procedure by the choice of the petitioner and of the respondent. We may be wrong, but that is our contention.

Senator KEATING

- It seems to me that the honorable 5and learned senator is not even . in the position of the enviable individual who tries to ride a rail, because he endeavours to get his feet on the ground on each side of the fence. The honorable and learned senator says at one moment that the Western Australian law does not apply, and in the next that, because some one in ignorance has adopted what is a wrong lex fori, therefore that person is to be bound in the strictest degree to every little detail of that law.

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Senator Clemons

- It is a question of procedure, not of law.

Senator KEATING

- I think there was a great deal worthy of consideration in the argument put forward by Senator Pearce, because the Constitution provides that -

Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

So far as the law of Tasmania is concerned, the Electoral Act, which regulates the whole of the procedure in connexion with the elections, also contains provisions with regard to controverted and disputed elections. The procedure to be adopted is contained in the law relating to the elections for the more numerous House. Therefore there is some force in Senator Pearce's contention. He draws the line, however, with regard to the applicability of this law. The honorable senator says it may be that it applies up to a certain point, and that after that the State law might possibly not apply.

Senator Charleston

- Because it cannot apply.

Senator KEATING

- On his own contention in regard to that particular study, I would ask Senator Pearce to look at the procedure in this case in a precisely analogous way. If the law of Western Australia applies at all, it can only apply - notwithstanding the smiles that might have been observed on the other side of the Chamber when this contention was put forward - up to a certain stage, and that stage is the lodgment of the petition with the Clerk of the Chamber. The law is laid down in Western Australia as to storting the machinery in

connexion with a petition. Section 146 of the Electoral Act provides that the petition must comply with certain formalities ; that it must be accompanied by a deposit of £50 ; and that it must be either presented by a member or lodged with the Clerk of the House. Section 147 provides that, within ten clays after it has been received, the petition shall be referred to the court. What I want to ask the Senate is, by whom shall it be referred to the court? Is the petitioner bound by the provisions of section 147 to take upon himself the responsibility of having it referred to the court? Senator Harney has addressed us at great length in regard to the law of Western Australia, but we have had no enlightenment from him or from any representative of Western Australia as to the question upon whom the duty devolves of transferring the petition from the custody of the Clerk to the court. I contend that the section as it stands involves no personal liability on the part of the petitioner to refer it to the court. Even if it did it must be remembered that in Western Australia there is a court of disputed election returns, which sits outside a Parliament, and has no reference to it apparently. There is no court that sits outside this Chamber to which this Parliament could refer the petition. If we intended to have the petition referred from this Chamber to the Court of Disputed Returns in Western Australia there might be some force in the arguments of some of the honorable senators opposite. The court is the Senate itself. Honorable senators on both sides of the House have agreed that the Senate itself is the court. It does not seem to have occurred to Senator Clemons, who has addressed himself very forcibly to this matter, that in lodging the petition with the Clerk of the Senate the petitioner has done something which is totally distinct from lodging a petition in regard to an election in Western Australia with the Clerk of the House for which the election takes place. Senator Clemons does not appreciate the distinction. In Western Australia after lodgment with the Clerk, the duty devolves upon some one of having the matter referred to an outside tribunal.

Senator Clemons

- To the court?

Senator KEATING

- To the court- the outside tribunal. Here it is lodged with the Clerk of the Senate, who is also clerk of the court - absolutely identical with the clerk of the court. The petition is in his custody.

Senator Clemons

- It has been contended that the Clerk is the Senate.

Senator KEATING

- Senator Sir Josiah

Symon seemed to lay a great deal of stress on an argument which was very similar to that ; but apparently that was in addressing his argument to that particular side of the case.

Senator Clemons

- The argument on the other side is that the Clerk of the Senate is the Senate. That is the only argument they have.

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Senator KEATING

- The honorable and learned senator on the opposite side of the Senate, who addressed himself to this motion with the greatest amount of warmth, seemed to admit that lodgment with the Clerk was lodgment with the Senate - that is, the court.

Senator Clemons

- I did not say so.

Senator KEATING

- Senator Sir Josiah

Symon said so. This simply illustrates the variety to which I have referred.

Senator Clemons

- Senator Symon is not in the chamber.

Senator KEATING

- I regret that he is not. It seemed to me that he was quite prepared to admit that lodgment with the Clerk was lodgment with the Senate. That was the impression that was conveyed to my mind by his argument.

Senator Sir John Downer

- Senator Sir Josiah Symon distinctly conceded it.

Senator CLEMONS

- There is a slight divergence of opinion on this side.
Senator KEATING
- Senator Sir Josiah Symon has just come in and he will be able to answer for himself. I think that Senator Sir Josiah Symon agreed with Senator Harney that the committee to which this matter was referred was not the court ; that this Senate itself was the court, and he admitted by implication, if not directly, that lodgment with the Clerk was lodgment with the Senate.
Senator Sir Josiah Symon
- I did not admit that.
Senator KEATING
- If the honorable and learned senator did not admit that, then he spent a great deal of his energy and a great deal of the time of the Senate in endeavouring to prove that the petitioner by tacitly adopting the subsequent action taken by Senator O'Connor lost all the value of his action in lodging the petition with the Clerk.
Senator Sir Josiah Symon
- I said there was lodgment with the Clerk which was subsequently superseded.
Senator KEATING
- - The honorable and learned senator also said that by allowing Senator O'Connor to present the petition, the petitioner lost the value of his lodgment of the petition with the Clerk. He contended most strongly that, by reason of the fact that Senator O'Connor had presented the petition, the petitioner had superseded his previous action.
Senator Sir Josiah Symon
- Certainly, after that it was of no avail.
Senator KEATING
- The honorable and learned senator made no such conditional qualification.
Senator Sir Josiah Symon
- I think I am entitled to say that my honorable and learned friend has misapprehended me altogether if he imagines that. I did not admit it; I never did admit it, and I do not admit that the leaving of the petition with the Clerk was a presentation to the Senate.
Senator KEATING
- I followed the honorable and learned senator very closely, and endeavoured to draw his attention particularly to the argument as to the subsequent proceeding superseding the former one. I would not have addressed such an interjection to the honorable and learned senator had I known he was qualifying his remarks with regard to the force of the first proceeding taken. We have heard from the other side that the Western Australian procedure applied because the petitioner had adopted it, and it was a matter of mere generosity on the part of the committee to concede this to the petitioner.
Senator Sir Josiah Symon
- No.
Senator KEATING
- Well, I think the honorable and learned senator himself said that the petitioner was treated very kindly by the committee.
Senator Sir Josiah Symon
-Very fairly.
Senator KEATING
- I believe Senator Harney referred to it as being kindly. Senator Symon says that the committee treated him very fairly. Will it be pretended by honorable senators who have used that argument that if this petitioner had taken his procedure from the law regulating matters of this kind in Victoria or Tasmania., or any other State in the Commonwealth, they would have acquiesced in it? Or if the petitioner had chosen to adopt the procedure that prevails in Canada or the United States, would the committee have adopted that so far as it was applicable ? It seems to me that there was a disposition on the part of the committee itself to deal with this matter in accordance with the procedure that prevailed in Western Australia, apart altogether from the action of the petitioner himself with regard to the form in which he brought his petition before the Senate.
Senator Sir Josiah Symon

- The element of fairness arose from the fact that the petitioner was allowed to use the form of procedure with which he was most familiar - that prevailing in his own State.
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Senator KEATING
- According to the honorable and learned senator the matter was primarily not one of right at all, but of grace, and having conceded it to the petitioner as a matter of grace, the committee wished to hold him bound as strictly as they possibly could to every little detail of procedure in connexion with it.
Senator CLEMONS
- Undoubtedly.
Senator KEATING
- The honorable and learned senator is not taking up a logical attitude in the matter. If the tribunal is one of such a character that it is not bound by any particular procedure at all, but can concede as an act of grace to any party that comes before it the right to follow his own procedure, surety they could have agreed to a laxity sufficient to enable them to overcome a little technical difficulty of the kind which has arisen.
Senator Clemons
- Not at all. Laxity and the Western Australian procedure are not convertible terms.
Senator KEATING
- I remind the honorable and learned senator that Senator Dobson has quoted section 148 of the Western Australian Act. Conceding that the Western Australian procedure prevailed in connexion with these proceedings not as a matter of grace, but of strict law, we come to section 149 of the Act, which says - The court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities or to whether the evidence before it is offered in strict accordance with the laws of evidence or not.
Senator Sir Josiah Symon
- That does not refer to the first proceedings.
Senator KEATING
- That is an elastic provision in this Western, Australian statute which a court, bound by the strictest rules of law, following the provisions of the statute, would be bound to act upon. I contend that if that applied to a court which is most strictly bound to confine its jurisdiction within the four corners of the statute, it applies with greater force to a tribunal which can take upon itself the right of conceding an act of grace to a party who comes before it in the way it is said this tribunal has done with regard to this petition.
Senator Sir Josiah Symon
- Would the honorable and learned senator say that they could dispense with the deposit?
Senator KEATING
- I do not know whether it would enable them to dispense with the deposit, because I do not think that would come within the provision that they shall be guided by the substantial merits and good conscience of a case without regard to legal forms and technicalities.
Senator Sir Josiah Symon
- It is a technicality.
Senator KEATING
- It is far more substantial than a technicality.
Senator Sir Josiah Symon
- Well, say the attestation of signatures.
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Senator KEATING
- I submit that, holding that the Western Australian law applies in its utmost strictness, it may still be contended that the petitioner in this case has substantially complied with all the requirements of that law and its procedure, to enable his petition to come up for determination upon its merits. That is as far as the report of the committee has gone. He has lodged his £50 deposit. He forwarded his petition within the 40 clays. It was in the hands of the Clerk of this Chamber, and, though I do not consider it necessary, in his hands it is also in the hands of the clerk of the court. It has not gone from this Chamber to any outside tribunal at all. It is practically here, and any senator might have moved that the petition be referred to the

court. Any senator might have got up and moved that this petition be referred to ourselves, but . I contend that even that was not necessary, because here we have absolutely a new court, the like of which did not exist, and was not contemplated by that statute. Here we have circumstances -the creation of a new Parliament, and a Parliament which had not laid down its procedure in regard to these matters - which were never contemplated by the framers of that Act. I say we can only apply the provisions of the statute so far as they are applicable to the existence of such a court as this in the circumstances by which it is surrounded at this present year of our history. On the other hand it has been stated by honorable senators opposite that this Western Australian law does not apply, and again when we really come to consider this matter on its merits - and I hope that every honorable senator applies his mind to the consideration of this question with a desire to do substantial justice between these parties- I cannot for the life of me understand why, when it is stated that the Western Australian law does not apply we should acquiesce in and adopt a report of this character -

That the petitioner has not conformed with the electoral law of the State of Western Australia, and your committee recommend therefore that the petition be not entertained.

It is stated that the Western Australian law does not apply.

Senator Clemons

- Who states that?

Senator KEATING

- I believe that Senator Sir Josiah Symon and those opposite have stated that.

Senator Sir Josiah Symon

- I did nothing ot the kind.

Senator KEATING

- I understood the honorable and learned senator to state that it did not apply in itself, and the committee regarded it as applying simply because the petitioner adopted it.

Senator Sir Josiah Symon

- It was the procedure he desired to be judged by.

Senator KEATING

- I understood the honorable and learned senator to state that it only applied by reason of the fact that the petitioner himself asked for it. If so I cannot see why we should be asked to adopt this report. One or two arguments have been addressed to the Senate, apart altogether from the strictly legal view of the case, that should not go without criticism. Senator Symon has pointed out to us the many great dangers and the evils which will flow from this Chamber reviewing a report which has been brought up by a committee, and not adopting it. Many of the arguments the honorable- and' learned senator adduced would have applied with great force to a determination that might be arrived at by an independent tribunal which had full power to hear and determine any matters submitted to it. But in this case it must not be forgotten that the status of this committee is not that of an ordinary court. This committee is simply appointed by the Senate to inquire into a certain matter and make a report which the 'Senate is absolutely free to act upon or .not to act upon as it deems fit, and the committee has no power whatever to determine the matter.

Senator Charleston

- Only to gather the facts in a concrete form.

Senator KEATING

- Yes, and submit them to the Senate, and it is finally for this Chamber to adopt or not to adopt the report. Senator Harney has laid great stress not only in his speech but' in his many interjections throughout the debate, upon what he considers would be the evil of allowing the Senate to determine a matter of this'' kind, which is purely a question of law, by reviewing the decision of a committee appointed to inquire into and report upon it. Does not the honorable and learned senator, and those who may be disposed to agree with his argument as to the inadvisableness and evil of the Senate reviewing the decision of the committee upon a point of law, see that as a matter of fact the Senate would be in quite as good a position to determine finally a matter of law as this committee ? Senator Clemons may take some exception to this, but does the honorable and learned senator not recognise from what has already come before us through the members of the committee that ' they were not in a position to give a decision upon a point of law ? The decision they have arrived at upon the point of law has been arrived at by a committee of seven members, only, two of whom were legally trained men, find one of them was on one

side and one on the other, and, as a matter of fact, the majority report of the committee is a majority report of laymen. Is not this Senate, then, in quite as good, if not in a better position to determine the matter as a committee composed as that committee was composed 1 Will it be contended for one moment that this report is a majority report of the legal members of the tribunal? The legal members were divided, and the majority was found amongst the laymen. So that all that the Senate. is really asked to do is to review the decision .arrived at upon a legal point by the laymen of the committee.
Senator Clemons
- That particular analysis cannot be applied as a general rule, and no one knows that better than Senator Keating.
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Senator KEATING
- I am not applying this as a general rule, and I hope that no such circumstances will ever occur again as will necessitate another discussion of this character in this Chamber. I hope we shall never again have submitted to this Chamber a report of this character. I think the report, considering the whole of the circumstances, may not only be characterized as unprecedented, but as something of which we maj* hope we will never have another illustration in the future. It has been pointed out on the other side, with a great deal of force, that to allow this Chamber to review a decision that may be arrived at, either on a question of law or a question of fact, in connexion with a petition, would be a very great evil, inasmuch as it might give rise to partisan decisions, but will it not appear to the minds of honorable senators who use that argument that if the evil of partisan decisions by the whole Chamber is something we should carefully shun, we should equally carefully shun it with regard to the particular tribunal that is charged with reporting on this matter? Would it not be possible that even a partisan decision might be arrived at in a committee of this kind ?
Senator Clemons
- Long enough ago it has been held to be far less likely.
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Senator KEATING
- I do not know how anybody, long enough ago, could have held anything of the kind with regard to a committee of men who were probably not then born holding ' opinions upon questions that were never then possibly debated. The system we have inaugurated with regard to the determination of disputed returns is a bad system, and I hope the effect of a discussion of this kind will be the adoption by the Chamber, with regard to the determination of disputed returns of senators, of some procedure which will necessitate these petitions being decided by an absolutely independent tribunal. I think that can be applied with similar force to the committee itself as to the Chamber. We are all animated with a desire to see that substantial justice is done between these parties. We are all imbued with the sentiments contained and given expression to in this connexion, that we should dispense to a great extent in the determination of these matters with those strictly legal forms and technicalities that have so often to be complied with. One argument which has been used by several senators is that if we review this particular matter any one may bring a petition forward against an honorable senator at any time during the term for which he holds his seat. How can that conclusion be arrived at from the position which the leader of this Chamber wishes the Senate to take up on this occasion, seeing that as a matter of fact it is not on the delay in the lodging of the petition that the supporters of the report of the committee rely, but on the delay in referring the petition. If the petitioner in this case came forward with his petition now, those honorable senators would say that he was out of court altogether, because he was not here within the 40 days. As a matter of fact he was here within the 40 days, and lodged his petition within the time pescribed by the law of the State. The delay which subsequently occurred, and honorable senators hold different views as to the . person on whom it should be shouldered, is now claimed as the reason why we should reject the consideration of the petition. So that so far as the argument of honorable senators in this connexion is concerned, I should say that the Senate could reasonably take into consideration that there was a considerable amount of delay and laches on the part of any petitioner who might not within twelve months or two years decide to commence his proceedings. There is only one other matter to which I will refer. Senator Harney referred to the petition being correctly lodged with the Clerk of this Chamber. Then it lay within the control of the Senate to refer it to fi judicial body to determine upon it. Who was to set it in

motion ? The petitioner, said Senator Harney, through a member. The question lias been asked, however, if no member would bring forward a petition on behalf of a petitioner, what would be his position? I believe Senator Sir Josiah Symon has replied that in such a case the petition would not be heard ; and it is inconceivable to me that we are going to lay down a general principle which we will find will have such a bad application, even under such exceptional circumstances as that. When we lay down principles which apply to the administration of justice, we take into consideration all possible exceptions, and take care to make the principle as comprehensive as we can. It is simply for these reasons that I support the motion before the Senate. If the Western Australian law does apply tq this matter, the petitioner has done all that he reasonably could do and all that was required of him. He has brought his petition before the Clerk of the Senate ; and it is sufficient that he has brought his petition before the Senate, leaving the determination of it to the Senate. It is desirable that the matter should be determined on its merits, and that we should not rely on a mere technicality to evade what is a duty devolving upon us. When a petitioner comes showing his bona fides we should not evade the duty devolving upon us of determining the question on its merits, and for this reason I support the motion. .

Motion (by Senator McGregor) proposed -

That the debate be now adjourned.

Question - that the debate be now adjourned - put. Senate divided -

12

AYES

11

NOES

Majority..... 1

Question so resolved in the affirmative.

Debate adjourned.

POST AND TELEGRAPH BILL

Postmaster-General

Senator DRAKE

. - I move -

That the Bill be recommitted for the reconsideration of clause 79, and the enacting words.

In moving the recommittal of the Bill, I should like to state that there are only two small amendments to be made in it ; one at the wish of Senator Sir Frederick Sargood, which will make the clause a little clearer, and prevent any misconception as to its scope and intention. The other amendment is to alter the enacting words in accordance with an instruction to the committee. As there are only these two small amendments to make, I should like if the Senate is willing to move the suspension of the standing orders in order to enable the Bill to be read a third time, and sent to the other Chamber. That will be a matter of considerable convenience, and as all the details have been thrashed out, I think the Senate will be able to agree to it.

Question resolved in the affirmative.

In Committee :

Clause 79 (Authority to persons to erect and maintain telegraph lines).

Postmaster-General

Senator DRAKE

. - It will be remembered that when we had clause 78 under consideration a proviso was inserted expressly exempting from the operation of the clause private lines erected on private lands, and also telephone lines in private buildings.

There is a subsequent clause which says that the Postmaster-General may authorize any person to maintain telegraph lines and so on. It has been pointed out - though I think the danger is an imaginary one - that that might be taken to mean that a person who wished to have a line on his own private land or in his own building would have to obtain authority from the Postmaster-General and do the work under certain conditions. That was never intended, and I think the clause could not be interpreted in that way; but in order to make certain, I propose to insert a proviso which has been prepared by Senator Sir Frederick Sargood. I move -

That the following words be added to the clause: - "Provided that such conditions and authority shall not

bo requisite in case of any person erecting or maintaining telegraph lines erected on private lands or within a private building."
Amendment agreed to.
Clause, as amended, agreed to.
Words of enactment - Be it enacted by the Parliament of the Commonwealth of Australia as follows.
Amendment (by Senator Drake) agreed to-
That the word "Parliament" be omitted with a view to insert in lieu thereof the words - " King's Most Excellent Majesty and the Senate and the House of Representatives."
Amendment agreed to.
Words of enactment, as amended, agreed to.
Bill reported with further amendments.
Motion (by Senator Drake) agreed to -
That the standing orders be suspended to enable the Bill to pass through its remaining stages without delay.
Report adopted.
Motion (by Senator Drake) proposed -
That this Bill be now read a third time.
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Senator PEARCE
- I should like to draw attention to the fact that some words that were uttered during the discussion in committee on this Bill, in regard to the employment of lascar seamen, were prophetic, inasmuch as what was foreshadowed is being carried into effect. It was said that the Orient Company would soon follow the example of the Peninsular and Oriental Company in respect of the employment of lascars. It was denied by some speakers that lascars are employed by the Peninsular and Oriental Company because their labour is cheaper than that of white men. I wish to draw attention to the fact that lascar seamen are about to be employed by the Orient Company, because I believe the Senate will have another opportunity, at the instigation of the Government, of reconsidering its decision upon this question. I trust that when we have an opportunity of dealing with it we shall not forget that we are now face to face with the fact that the two largest steam-ship companies trading between Australia and the United Kingdom are now employing lascar' crews.
Senator CHARLESTON
- I think it is only fitting that the attention of Senator O'Connor should be called to a reply made by the Prime Minister in the House of Representatives in respect to a question as to what would be the policy of the Government relating to the contract for the carriage of mails. The Prime Minister was asked whether the Government would refuse to let a contract for the carriage of mails by sea unless white crews were employed. The reply the Prime Minister gave Wm - " We will deal with that question in the 'Post and Telegraph Bill when it comes before us." I understand that" the leader of the Government in this Senate clearly stated that the Post and Telegraph Bill afforded about the worst opportunity of dealing with that question, and that it would be altogether unwise to insert such a provision in this Bill, because it might lead to the suspension or rejection of the Bill. The honorable and learned senator said it would necessitate the Bill being reserved for His Majesty's assent, and that probably His Majesty would not assent to it.
The PRESIDENT
- I do not think that this is the proper stage for a discussion on this question. The motion is that the Bill be read a third time. The honorable senator is alluding to matters which are not in the Bill. The general policy of the Government in reference to lascar seamen is not embodied in this Bill, and therefore this is not the light time to discuss that policy
Senator CHARLESTON
- The "question of mail contracts is in the Bill, and I am referring to that matter. The statement made by the Prime Minister in the other House appeared to me to be a kind of reflection on the leader of the Senate, and I thought I would be justified in calling attention to it.
Vice-President of the Executive Council
Senator O'CONNOR

. - Might I say, in answer to the honorable senator's statement that I have not. seen the expression of opinion on the part of the Prime Minister to which he refers. I did not know of it, but I know the statement that I did make with regard to the policy of the Government was made with the full authority of my colleagues. ' I said so at the time ; I say so now, and the policy I referred to will be adhered to.
Senator Staniforth Smith
- What is that policy ?
Senator O'CONNOR
- The policy of a white Australia.
Senator KEATING
- I am not altogether in accord with the motion before the Senate. We have been going through this Bill now for some weeks. We have considered it on the second reading, and we .have gone through it very carefully in many instances, and at other times less carefully, in committee. There are several clauses in the Bill against which I must register my protest ; but as honorable senators know the grounds of my opposition, I do not intend to enter upon them now. This is the first piece of legislation of a practical character that we have had before the Senate, and, as the marginal notes show, it has been framed by reference to similar statutes passed in other States. I hope this will be the last attempt on the part of the Government to utilize a purely machinery Bill for the purpose of legislating by implication on matters of a social kind, in connexion with which the States have still undoubtedly the exclusive right to legislate for themselves. I did hope that the Postmaster-General and other honorable senators would have seen their way to have guaranteed the preservation of State rights, and the rights of municipal authorities, to a greater extent than they have guaranteed them in some of the clauses in this Bil], which relate to matters in which there might be a difference of opinion, as to the telegraph wires of the departments and wires erected by any local authority in order to conduct light or power.
Senator Drake
- I think the honorable and learned senator will find that it will be all right, and that the provision to which he refers will not encroach upon the power of any municipality.
Senator KEATING
- I hope that the. Postmaster-General's remarks will prove correct. I think that a little more consideration might have been given to the matter, and more attention paid to those communities which had erected works of the character to which I have referred, with due attention to the statutory obligations imposed upon them by their particular States. Under all the circumstances I cannot .say that I find myself in accord with the motion before the Chair.
Question resolved in the affirmative.
Bill read a third time.
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21:55:00
Senate adjourned at 9.55 p.m.